

DÁIL ÉIREANN

AN COMHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

JOINT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

Dé Máirt, 3 Iúil 2018

Tuesday, 3 July 2018

Tháinig an Comhchoiste le chéile ag 3.30 p.m.

The Joint Committee met at 3.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Jackie Cahill,	Tim Lombard,
Marcella Corcoran Kennedy,	Pádraig Mac Lochlainn,
Martin Kenny,	Michelle Mulherin.
Charlie McConalogue,	
Willie Penrose,	
Thomas Pringle.	

I láthair / In attendance: Senator Anthony Lawlor.

Teachta / Deputy Pat Deering sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: I propose we go into private session to deal with some housekeeping matters. Is that agreed? Agreed.

The joint committee went into private session at 3.39 p.m. and resumed in public session at 4.26 p.m.

Horse Racing Ireland: Discussion

Chairman: The purpose of this session is to engage with Mr. Nick Hartery who has recently been appointed as chairperson of Horse Racing Ireland, HRI, to discuss his approach in undertaking his role and his strategic priorities in that regard. The joint committee welcomes the opportunity to meet him to hear his views. We trust that it will serve to provide greater transparency in the process of appointment to State bodies and boards. I welcome Mr. Hartery and wish him well in his new appointment, on which I congratulate him. I wish him every success in his new role.

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

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I ask Mr. Hartery to make his opening statement.

Mr. Nicky Hartery: I thank the Chairman and committee members.

I grew up in County Waterford, on a farm in Kilbarry just outside Waterford city. I graduated from UCC in 1972 with a degree in electrical engineering and later from UCG with a master's degree in business administration.

My business career has allowed me to see much of the world. I spent the first nine years working with General Electric in Shannon, County Clare. I then worked with Verbatim in Limerick in growing the start-up company in green fields for the first five years of its history, before moving to Geneva in Switzerland for two years to become its senior vice president for its operations in Europe, the Middle East and Africa. I spent the years from 1987 to 2000 in the United States as executive vice president at Eastman Kodak and president and CEO of the Verbatim Corporation. I returned to Ireland in 2000 to take up the role of executive vice president for Dell's operations in Europe, the Middle East and Africa. I worked there for eight wonderful years.

My family and I put down roots in Limerick when I moved to work in Shannon. I bought a farm in Croom in 1985. I have had an interest in horses all of my life. The farm is my passion and it is where I breed thoroughbreds, some of which I keep to race and some of which I send to the sales. I have been a non-executive director of Cement Roadstone Holdings, CRH, since 2004 and chairman since 2012. I have been chairman of Musgrave Group since 1 January this year, having served on the board of the company since 2010. I am also on the board of a Canadian company, Finning International, and chairman of its governance committee. It is the largest global dealer of Caterpillar machinery. I also have my own company, Prodigium. My love for business is matched by my passion for thoroughbred horses. To have the opportunity to serve as chairman of Horse Racing Ireland at a key juncture in the history of the racing industry is truly an honour. If my business travels around the world have taught me anything it is that Ireland is a global leader when it comes to breeding thoroughbred horses to race. I assure the committee that Ireland's reputation for producing skilled people, as the most brilliant handlers of horses, is renowned all over the world.

Ireland is the second largest producer of bloodstock by value in the world, second only to America, and the third highest producer of live foals in the world. Those statistics are backed up by a report produced by Deloitte last year, which measured the contribution to the Irish economy of racing and breeding at €1.84 billion and the number of jobs directly and indirectly supported by racing at 28,900.

At the start of this journey I am pleased to come before the committee this afternoon to express HRI's gratitude to our elected representatives for the support the industry has received over the years. The Deloitte report shows that investment made by the State in horse racing pays off by many multiples in terms of return to the Exchequer and additional employment throughout rural Ireland.

One of my ambitions in my term as chairman will be to continue to strengthen the role that thoroughbred racing and breeding plays in the towns and villages of the State. On the track Ireland is world class, competes with the best and enjoys success from here to Melbourne and back, but this is a challenging and perilous time for the industry in Ireland with a number of significant challenges, including Brexit. Horse racing is run on an all-island basis in Ireland, and 80% of our bloodstock exports are to Britain.

Horse Racing Ireland is putting the final touches to an ambitious strategic plan for 2019-23. The extra investment that we are proposing will protect our current position, allow the industry to grow and will enhance the return to the Exchequer and to local economies all over the State. This strategic plan will address the various challenges faced by our industry.

Given the keen interest that the committee has shown in our industry, I would encourage and invite any members who have suggestions, ideas, priorities or objectives for Irish racing's five-year future, to please engage with us. The suggestions would be very welcome.

My priorities for the next five years are very focused but interwoven. The key issue for me will be to drive excellence through people by putting people first. It is also crucial that we have our equine welfare side of the business right and the integrity of what we do is secure. If we have the people right and the horses right, then we have the perfect raw materials.

There is also the matter of making sure the investment and funding is appropriate. A sustainable funding model for Irish racing is critical to allow the future planning that an industry of this size needs. This will lead to greater participation in our industry, more horses in train-

ing and more people involved in ownership. There will be a knock-on effect of broadening the interest and appeal of racing in Ireland and increasing its profile.

That is probably enough about me at this point, and I am happy to answer any questions the Chairman or the members may have.

Chairman: A number of Deputies have indicated in the following order: Deputies Pringle, Penrose and McConalogue. Then we will have Deputies Cahill and Kenny.

Deputy Thomas Pringle: I thank Mr. Hartery for his introduction and the outline of his résumé. I wish him well in his role as chairman of Horse Racing Ireland, and all that it involves. Coming as I do from Donegal I probably do not have as much first-hand knowledge of Horse Racing Ireland as we do not have too many race tracks up in Donegal. We do, however, have a couple of successful jockeys. I wish Mr. Hartery well and all the best for the future. As Mr. Hartery has said, it will be a difficult time with Brexit and so on coming down the tracks.

With regard to harness racing, and Irish Harness Racing Association, which has been in existence in Ireland for the last few years also, will that sport have some impact on Horse Racing Ireland? I am not sure what the role is, and perhaps Mr. Hartery could expand on that. That sport has the potential to develop and grow but it needs the use of tracks. I believe that all aspects of horse racing should be working in partnership and working together but this does not seem to be happening on the ground in the context of harness racing. In his role with Horse Racing Ireland, what are Mr. Hartery's views on harness racing and does he see the two sports developing and working together, if possible?

Deputy Willie Penrose: I thank Mr. Hartery, we are glad to have him at the committee. He has a very impressive résumé and I have no doubt that his national and international business acumen will be of great benefit and will be utilised by HRI. Mr. Hartery has very ambitious plans and I am sure he will help the executive and the board in a very positive way.

We are all acutely aware of the importance of the horse racing industry at all levels, including the thoroughbred industry and flat racing. Ireland is prominent in the sport internationally, especially in Britain and France. The horse racing industry in Ireland is spread geographically right across the 32 counties. There are currently some 6,500 breeders. Mr. Hartery will be aware that there was a big lull during the economic recession and it sapped a lot of the confidence out of the industry, but we still have 26 racecourses. I know that the chief executive of HRI is familiar with my interest in Kilbeggan Racecourse. Mr. Hartery will know that we are very eager for some significant investment to be forthcoming. He is very welcome to visit there as part of his first duties, along with the chief executive. We look forward to HRI presenting the course with a cheque very soon.

