

DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓ, FIONTAIR AGUS NUÁLAÍOCHT

JOINT COMMITTEE ON BUSINESS, ENTERPRISE AND INNOVATION

Dé Máirt, 19 Feabhra 2019

Tuesday, 19 February 2019

The Joint Committee met at 4 p.m.

MEMBERS PRESENT:

Deputy Lisa Chambers,	Senator Aidan Davitt,
Deputy Billy Kelleher,	Senator Kevin Humphreys,
Deputy James Lawless,	Senator Pádraig Mac Lochlainn,
Deputy Tom Neville,	Senator James Reilly.
Deputy Maurice Quinlivan,	
Deputy Noel Rock,	

DEPUTY MARY BUTLER IN THE CHAIR.

The joint committee met in private session until 6.20 p.m.

General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018: Discussion

Chairman: I remind members and those in the Visitors Gallery to please ensure their mobile phones are switched off for the duration of the meeting as they interfere with the broadcasting equipment, even when left in silent mode.

This is the public session of pre-legislative scrutiny of the companies (corporate enforcement authority) Bill 2018. I welcome the following officials from the Office of the Director of Corporate Enforcement, ODCE; Mr. Ian Drennan, director; Mr. David Hegarty, enforcement portfolio manager; Mr. David McGill, digital forensics specialist; Mr. Brian O’Keeffe, detective inspector; Mr. Conor O’Mahony, head of insolvency and corporate services; and Ms Sharon Sterritt, enforcement portfolio manager.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or 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 remind witnesses that the presentation should be of not more than ten minutes’ duration. Members have been circulated with the presentations submitted by them.

I call Mr. Drennan to make his presentation.

Mr. Ian Drennan: I thank the committee for the invitation to appear before it. This meeting has been preceded by correspondence spanning more than a year and a half and, as such, I am sure that all concerned are pleased that we have finally reached this point. As I am time bound in delivering my opening statement, I will get to the point. The question was posed at the committee’s meeting of 5 February as to whether the ODCE is fit for purpose. In a similar, albeit more colourful, vein, it was asserted that the ODCE is “an appallingly failed entity”. It is, of course, entirely legitimate for legislators to question whether the ODCE is fit for purpose given the provenance of the general scheme of the Bill currently before the committee. However, it is respectfully submitted that any such assessment should be conducted by reference to the facts – and I will return to the facts later.

Incorporation with limited liability is a privilege conferred by the State for the purpose of encouraging and facilitating entrepreneurial activity. In return, company law imposes requirements on those who benefit from that privilege and confers rights upon, among others, companies’ members and creditors. However, 20 years ago, company law was, to all intents and purposes, unenforced in this jurisdiction. That state of affairs was judged to be unacceptable by

the legislators of the day and gave rise to the enactment of the Company Law Enforcement Act 2001, CLEA, which provided for the establishment of the ODCE.

The CLEA, which was subsequently subsumed into the Companies Act 2014, conferred the ODCE with three core functions, namely, to promote compliance with company law, to exercise a supervisory remit *vis-à-vis* insolvent companies, and to investigate suspected breaches of company law and take appropriate enforcement action.

Over the past decade, the office has, through a combination of High Court applications, detailed assessment of liquidators' statutory reports and, more recently, by way of offering statutory undertakings, overseen the restriction of 1,648 directors of insolvent companies and the disqualification of a further 228 company directors. While both restriction and disqualification have a punitive dimension, their principal purpose is to protect members of the public. Consequently, both have serious implications for the almost 1,900 individuals concerned and contravention of either can expose one to both unlimited personal liability and criminal sanction.

For similar reasons of creditor protection, company law imposes limits on the extent to which company directors, and persons connected with them, can extract funds from companies by way of borrowings, thereby reducing the funds available to meet creditor obligations. Over the past decade, ODCE intervention has resulted in unlawful directors' loans to the value of €500 million being rectified. Multiple other instances of non-compliance have, similarly, been addressed through cost effective approaches including the issuing of warnings and statutory directions. The latter category of action includes, for example, assisting homeowners to vindicate their rights as members of property management companies – an extraordinarily important issue for those concerned.