Chairman: No lobbying now Deputy.

Deputy Willie Penrose: I never lobbied, not really.

One of the big threats that Mr. Hartery and his board will have to confront is Brexit. It certainly represents a significant threat to the horse racing and horse breeding industry in Ireland because the UK is our biggest export market, ahead of France. Some of our racecourses are across the Border. Has Mr. Hartery thought about this? Has the board prepared a plan? Is HRI working with the Department of Agriculture, Food and the Marine on this? What has been the interaction between HRI and the British Horseracing Authority in the United Kingdom, and with France Galop? Interaction with these organisations is very important to us in this context.

I know that HRI is in a difficult position. Like everybody else, they are in a vacuum, but HRI is a major industry that has significant North, South, east and west relationships.

The question I have for Mr. Hartery is one that often comes up at this committee - including at our last meeting when the HRI chief executive referred to it - on the significant funding provided by the people of Ireland to the horse racing industry. Mr. Hartery has expressed his appreciation for that today, and it has cross-party support. In a recent presentation to this committee the HRI chief executive spoke of a long-term and sustainable funding structure to be put in place. Has Mr. Hartery given any thought as to what a long-term sustainable funding structure for the industry would look like?

The industry is not just very important for breeders, jockeys and those within the industry; it also makes a major contribution to rural areas in particular. There were big events at places such as the Curragh at the weekend but smaller racecourses such as Ballinrobe, Roscommon and Kilbeggan are tremendously important to the midlands. There have been some noteworthy successes. One of our most significant owners lives right in the heart of that area, just outside Mullingar at the Gigginstown House stud. We have a great history there but it is important that it is maintained, retained and supported. One has to look for ways to do that, such as taxation, including the betting tax and whatever will come forward, as a sustainable way of ensuring that the industry will be promoted and financed.

Deputy Charlie McConalogue: I thank the witnesses for attending. I welcome the CEO of Horse Racing Ireland, HRI, Mr. Brian Kavanagh, who is accompanying the witnesses. I thank Mr. Hartery for taking on the role. It is important that people with good qualifications step up to the mark and serve in public service roles. This is one. It is clear from his presentation and curriculum vitae, CV, that not only does he mix passion and strong interest in horse racing, he also combines it with an impressive business CV and much experience at corporate level across a number of companies.

With regard to the challenges going forward, as Deputy Penrose touched on, what are the witnesses' thoughts on Brexit, the challenge that poses and what actions they think we need to take to best prepare ourselves for that over the coming months? The witnesses outlined the importance of appropriate funding investment and said that it needs to be used well. I would be interested in their further thoughts on how they believe funding should be invested and what the best way to spend it is. Deputy Penrose mentioned Kilbeggan Racecourse, and Senator Paul Daly, who is a member of this committee, is chairman of Kilbeggan Racecourse. He passes on his apologies for not being able to be here today due to a bereavement in the family but I have no doubt that he and Deputy Penrose would be at one about that.

Deputy Willie Penrose: So is the Chairman.

Deputy Charlie McConalogue: Certainly. Those are the two key points I would make about Brexit, funding going forward and how the witnesses believe that is best used to promote the industry. I thank them for taking the time to come in to us today.

Mr. Nicky Hartery: I will start with each member, call the question and make sure that the question I heard is the question that I was asked. The first relates to the Irish Harness Racing Association, from Deputy Pringle. I officially joined on 23 May and went to a board meeting. I will categorically say that I have not discussed harness racing. I will take it out of here as a question to us, about how we encompass all activities relating to horses in Ireland. We will take the question away and come back to the Deputy about it.

Deputy Thomas Pringle: That is dead on.

Mr. Nicky Hartery: The question from Deputy Penrose-----

Chairman: He wants the cheque for Kilbeggan.

Deputy Willie Penrose: Mine is very simple. As a businessman, one should realise that is a simple job.

Mr. Nicky Hartery: Not today. I have been to Kilbeggan, had a horse run in Kilbeggan and it is a nice place to be and to race. With regard to Brexit, in other non-HRI businesses, it is also a big deal. My process relating to Brexit is to prepare for the worst. I will talk the committee through some of that. I have spent time with the team at HRI on this. It is one of the biggest and most pressing challenges facing Irish industry and breeding. The ability to move horses between the three big nations is really important, as the Deputy mentioned, with France Galop, the UK and us in Ireland. Between the three individual groups and the departments of agriculture in each country, a high healthcare standard has developed and was presented to Brussels last Thursday. That also has the support of the other 15%, which are Italy, Germany, Scandinavian countries, Spain and others. It has united support across Europe. That is so horses can move freely within Europe. That part of it has been done. Activity has started to complete the issue of - using airline terminology - priority boarding, so that when it comes to a port, a horse is not delayed for a number of hours but moves through on priority. That part of the logistics has to be completed and will be done. Those are the two critical items. That is assuming a hard Brexit. That means there will be special categorisation for thoroughbred horses.

The next issue related to funding. A key issue with funding is that there are a number of areas where there is funding, such as the foal levy, which I have been paying into for years, and that should be retained. We are looking at every mechanism that provides revenue to HRI. That is one. The stallion masters provide approximately €2.5 million a year, which goes into European breeders' funds and so on. The other issue which I am interested in, when I look at this as a balanced portfolio, is that we collected approximately €70 million for HRI in 2001 on €1 billion of revenue in betting. Today, we collect €51 million on €5 billion. There is a significant imbalance somewhere. I am not saying that it should go up by a certain amount or anything like that. We need a balanced portfolio. There needs to be more give where we, as HRI, can fully fund ourselves. The UK tax is 2.5%. We have an excellent product. How do we stay competitive? In France, they take 7.5% in the pari-mutuel to fund their organisation. If an Irish horse is racing in France, one misses the premiums which are worth another 80% of the winnings. I raced there recently and the winning horse, which was just ahead of us, had €17,500 of a win take and approximately €12,500 between premiums. It is quite significant. There are different models in different countries. I am not saying there is any outcome from this but HRI will look at the different models used, and at what is best for Horse Racing Ireland so that we can give it and the industry in Ireland an advantage as we go forward.

I may have answered both Deputy McConalogue's questions at the same time. Does he want to ask something else?

Deputy Charlie McConalogue: I was asking about the appropriate use of investment, how Mr. Hartery feels funding should be invested in the sector to get the best result, and what his thoughts would be on that.

Mr. Nicky Hartery: A big investment which I inherit coming in is the Curragh. That is

important. I have asked our CEO to get an update on it. It looks like we are on plan and on time. I have asked because it is a big investment and I have no doubt that the Deputy will ask me at some stage if we are on budget. It is one of our biggest spends so we should make sure we get an up-to-date record of where the budget is. I assume that we are close to it. That is a big spend, and another big investment should be the Equine Centre. To have an industry like ours and to be a leader in the global market, we need to have the capabilities for drug testing and everything related to that. The committee should see an energy in that area from HRI. The last development in Leopardstown was in 1971, according to the check I did, and it is probably time for it to be refreshed. They are the key investment areas that I see in the next 12 to 24 months.

Deputy Jackie Cahill: As previous speakers have done, I wish Mr. Hartery well in his appointment as the new chairperson of Horse Racing Ireland. As Deputy McConalogue said, it is important that someone with such an impressive CV will come in and take over a public body. I wish Mr. Hartery the best of luck in his new role.

When answering some of the questions about betting tax, Mr. Hartery indicated that we should be able to fund industry ourselves at some point. While I fully agree with him, I am a man who likes my day at the races. Track bookmakers are an endangered species. They are part of the whole atmosphere and racing scene, which they add to and enhance.

Chairman: Senator Lawlor has indicated there is a vote in the Seanad, which he might miss if he has to wait. Would the Deputy mind letting him contribute first?

Deputy Jackie Cahill: That is no problem.

Senator Anthony Lawlor: I appreciate that. I am delighted to see investment in the equine centre in Johnstown is under consideration. The centre is a world-class leader with regard to both equine research and forensics. It is extremely important that the trustworthiness of the industry is upheld.

In Mr. Hartery's opening statement he mentioned he is chair of CRH and the Musgrave Group, is on the board of a Canadian company and has his own company. Will he have time for this role? In the past, there were issues around chairmen of boards not putting sufficient time into the boards, and this had consequences.

Is Mr. Hartery advocating an increase in betting tax and, if so, is he seeking support for such an increase?

Those of us who regularly go to the races will notice the dominance of a small number of trainers in certain parts of flat racing and also in the national hunt. That is not their fault, but many people are leaving the industry because they do not get sufficient returns, especially on the training side. Does Mr. Hartery expect the industry to be able to galvanise support to increase the returns for those who are in difficulty and those at the lower end of the scale? The more trainers the industry loses, the worse it will be because it will be more centralised with only a few trainers. We would like a broad spectrum of trainers across the country in various counties. There are trainers along the western seaboard too.

I thank Deputy Cahill for letting me speak before him.

Deputy Jackie Cahill: While I appreciate the potential to increase revenue from taxation and betting, the figures will show that the number of track bookmakers has dropped significantly. As I said, they are an integral part of the atmosphere at race meetings in Ireland. If we are

to increase revenue, we must consider their position. We cannot compare a track bookmaker with a major multinational because it is not a level playing field. Ladbrokes and other companies are on the rails now. We must try to preserve the unique atmosphere of the betting ring. If we try to increase revenue from betting, a concept which I would not disagree with, we have to ensure track bookmakers are able to survive. We must not impose an unsustainable tax on their turnover.

In regard to attendances at race meetings, Galway in a couple of weeks' time will be thronged to the rafters. At marquee meetings, whether it is Leopardstown at Christmas or whatever, attendance is good. However, at the ordinary, mundane meetings, attendance is dropping significantly. At my local track in Thurles on a Thursday in the winter time, there will hardly be the people looking after the horses that are racing. Those tracks are struggling. Is anything envisaged to promote attendance at what we would describe as bread and butter meetings? Many of the provincial tracks are under extreme pressure, especially in the winter. They are an important part of the industry. Does Horse Racing Ireland have plans to help these provincial winter tracks?

Thankfully, prize money is good in this country, but there is a division between the flat and national hunt prize money. What does Mr. Hartery see as a suitable ratio? As Senator Lawlor said, a small number of trainers and big operations dominate flat racing. A few trainers also dominate the national hunt racing scene. What are Horse Racing Ireland's plans regarding prize money for both flat and national hunt racing? Point-to-point racing is becoming more and more important for trainers with one, two, five or six horses as they try to get customers. It plays a significant part in the national hunt scene. This sector needs to be protected and we must ensure it feeds into the national hunt. The prize money and support available for the sector will be important.

I would also like syndicate ownership to be promoted. Levels of syndicate ownership declined alarmingly after the boom, although it is starting to recover. There is no better way to promote the product we have to sell. If five, ten or 15 lads are involved in the ownership of a horse, they and their families will attend race meetings. I would like greater incentives to be provided for syndicate ownership. For a limited outlay, one can become a part of the whole atmosphere. There is no greater kick than having a winner. I would like to see syndicate ownership promoted as much as possible.

Drug-testing was referred to and I strongly recommend investment in it because our reputation is paramount. I encourage co-operation with Bord na gCon in this area because greyhound and horse racing are similar industries, including in respect of funding. If we had a State laboratory covering both sports, there could be many synergies. That is the best approach because the industry needs its integrity to be enhanced. The integrity of horse racing is at a very high level, without question, and the level of testing is superb, but investment in testing would be welcome. I encourage Horse Racing Ireland to engage in talks with Bord na gCon on a joint venture in this area, which would be very welcome.

I agree with Deputy Pringle's comments about harness racing and its future. Representatives of the harness racing sector have made impressive presentations to the joint committee. They believe they could get a competitive industry up and running with a small budget. I would like to see greater co-operation with that sector, which has potential and will not encroach on other parts of the horse racing industry.

Deputy Martin Kenny: I thank Mr. Hartery for coming in today and sharing with us his

extensive CV in the business world, and his interest in horse racing.

One of the major issues over the years has been the amount of taxpayers' money that goes into the horse racing industry. The industry receives a significant sum every year. I accept that this investment delivers a return in the sense that the activity in the horse racing industry generates tax revenue. Mr. Hartery referred to the impact of betting tax. Something clearly needs to be done in this area, although I will not get into what this should be. How can Horse Racing Ireland make the industry sustainable and enable it to pay its own way and more? As everyone will appreciate, it is difficult to make an argument for allocating the best part of €100 million to the horse and greyhound racing industries every year when hundreds of people are lying on hospital trolleys and we have a housing crisis and many other problems in society. Much of this money is used for prize money and we see that the people in the winner's enclosure are not exactly on the poverty line. This issue needs to be addressed by the industry.

On attendance at race meetings, Galway in a couple of weeks' time will be thronged to the rafters. At marquee meetings, whether it is Leopardstown at Christmas or whatever, the attendance is very good. Attendance at the ordinary, mundane meetings, however, is dropping significantly. At my local track, Thurles, on a Thursday in winter, there will barely be the people looking after the horses racing. Those tracks are struggling. Is anything envisaged which could promote the attendance at those bread-and-butter meetings, as we would call them? Many of these provisional tracks are under extreme pressure, especially in the winter time. They are an important part of the industry. Are there any plans to try to help those provincial winter tracks? Given his past experience, perhaps Mr. Hartery is the person to do it. It would also be a difficulty if we were to see an increase in betting tax and it went to pay for what people would see as an extravagance. There needs to be a sense that value for money would be coming from it. That brings me back to the point made that in the past decade or two it has become an industry in which it is very much the high flyers who are seen to take the cream, while a lot of those at the bottom such as the smaller trainers and breeders are struggling and finding it difficult to survive. A serious attempt needs to be made to rebalance that position. Simply creating a level playing field would not do that because the bigger players are so dominant. Measures have to be put in place to ensure the people at the bottom will be given more than a fair chance to rise and do better in that respect.