At the other end of the civil enforcement spectrum, following a major investigation over the course of a year and a half the ODCE filed papers with the High Court in March 2018 signalling its intention to apply for the appointment of inspectors to the publicly quoted Independent News & Media plc. In response, the company initiated judicial review proceedings seeking to quash the ODCE's decision to seek the appointment of inspectors, and in so doing, arguing that the ODCE had been under an obligation to consult with the company in advance. In June 2018, the High Court rejected the company's arguments and dismissed the judicial review. Following the hearing of the subsequent application for the appointment of inspectors, which was vigorously opposed, the High Court delivered judgment in September 2018. In delivering his judgment, the President of the High Court, Mr. Justice Kelly, concluded:

As I said in the DCC case on the topic of proportionality, the appointment of inspectors is a serious matter and such a sledgehammer should not be used to crack a nut. What has been disclosed in the evidence before me is no nut. The appointment of inspectors to ascertain the truth of what has allegedly gone on in the company is well justified and is not disproportionate. None of the issues raised by the company warrant the court exercising its discretion against making the order sought. It may be that there will be a complete explanation for all of the Director's concerns but if there is not then what is alleged is very serious indeed. The evidence merits the appointment of inspectors and that is the order I make...".

In the realm of criminal law, over the past decade, the ODCE has both initiated prosecutions in the District Court and referred matters to the Director of Public Prosecutions, DPP, on foot of which numerous charges have been directed on indictment. Over that period, convictions have been recorded on 97 counts in the District Court, with multiple other charges being taken into consideration, and convictions on indictment have been recorded on 46 counts in the

Circuit Court.

Of course, by far the highest profile prosecutions associated with the ODCE are those that related to the former Anglo Irish Bank Corporation plc, or Anglo. Before I address the matter of DPP v. FitzPatrick, it is important to place on record that the ODCE's Anglo-related investigation, which comprised of five separate investigations, resulted in four trials, all of which resulted in persons being convicted on indictment of criminal offences. In the narrative that has followed DPP v. FitzPatrick, sight is sometimes lost of that fact. It is also important to note that it has never been suggested in any court that any of the investigations were in any way deficient or below the requisite standard. Specifically, the aforementioned trials resulted in Mr. William McAteer and Mr. Patrick Whelan, both former directors of Anglo, each being convicted on ten counts of the provision of unlawful financial assistance contrary to section 60 of the Companies Act 1963, as amended; Mr. William McAteer being convicted on one count of fraudulent trading contrary to section 297 of the Companies Act 1963; Mr. Patrick Whelan being convicted on one count of failure to maintain a licensed bank's register of lending to directors contrary to section 44 of the Companies Act 1990; and Mr. David Drumm, also a former director of Anglo, being convicted on ten counts of the provision of unlawful financial assistance contrary to section 60 of the Companies Act 1963, as amended.

In addition to all of the foregoing, since its establishment, the ODCE has published a substantial number of guidance documents for the benefit of those engaging with companies in a range of capacities. Those documents are widely regarded by stakeholders, both professional and lay, as being of an excellent standard and an invaluable reference tool.

I will turn now to the matter of DPP v. FitzPatrick. In circumstances where the report that I submitted to the then Tánaiste and Minister for Business, Enterprise and Innovation in June 2017 cannot be published, in response to the committee's stated desire to discuss the matter of DPP v. FitzPatrick, by letter dated 22 December 2017, I indicated my intention to provide the committee with a detailed submission on the matter in order that it could discharge its functions of holding the ODCE to account and scrutinising proposed legislation on an informed basis. As is plainly evident from my correspondence with the committee, of necessity, there is considerable overlap between my proposed submission and the report submitted to the then Tánaiste and Minister. However, on two separate occasions thereafter, the committee stated to the ODCE-----

Chairman: Mr. Drennan can continue with his opening statement and we will clarify that point at the end.

Mr. Ian Drennan: Thank you, Chairman.