The issue of the working conditions of stable staff has come up at different times. Their remuneration needs to be looked at. There is a need to follow best practice because I know someone from my part of the country who works in the industry, loves horses and works with them nearly 20 hours a day, but they are not very well paid for the amount of energy and effort put in. While we all appreciate it is an industry in which there is a need for consistency, and the same people to handle horses all of the time, at the same time there is an issue that cannot be ignored and which needs to be dealt with.

I refer to Brexit which Mr. Hartery mentioned as something that will clearly be a problem which we will all have to face. I live in a Border area and know that any issue of trade across the Border or the channel will be difficult. It does not only concern the movement of horses for racing, it also concerns the sale over and back of horses and other animals. Mr. Hartery mentioned healthcare standards, but from the point of view of public policy, does he believe there are particular areas at which we should be looking to enhance it to ensure Brexit will not have too serious or negative an impact on the horse racing industry?

I mention the relationship with bookmakers. A lot of small bookmakers feel squeezed because of the way the situation has developed during the years. It is another issue that clearly

needs serious attention quickly because it is not appropriate that they have ended up in the situation in which they find themselves.

A lot of the big problems we have had during the years have had to do with management and how things are run. Certainly, the perception is that things could have been run a lot better. As the new person in the position of chairman, I would appreciate an assurance from Mr. Hartery that he has a handle on the matter and understands that these issues need to be dealt with appropriately.

hT lot of the big problems that we have had down the years have been around management and how things are run. The perception out there has certainly been that things could have been run a lot better and I would appreciate an assurance from the witness, as the new person in the position of chairman that he has a handle on that and that he understands that those issues are there and that they need to be deal with appropriately.

Mr. Nicky Hartery: A lot of questions - about 20 - have been asked. If I miss one of them, please come back to me on it.

I will start with Senator Anthony Lawlor who asked three questions, the first of which was about the time I could give to this role. I gave a lot of consideration to it before I decided to take it, particularly the time I could give to it. It is not the degree of difficulty that is the issue but giving the role the appropriate amount of time. I committed to giving it the appropriate time to make sure it would be done properly and that at the end of my term the organisation would be in a far better place. My predecessor did a fine job and I hope that when I pass on the baton, the next person will get it in better shape again. I hope every chairman who comes after me will have the same attitude to the role. That is my attitude to it.

On betting tax, I appreciate the support. The CEO and I will come back to the committee on the issue. It is not about picking out one element but about ensuring people are fully aware of all of the different elements of fundraising within HRI, including the foal levy, and where we might be in that regard in the next two to five years.

The Senator's third question was about the few dominant trainers. It is interesting because on a weekly basis fields will include the offspring of the top sires and the top trainers and so forth will be seen. The other day I was reflecting on the fact that of the top ten trainers, probably only three of them were there five to seven years ago. That movement will happen every five to ten years. There are quite a number of new young trainers coming through in Ireland; therefore, in time there is a changing of the guard. As in all industries, that puts pressure on people to perform better, which can be good, as much as anything else. I look at what is going on and the standards being set in Ireland are exceptionally good. I do not only look at Aidan O'Brien as being Irish. It is a global picture. Irish trained horses race in England, France and the United States. In the past they only raced in Ireland and the United Kingdom, but lots of trainers now race their horses in the United States and France. Therefore, it is a different playing pitch, but changes will happen in time. They are the dynamics of the industry. The key owners in the 1970s were probably not the key owners in the 1980s. They are definitely not the key owners today.

There was a question about harness racing. The one thing I will say about it is that I have been to the Hambletonian twice. As I have seen it in the United States in particular - New Jersey is a great state for it - I am quite familiar with it and, therefore, the question is interesting for me. I have not, however, looked into it in Ireland. In response to what the first Deputy asked

of me, I do not see or hear a lot about it, but we will pick up on it.

I am delighted that there is support for drug testing, about which Deputy Jackie Cahill spoke. I agree with the points made about syndicate ownership. I saw how effective it could be in getting more people involved in the industry.

The division of prize money between flat and national hunt racing was the subject of another question. I have not looked into it, but I will take the question away and look at it.

Attendances are back to where they were pre the recession. The annual figure is about 1.3 million, of which the festival meetings, including those in Galway, Listowel, Punchestown and Leopardstown at Christmas time, account for about 40%. There are about seven festival meetings which include the Fairyhouse festival meeting at Easter. Attendances at all other tracks account for 60% of the figure. The comment that attendances are lower at tracks such as Thurles is reasonable and accurate. It is something that will be looked at because it is all part of promoting the industry. The one thing we need to be careful of is the idea of people who attend race meetings being the few who are well-heeled and go racing and so forth. When one looks at many sports, and I have lived in Switzerland where motor car racing and the motor show in Geneva are big things, one gets the same principals, but they are a minute number of the 28,900, or let us say 30,000, people involved in the industry in Ireland. As has been said, there are many people who do a lot of hard work in the industry locally on the stud farms preparing horses for racing and so forth. We need to keep that in mind.

The other question from Deputy Cahill was on bookmakers. The bookmakers' stands at the racecourses are an endangered species. When we consider the opportunities we have to support the industry we will take that into account and I will revert to the Deputy on the matter. I have noted what he said.

I might not have Deputy Martin Kenny's questions in the order he asked them. He referred to small breeders struggling and a rebalance. Many of the small breeders I see in my part of the world multitask, if I can put it that way. They might be doing cattle, milk or whatever and they do a great deal of multitasking. Unless one has a specific capability in the breeding lines and the like, the industry will pay for what it wants, which is what the industry does, and it does not pay for what it does not want. That will always be a difficulty. It is an industry that very much refreshes itself. For example, right after the recession in 2008, 2009 and 2010 there was a significant drop in foal numbers in the country. We had significant overproduction and what happens then is the bottom 10% or 15% of the industry falls out. That will happen as that is just the dynamics of an industry.

The Deputy referred to working conditions in stables. One of the things I have got myself and our CEO involved in is staffing. We realise it is not a 9 a.m. to 5 p.m. job and so forth but currently Kieran Mulvey is pulling the employers, the employee groups and HRI together and is working diligently. We hope to have an appropriate outcome emerge from that process by the end of this year and hopefully even sooner. This is a work in progress and I do not wish to say more on it at this point. However, I know there is a good programme in place and I hope to see it come out on the right side for everyone.

Chairman: Deputy Kenny also made a point about the amount of taxpayers' money going to the industry.

Mr. Nicky Hartery: My objective is to see the industry becoming self-funding, if that is the

right word, in order that the funding in the industry is used to promote a better industry, higher foal numbers, better breeding and, as a result, more people employed. It is a labour intensive industry and that would be better for the country as it is very much driven on a rural basis.

The Deputy's last question was on the management, and I assume he was referring to HRI management, and how things were managed. I believe the chairman has a couple of key responsibilities. One is strategy. One makes sure the strategy is appropriate for the business one is running. The second thing is talent. That is something I have yet to get into within HRI and to work with the team there, but my understanding from the outgoing chairman is that he was quite pleased with the management and so forth. Respectfully, as the Deputy asked me the question he can take it that I am responsible for it. I will make sure I follow through on that and ensure we meet all needs.

Deputy Martin Kenny: With regard to Brexit, is there any particular public policy issue we could deal with or examine?

Mr. Nicky Hartery: Yes, I made a note of public policy to help the horse racing industry. I am not aware yet, but I have taken that on board. If there is something the committee can help with, all help will be gratefully appreciated.

Chairman: As there are no other questions, I thank Mr. Hartery for appearing before the committee today. We raised a number of issues with him and I am sure he will revert to us in due course. He indicated in his opening statement that a strategic review was being undertaken. The committee looks forward to engaging with Mr. Hartery, the chief executive and Horse Racing Ireland over the next number of months in that regard and we look forward to having him and the chief executive before the committee later in the year perhaps, so we can have an input into that review. We wish him every success in his new role. I am sure it will be very fruitful and beneficial as we all move forward together.

Mr. Nicky Hartery: I thank the Chairman and committee members.

Sitting suspended at 5.17 p.m. and resumed at 5.21 p.m.

Report of the Agriculture Appeals Act Review Committee: Discussion

Chairman: I welcome Dr. Kevin Smyth, assistant secretary, and Ms Eilis O'Connell, assistant secretary, Department of Agriculture, Food and the Marine. The meeting is to discuss the report of the Agriculture Appeals Act review committee.

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

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an of-

ficial either by name or in such a way as to make him or her identifiable.

I call Dr. Smyth to make his opening statement.

Dr. Kevin Smyth: I thank the Chairman and the members of this committee for the opportunity to address them today with my colleague, assistant secretary Ms Eilis O'Connell, regarding the Agriculture Appeals Act 2001 and the work of the appeals office.

The programme for partnership Government provided for a review of the Agriculture Appeals Act 2001 to ensure the independence and efficiency of the office in dealing with appeals from farmers. In September 2017, the Minister announced the commencement of such a review through the establishment of a review committee to carry it out and to furnish a report. The report was to include recommendations on the legislation governing, and the future operation of, the appeals office and was to be completed by the end of that year. The process was to feature consultation with relevant stakeholders.

The committee comprised Niamh O'Donoghue, former Secretary General, Department of Social Protection and chairperson; Pdraig Gibbons, former chairman of Connacht Gold and former president of the Irish Co-operative Organisation Society; and Paud Evans, former principal officer in the Department of Agriculture. Written submissions were invited and 20 submissions were received by the closing date.

In February 2018 the report was published for consideration by the relevant stakeholders, including this joint committee, explaining that the recommendations were currently under consideration by the Department, particularly with regard to legislative changes that may be required to give effect to them. The consultation process that has been under way is now drawing to a close. To date, there has been a submission from this committee and we have had meetings with the director and a senior staff member in the appeals office, staff in the payments and entitlement areas and a recent meeting with six farm organisations after last week's farmers' charter meeting. This committee meeting will help to further inform the process.

We are aware through the committee's letter of 2 May that it has the following issues of concern: the status of the independence of the chairperson of the appeals panel; the independence from the Department of any legal advice sought by the appeals panel; and the validity of inspections that are not carried out in accordance with terms, conditions and guidelines of the scheme. Furthermore, the committee also indicated that its engagement will be ongoing in reviewing the legislation as it progresses through the Oireachtas. The Minister is interested in the further views of the committee and would like to ensure all interested parties have had their say on the contents of this important report.

There were 31 recommendations in total but I will highlight some of the key points in the report. The most significant recommendation is probably the introduction of an independent agricultural appeals review panel. Others include a fee to be set by the independent review panel for the progression of an appeal to the second tier; the Department should continue to broaden the pool from which appeals officers are recruited; a structured programme of knowledge and skills-based training and development to be put in place; the appeals office should publish a principles-based code of practice; the appeals office should put structures in place to ensure that appellants can be advised of the progress of their appeal; greater engagement by the appeals office with the farmers' charter of rights monitoring committee; the appeals office should consider recording oral hearings and the possible use of video conferencing; the introduction of a plain English booklet giving details of the decision-making process may be given

to all claimants; the time limit for submission of correspondence to be extended from 14 to 21 days; the appeals officer may have discretion as to whether to hold an oral hearing as necessary; arrangements are to be made to appoint a deputy director with potentially a greater remit; the Department should look at the robustness of its internal review process; the report of a finding by the appeals office should be timely and comprehensive in the interest of informing both the Department and the appellant; and the regulations should be amended to require both parties to submit a list of attendees that they intend to have at an oral hearing and that any new evidence should be submitted two weeks before the date of the hearing.

Subject to a positive decision by the Minister, certain of these recommendations can, in effect, be put in place relatively quickly. I would cite as possible examples areas such as the introduction of greater levels of training; the publication of more detailed information; a better emphasis on timeliness; and the procurement of additional IT resources etc. The biggest challenges arising from the recommendations, such as the introduction of an agricultural appeals review panel comprising the director of the appeals office and non-departmental staff, would require primary legislation to be introduced.

A preliminary legal view has also been put forward that the recording of proceedings would need a legislative change as section 8(2) of the Agricultural Appeals Act currently requires that hearings be held in private. The use of video recording and communication tools such as Skype would need to be carefully examined legally, particularly with regard to the use of personal information and GDPR ramifications. Consideration will also have to be given to the practical aspects of the recommended changes. For instance, there would be logistical issues and increased administration arising from having four additional persons review each case. Currently, there is no second oral hearing and appeals to the director are based on fact or on law. The recommendations seem to make provision for the independent review panel to meet the parties again.

If I can paraphrase the consultation that has taken place to date, I would say that the groups that have given their views have been broadly supportive of the contents and recommendations of the report. The farm organisations spoke of the need to strengthen the independence of the appeals office and the importance of open access to an oral appeal. The appeals office itself gave the view that any changes must not compromise the authority and responsibility of that office and, in particular, of the director. The appeals office welcomed the recommendations of a six-month timescale for appeals and the use of a code of practice. Staff within the paying agency wanted greater certainty on the timescale of appeals and to curtail the late introduction of new evidence.

It would be remiss of me to suggest that all recommendations in the report have been met with universal agreement. The farm organisations are opposed to the introduction of fees for further appeals. Reservations have also been expressed about the use of recording and video conferencing from the point of view of the stress it might cause, the legal and privacy implications and its efficacy as a communications tool. I am happy to discuss these views with the committee.

Regarding the next steps, the views of all parties will be summarised and sent in a submission to the Minister on the best way to implement the report. There will be an emphasis on those recommendations that can be put in place quickly. Definitive legal advice will be sought on the best way to proceed with those recommendations that require primary or secondary legislation. I thank the committee members for their time and we are happy to answer questions.

Chairman: I thank Dr. Smyth. I will take questions now from members. I call Deputy

Cahill first.