Whereas one fully respects the committee's decision not to accept a submission, the net effect of that position is that, unfortunately, the committee is not in possession of the necessary information to enable it to reach evidence and fact-based conclusions.

The seriousness of the investigative failures which occurred in the ODCE during the course of the investigation that preceded DPP v. FitzPatrick is fully acknowledged. In a statement dated 23 May 2017, the ODCE fully accepted the judicial criticism directed at it. Moreover, valuable lessons, particularly as regards risk management, have been learned.

However, in assessing whether serious failures that manifested in one investigation, which was a subset of a broader suite of investigations, which, in turn, were a subset of the ODCE's

broad enforcement work, can validly be extrapolated to draw conclusions as to the ODCE's overall fitness for purpose almost ten years later or as to whether it is "an appallingly failed entity", the following considerations are of relevance.

The scale of the five investigations into Anglo Irish Bank, when taken in aggregate, was unprecedented, not merely in terms of the ODCE's history up to that point but, arguably, in the history of the State. Unfortunately, the risks associated with taking on a suite of investigations of this scale were not sufficiently appreciated at the time. As a consequence, those risks were not appropriately mitigated.

Given that the trial judge cited, as being the most fundamental error, the manner in which the ODCE went about taking witness statements from two Ernst & Young audit partners, among several matters, the following is of relevance. The statements in question were obtained during the period January 2009 to June 2012, almost ten years ago. During the period July 2010 to January 2012, approximately 60 statements were taken from other witnesses during the course of the investigation. None of those statements attracted any criticism from either the defence or the court. As is evidenced by the transcripts of the trial and other relevant documentation, much of which is included in the proposed submission and virtually all of which was ventilated in open court, the factors that contributed to the trial judge ultimately directing the jury to acquit the accused extend well beyond the failures that occurred within the ODCE. Whereas it may not fit neatly with the narrative, as evidenced by the fact that four of the five Anglo-related investigations conducted by the ODCE resulted in convictions before the courts, notwithstanding the failures that occurred in the investigation that preceded *DPP v. FitzPatrick*, an enormous level of high-quality investigative work was done over that period, an achievement that, unfortunately, came at a considerable human cost.

I trust the briefing material provided in advance of the meeting has been of assistance. My colleagues and I look forward to the discussion to follow. In particular, I reiterate that I am happy to discuss any aspect of *DPP v. FitzPatrick*, provided that any such discussion is based on the facts.

Chairman: I thank Mr. Drennan for attending today. As he said himself, this meeting has been preceded by correspondence spanning more than a year and a half. I am glad we have finally reached this point where we can discuss the heads of the Bill and other issues.

I want to reiterate that all discussions will be fact-based. I am going to be very strict on this. It is important we adhere to that.

On Mr. Drennan's earlier point, he offered the committee, with a view to discharging the duty to that committee, a submission. I want to put on record that after a discussion earlier, we have decided to take that submission and we thank Mr. Drennan for it. The clerk of the committee will be in touch in the next day or two. She will write to Mr. Drennan to put it on a formal footing.

Mr. Ian Drennan: Thank you, Chairman.

Chairman: As so many members wish to ask questions, I will limit the first round to five minutes for questions and answers per member. Then we will have a second round. We will commence with Deputy Billy Kelleher.

Deputy Billy Kelleher: I welcome Mr. Drennan and the other witnesses.

While some of the language may have been colourful at the committee last week, as was referenced, I am supportive of the purpose of the ODCE in ensuring the integrity of company law is upheld. It is not just the integrity of company law that is involved but the integrity of the State and how it is viewed by the outside world. It is important we ensure the office has a prosecutorial role with the capacity and wherewithal to do its job. I do not want to see the office as a failed entity. It must have all the resources available to it to perform its duties.