Deputy Jackie Cahill: I thank Dr. Smyth for his presentation. I have been asking questions about this issue for a long time on this committee. It was a condition of the Programme for a Partnership Government that there would be a review of the appeals process. The reality on the ground is that farmers have lost confidence in the appeals process and the procedures surrounding it. Our job is twofold. We want to restore farmers' confidence in the process and we can do that by ensuring there is fairness in the process. We need an independent chairman. With all due respect to the personnel of the Department, an independent chair is not someone who has spent his or her life working in the Department. Many people with the required CV are not former employees of the Department. I am not casting aspersions on anyone's character but we are trying to restore confidence and that is one of the essential things that needs to be done first.

We also need an appeals structure with farmer representation. I refer to the model for tuberculosis, TB, compensation. If there is a dispute over TB compensation, an appeal can be made to a body which has farmer representation. In general, that has worked well and there are few complaints when people use that appeals process. People are happy with the findings. I know of one case lately involving a high economic breeding index, EBI, herd. The farmer was not at all happy with the valuation system. An appeal was made to that body and it was felt there was a fair hearing. Farmers' representation on the appeals body added greatly to the credibility of the process.

When an inspection is carried out and it is proven subsequently that it was not carried out correctly according to the terms and conditions of the scheme, then no sanction should be applied. From past experience, unfortunately, in a significant number of cases inspections have not been carried out in accordance with the terms and conditions and substantial fines have ensued. If there is a Garda prosecution and everything is not done correctly, when it goes to court it is automatically thrown out without any debate. The same thing has to happen here. Department officials who are carrying out inspections have a rule book. If it is seen that they have not adhered to that when carrying out the inspection, if it has not been in accordance with what is laid down in black and white, then that inspection has to be null and void. That is absolutely essential to restoring farmers' confidence in this whole process.

I welcome the review. We have our Agriculture Appeals Act and we have a job of work to do now. Those changes would go a long way towards restoring farmers' confidence and ensuring that in future farmers would be confident of getting a fair hearing. It is important to state that we are talking about a minority of cases where people feel they have to go for appeals - not every farmer that is going down this route. Where they do go down this route we have had much publicity in the last couple of weeks about questions being asked. In my neck of the woods, this issue goes back five, six, seven and eight years.

We were very critical and I produced figures here which showed the levels of fines in one part of Tipperary versus the other part was at a ratio of 3:1. In my view, there were not more non-compliant farmers in north Tipperary than south Tipperary, and definitely not to that ratio. There were significant issues. Many of those individual farmers, unfortunately, went the appeals route and the outcome was not what I would consider satisfactory. Those are my recommendations and they come from extensive consultation with farmers who have been in throes of this and feel they have been unfairly treated by the whole process. If we could get those three things from this review, we will be going a long way down the road to restoring confidence and ensuring that farmers will feel this appeals process will give them a fair outcome. They might not always like the outcome they get but they want a fair hearing, and that is what is being asked

for and demanded.

Deputy Martin Kenny: I thank Dr. Smyth for his presentation, which I read earlier. I come across appeals regularly and the issue is that people often feel they are up against it. They already have a negative finding before they go for the appeal, they are trying to prove themselves and the people they meet are very much on the side of Department. That is generally the way people look at it. I welcome the report and its recommendations. I have an issue with the fee being put in place because in the vast majority of cases the people looking for an appeal are looking for something to which they are entitled. They feel they are being done out of that wrongly or they would not be appealing. Suggesting a fee should be put on them would be an unfair penalty to place on people who already feel penalised by the system.

I agree with Deputy Cahill's suggestion that the chair should be somebody independent. I do not think it has to be anyone with any particular knowledge of agriculture or the agricultural sector. It can be someone from outside. There are many eminent people who, with a short bit of training up in the areas of the various schemes, would be able to come up to the standard and deliver. Most of the recommendations are clear and sensible. One simple example that I came across recently is where a person was reported to the local authority, wrongly, for spreading slurry. The local authority came out, did a short investigation and then sent a report off to the Department. That person feels wrongly done by because he or she had not breached anything. They also feel that the investigation by the local authority was simply to try to substantiate the report that was already sent in.

Those of us who live in rural Ireland, and in the farming community, know that when somebody reports somebody else it usually has nothing to do with the issue reported. It is about some other gripe from long ago. That is often the case in many of these instances. When something like that goes to an appeal it is difficult to sort out the issue. There needs to be a clear sense that people will get a fair hearing. Many people in the farming sector feel they do not at present. I have come across several people who, when they have taken a beating on something, say they would not even bother appealing it because they do not think they would get a hearing. That is a bad thing. People should feel confident, if they feel they are in the right about something, that they should be able to proceed.

Even if the appeals mechanism does not work out for them, they still have recourse to go to a solicitor and go to court. That is a reality that many people do not understand. They do not know they have that right. They should take that right when necessary, if they feel strongly enough about it. That should not, however, be necessary. The appeals mechanism should be strong enough to deal with it and deal with it adequately. As Deputy Cahill said, people often may not get the result they want. However, although they may not agree with the decision, most people would get some level of satisfaction from being afforded a fair hearing. I welcome the work which has been done by the Department but I do not agree with people who are already being penalised being charged a fee.

Deputy Charlie McConalogue: I thank Dr. Smyth and Ms O'Connell for attending. On the appeals system, part of the problem relates to how the schemes are structured and the lack of flexibility regarding a mistake a person may make and the resultant penalty. Where do common sense and reasonableness come into the process? At all stages that an application is with the Department or under appeal everything is ruled by absolutely strict and rigid terms and conditions which often do not take cognisance of the realities and difficulties for people participating in schemes. We all understand the need for terms, conditions and rules but there must be some level of flexibility and understanding. That is where many of the difficulties originate. What

capacity is there for flexibility within the system and the various schemes? Surely we can address that issue in terms of how the system and the terms and conditions are set up.

In the past two weeks, I have become aware of three relevant examples. A mistake relating to a tier 1 condition was made by an adviser in the submission of a GLAS application for a small rented plot of land, with the result that the landowner was unable to avail of the scheme after the first year. The full amount of €5,000 was paid in that year but although all the tier 2 actions were carried out in respect of the land, the farmer has been excluded from the GLAS scheme, must repay €5,000 and will miss out on €25,000 potential income over the five-year period. No flexibility was shown in respect of that mistake. Considering the extent to which such people depend on EU schemes for income, that decision is extremely inflexible and unfair to that full-time small farmer.

An appeal was lodged regarding a carbon navigator not being submitted on time to the beef data and genomics programme. The person carried it out, wrongly believed it had been submitted and must now repay €2,000 and has been excluded from the scheme. Again, there was no capacity for flexibility in that regard.

An application to TAMS relating to a low-emissions slurry spreader initially purchased on hire purchase was refused. The applicant later bought the spreader, which cost €40,000, outright in order to claim on it and is within the allowed three-year time period for to submit a claim but may not do so. That young farmer is out of pocket for 60% of the value of the spreader and has been left in an exceptionally unenviable position.

People considering appeals in respect of land and eligibility matters are not issued payment until those appeals are heard. Due to the fact that they do not wish to be without the payment until the completion of the process, they may accept a small penalty imposed on them although they think it unjust. In what way can there be more flexibility and understanding to better reflect the reality of farming and understand the impact that decisions based on very strict terms and conditions can have on the farming community? That is key.

On the implementation of the recommendations and timelines, the committee has reported and the recommendations have been made but there is no clear timeline for implementation. Can we ensure that clear timelines will be put in place for what will be implemented and when?

Chairman: I thank the witnesses for attending. As Dr. Smyth is aware, the committee has been engaging on this matter for over a year and has examined the entire process, which is obviously very good.

How many cases have been appealed so far this year compared with the same time last year? Has there been an increase in appeals relating to specific areas or schemes such as the beef data and genomics programme referred to by Deputy McConalogue, GLAS or any other scheme? Are greater numbers of appeals being lodged in some areas of the country than was previously the case?

To follow on from the Deputy's question on timelines, it is over a year since the committee began its consultation process on the issue and communications with the Department in that regard. Dr. Smyth stated that some recommendations can be implemented now or reasonably shortly but the key issues will require legislation. He referred to the fact that only the director may deal with individual cases, of which the committee was aware. If there is an increase in the number of cases, how will one person be able to get through them in a timely manner? That

will be a major issue down the line.

Whether we like it or not, legislation may progress slowly through the Houses and agricultural matters may not be afforded much priority, although all present would like them to be. It will take time to increase the priority of legislation in this area, although this issue is of importance. How can the necessary changes be progressed at a far quicker rate than is currently the case? The year-long consultation process is coming to an end. It is likely that some cases have been under appeal for up to a year and a half. When will they and the overall issue be addressed?

Dr. Kevin Smyth: I thank members for their questions. People have not totally lost confidence in the appeals office. They believe there are ways in which things could be done better. There is a need for fairness and greater levels of confidence in the office. Many people think the appeals review panel is the mechanism to achieve that. Much stress has been put on that. As referenced by Deputy Cahill, the independent chair will be vitally important. He or she will drive the new system. All those consulted emphasised the importance of people respecting the independent chair and those on the panel. I acknowledge Deputy Cahill's point regarding farmer representation on the five-person panel and will relay it to the Department.

An inspection that is carried out incorrectly should be a basis for an appeal but that depends on the scale of the error. Deputy McConalogue stated that a small mistake by a farmer should not result in a big penalty. Similarly, a failure by an inspector to sign a sheet or include a date should not automatically invalidate the inspection. It is for the appeals office to determine whether an inspection is valid. Obviously, if it is of the view that the inspection is not valid, then the whole thing should fall automatically.

Deputy Jackie Cahill: Are they catalogued?

Dr. Kevin Smyth: As stated, one needs to show the areas. I would be interested to hear of examples the Deputy has in that regard.

I agree with Deputy Martin Kenny that certain farmers are of the view that the appeals process is difficult. They are not used to it and it is one of the things that should be borne in mind when we speak about video conferences and so on. It is difficult enough for farmers to turn up at appeals hearings. One can see why video conferencing might be a more efficient way of doing things but for a person who is not used to dealing with a public process, sitting in a Department office in front of a video camera might make the process even more difficult. It must be borne in mind.

In the context of who is chosen as the chairman, one of the problems is that the legislation is awfully complex. I wonder if a person who knows nothing about agriculture would be able to take on board the complexity of the schemes.

On Deputy McConalogue's comments regarding GLAS, the beef data and genomics programme and TAMS cases, I can see from where the difficulties are coming. This is borne of the complexity of the schemes that are in place. There are certain things we have to deliver, and this is one reason we have problems. While we try to make the schemes as simple as possible, there are areas where they become complex and then things have to be done and certain hurdles have to be crossed. An independent chairman should have the technical expertise to know and understand the schemes at a fairly early stage.

Chairman: Deputy Cahill referred to a conflict of interest if, for example, the chairman

overseeing an appeal hearing is a former employee of the Department of Agriculture, Food and the Marine.

Dr. Kevin Smyth: I understand that. This point was made by all six farm organisations. On the other hand, it must be possible to find a chairman who has a knowledge of agriculture and who is acceptable to all. I take the point regarding the Department.

On the panel, it might be useful at times to have a person who has a knowledge of schemes and who would be able to help with the technicalities. I would not rule it out. The person could be departmental or a former public servant from Teagasc who could be an asset. Do not rule people out automatically.

Deputy Jackie Cahill: Dr. Smyth referred to having a knowledge of schemes. There are many consultants out there, and other people, who work on the schemes besides Department staff. The Department is on one side of the fence but there are many more people on the other side now who have a serious understanding of schemes. I do not accept that the only gene pool comes from the Department. There are many people out there who understand these schemes inside out. If we are to restore confidence in the scheme, then independence is fundamental. We can see how the farmers' charter worked. We have always managed to get individuals for that who are seen as independent to all groups around the table. We need the same in this structure also. I understand that Dr. Sean Brady is the chairman of that group.

Dr. Kevin Smyth: Yes. Dr. Sean Brady is chairman.

Deputy Jackie Cahill: Dr. Noel Cawley was the chairman when I used to attend its meetings. We can come up with people who have knowledge of the industry but who are outside the Department employee records.

Dr. Kevin Smyth: I do not disagree with the Deputy. There is a very wide gene pool. There are consultants who might have the best of both worlds. They have the agriculture knowledge and the status and respect to be able to take the chair.

On the implementation of the recommendations and the timelines, we seem to have three types of recommendations. I am not pre-empting the decision of the Minister by stating that there is one recommendation we can do straight away where we do not require legislation. There are other recommendations in respect of which we might need to bring in a statutory instrument as secondary legislation. Undoubtedly, the slowest part will be when primary legislation will be required. This is what we need for the secondary review panel. We cannot avoid primary legislation for that.

Chairman: Has the process relating to it started?

Dr. Kevin Smyth: We have had preliminary legal advice on the matter. We are aware of what needs to be done but I cannot give any promises. The members know how difficult it is to get legislation through the two Houses. I would be misleading the committee if I said I could give even a rough timeline.

On the 700 directive appeals, they tend to change from year to year depending on what is the most important thing at the time for schemes. For example, the main appeals in 2016 related to the agri-environment options scheme, basic payment scheme inspections, GLAS, areas of natural constraint schemes and the beef data and genomics programme.

Chairman: Was this in 2016?

Dr. Kevin Smyth: Yes.

Chairman: Have they all been dealt with?

Dr. Kevin Smyth: Yes. On the 2017 appeals, we can see that beef data and genomics programme moved up the pecking order and was the most popular, followed by the national reserve because it was the year of decision for the national reserve scheme. GLAS was also on the list, as were the Scottish derogation payments. We cannot say that the appeals are the same types every year. This year, most of the appeals have been in respect of GLAS, which is top of the list, followed by the basic payment scheme and the beef data and genomics programme.

Chairman: How many appeals remain in the system to be dealt with?

Dr. Kevin Smyth: It is usually in the region of 700 per year. It is fairly constant, but it varies between schemes.

Chairman: Can Dr. Smyth indicate the type of appeals that currently take longest to complete?

Dr. Kevin Smyth: Some of the more complex appeals take over a year. The vast majority of appeals are dealt with in 70 or 80 days, which is below the 90-day limit. The problem with the more complex appeals is that they involve legal issues and complex matters of law. They are extremely detailed and there are also complexities within the schemes to take into consideration. They are the more difficult cases, but they are a minority.

Chairman: If an appeal were lodged today - 3 July - will it be dealt with in a time-based manner or, on foot of the complexities to which Dr. Smyth referred, will it be dealt with in due course? Will appeals submitted in July be dealt with in December or, if there are complexities involved, will it take longer to dispose of them?

Dr. Kevin Smyth: Most cases would be dealt with within the three month period. One of the problems with the more complex cases is that often they can go to oral appeals and, for one reason or another, the oral appeal does not take place. In 71 cases, the oral appeals were cancelled at the last minute.

Chairman: How many?

Dr. Kevin Smyth: In 71 cases.

Chairman: What percentage of appeals would go to an oral hearing?

Dr. Kevin Smyth: I cannot recall offhand, apologies.

Chairman: Would it be sizeable? Would it be 50%?

Dr. Kevin Smyth: I will have to check that out.

Chairman: Okay

Dr. Kevin Smyth: Reference was made to the need for common sense around the systems and the schemes. I totally agree with this point but the reason we have an appeal system is that when mistakes are made there must be a way of rectifying it. There are three levels of appeal

at the moment: the internal review; the appeals officer; and the director of appeals. At the moment there are some 40 cases going to the director of appeals per year. It has increased in the last couple of years. It was between 17 and 20 but it is now up to 40 cases. One of the reasons the report should be welcomed is because I believe we should be putting in place mechanisms to assist the director in dealing with this matter and I believe the panel will be of assistance. We might also consider the remit of the deputy director, in terms of reducing the workload of the director.

Chairman: The problem is that it will take a while to reach that stage.

Dr. Kevin Smyth: I know. Unfortunately, legislation is required.

Chairman: Yes. By the time we reach that stage, it is possible that there will be 100 cases in that year thus leading to a build-up. I take the point that has been made by Dr. Smyth.

Dr. Kevin Smyth: Are there any other questions I did not deal with?

Chairman: I wish to ask an additional question. Dr. Smyth is right when he said that the system must have integrity. How many appeals have been successful in the past year?

Dr. Kevin Smyth: We deem an appeal to be successful when it is allowed or partially allowed and they usually run, in percentage terms, from the high 40s up to 50%. Last year there was a glitch when the level of success fell below 40%. The reason for the decrease was due to the type of appeals, which were on the Scottish derogation, the national reserve and access to entitlements. They were simple “Yes” or “No” appeals in that one either complied with the conditions stipulated to allow one be part of the national reserve or one did not. The response was a simple “Yes, one is in the national reserve,” or “No, one is not.” There was no scope for appeals to be partially allowed. There was also a very high level of refusals compared with the normal course of events. The normal rate of successful appeals runs from the high 40s and up to 50%. Last year, the percentage fell below 40%.

Senator Tim Lombard: I apologise; I was called away to vote in the Seanad and my return was slightly delayed.

I want to ask whether the appeals office received independent legal advice. Where does such advice come into play? Perhaps my question has been asked previously.

From where does the appeals office get its legal advice? Does the same location provide legal advice to the Department of Agriculture, Food and the Marine? Does a solicitor in God knows where have a contract to supply the appeals office with legal advice? How does the appeals office contract out its legal advice?

Ms Eilis O’Connell: The Department has an internal legal services division, which provides advice to the Department on legal matters that arise. In terms of the appeals office, any request for legal advice are referred for independent counsel to be assigned.

Senator Tim Lombard: Has that always been the way?

Ms Eilis O’Connell: That is my understanding, yes.

Deputy Jackie Cahill: What is the timescale?

Chairman: Dr. Smyth has indicated that he cannot give a timescale.

Dr. Kevin Smyth: What I call non-legal recommendations are given priority and, hopefully, we can proceed fairly quickly on those. I refer to things like the code of practice and booklets for farmers. These are the sorts of additional things that can be done. Additional training-----

Chairman: Will the important ones require legislation?

Dr. Kevin Smyth: Yes, definitely. The review panel is key but that requires primary legislation because we would have to change the Act.

Deputy Jackie Cahill: Will this committee have an opportunity to scrutinise such legislation?

Dr. Kevin Smyth: Yes.

Ms Eilis O'Connell: Yes.

Chairman: There could be different faces here by then.

Deputy Jackie Cahill: I hope that we are still here.

Chairman: People want to steal the Deputy's parliamentary seat.

Deputy Jackie Cahill: I will probably stay here a bit longer then.

Chairman: Do members have any more questions? No.

As the witnesses will have heard, the biggest concern is time. I know of a TB-related case that dragged on for 18 months, which I thought was extraordinary, but in the end the appeal was 95% successful. First, the farmer lodged his appeal with the appeals office and received 95% approval. Unfortunately, the Department appealed the decision. At the time I did not think that the Department could do so. However, the director agreed with the original approval of 95%. The farmer had to wait 18 months to receive a payment of €30,000. Eighteen months is a long time for anyone to wait. In addition, as his herd was restricted for the duration, he could not sell his stock to replace animals or be able to exist financially. He was put in a very difficult position. I am talking about one case but I am sure there were similar cases. The system is draconian because he had to wait 18 months to get his case dealt with.

Dr. Kevin Smyth: As the Chairman will know, I used to be in charge of the payments area. It is unusual for the Department to appeal decisions. The vast majority of appeals are not by the Department.

Chairman: The Department did appeal a decision in this case.

Dr. Kevin Smyth: I agree that it happens. As there were only three cases of this happening last year, it is unusual for the Department to lodge an appeal.

Chairman: Can Dr. Smyth see that the system is unfair?

Dr. Kevin Smyth: I understand it adds a layer of complexity.

Chairman: We would be unhappy if we were told that we had to wait 18 months for our salary.

Dr. Kevin Smyth: Yes.

Deputy Jackie Cahill: I do not expect the representatives to comment on the following case. I know of a case in my constituency that went to the High Court. The farmer won his case in the High Court but then the Department lodged an appeal. He took on the Department and won his case in the High Court. I do not understand why the verdict was not accepted by the Department, particularly in terms of one's concept of fairness. The case has been lodged with the Supreme Court. A substantial amount of money is involved and the time lag is huge. Ten years or more have elapsed since the case was first initiated, which is very unfair on one individual farmer. I do not expect the officials to comment on the case.

Chairman: Yes.

Deputy Jackie Cahill: I personally think that when the farmer won his case in the High Court, it should have been the end of the matter. Unfortunately, the decision was appealed by the Department, which makes farmers sceptical of the whole process.

Dr. Kevin Smyth: I am aware of the case. It is due back in court in the middle of October.

Deputy Jackie Cahill: Good.

Chairman: Since there are no further questions I thank Dr. Smyth and Ms O'Connell for appearing before the committee today. I am sure they understand our interest in this particular issue. We look forward to engaging with the process as it moves along and we hope that happens as soon as possible.

The joint committee adjourned at 6.07 p.m. *sine die*.