In that context, the questions we must ask are around the proposed scheme of companies (corporate enforcement authority) Bill. Would it have addressed some of the challenges which the ODCE has faced? While we might try to put a gloss on it and pretend it did not happen, there was a large criminal trial. Judge John Aylmer, the trial judge, was, to say the least, unkind to the ODCE about its performance and how it collated evidence, addressed the issue of statement taking and the basic presentation of the case in the trial itself. That is a fact which cannot be disputed. If it is, we can move it to another stage in our discussions. Are the heads of the Bill, as outlined, sufficient to address the issues of what was thrown up during the trial and of which Judge Aylmer was so scathing in terms of the State's ability to prosecute?

I was once a Minister of State in the Department which oversees the ODCE. I would have had discussions with Mr. Drennan's predecessor around the issue of resourcing. Complex trials can come about in the area of company law. Resources can be taken from or bequeathed to the ODCE at the whim of the Department, a Secretary General, Minister or Minister of State. Looking at the make-up of the staff available to the office over many years, it is certainly not compatible with what is required to deal with the complexities of company law, investigate any breaches and then potentially prosecute them.

Is Mr. Drennan satisfied there is enough independence provided in the heads of the Bill around the issue of assessing and adjudicating the required resources for the day-to-day workings of the office and taking an individual or a company to court? It must be borne in mind that the largest criminal trial involving the ODCE collapsed and the judge was not complimentary to say the least.

The report suggested there should be greater co-operation or use of the resources of An Garda Síochána in presenting a case and taking statements. Does Mr. Drennan believe that has been sufficiently addressed in the heads of the Bill?

When one looks at the expertise on which the ODCE can call, where does Mr. Drennan see the decision-making process sitting with the DPP? Is there an overlap? Should the DPP have more of a prosecutorial role in the ODCE or should the ODCE be allowed to act more independently?

Mr. Ian Drennan: I thank Deputy Kelleher for his opening sentiments which are appreciated. Initially, he used the word "unkind" and then subsequently used the word "scathing". I agree scathing is the more accurate adjective. The trial judge was scathing. We are on record as saying rightly so in respect of many of the issues which arose. On the resources that the Deputy referenced, there are a couple of issues within that such as expertise. When I took up the position, I went on record soon after being appointed that I was of the view that the office would require further professionalisation. That resulted, with the support of various Ministers and Governments. A fairly significant recruitment programme has taken place thereafter and many of the people sitting before the committee are people who are a product of that. Both of the enforcement managers sitting beside me are relatively new, one of whom is a barrister while the other is a forensic accountant. We also have a digital forensic specialist and a whole range

of new skills have been brought to the organisation and have fairly substantially enhanced our capability across a range of activities.

The Deputy referenced independence. On statutory independence and decision-making, in my tenure there has never been an issue and I have never experienced any degree of interference or anything such as that. Independence is about being able to do one's job on a day-to-day basis, which is tied in with resources and the Deputy raised an important point, namely that one of the key measures within this Bill is the proposal to transition the ODCE from being an office of the Department to being an agency. I know the Deputy is fully conversant with that, having been there. I should preface my remarks by saying that I was formerly a chief executive officer, CEO, of an agency, the Irish Auditing and Accounting Supervisory Authority, IAASA, which also comes within the committee's remit. As I did that for eight years, I have a pretty significant level of understanding as to how an agency operates, how an office operates and the differences between them. The reality is that one's ability to manage one's own resources, to fill vacancies when they arise and to do important things such as a succession plan is considerably enhanced in an agency environment *vis-à-vis* an office because the reality is that whereas we have a number of individuals who are hired directly through open competition in the newspapers, another cohort of staff are officers of the Department, who are effectively assigned to the ODCE and that area is more problematic. The Deputy will know that himself from the internal workings of Departments. When a vacancy within that cohort arises, one really just joins the queue and the officials from the Department effectively touched on that last week. Then one becomes part of the broader staffing priorities of a Department, which are entirely legitimate from a Department's perspective but do not necessarily align with our interests, whereas one is in an agency and a vacancy is coming up, one can just get on with filling the vacancy through open competition to ensure that people with the requisite skill sets are being hired.

An Garda Síochána was the next issue. The first thing I should say is that in my experience, during the six years I have been in the organisation, we have had an excellent working relationship with An Garda Síochána. As the Deputy is aware, we have a cohort of members of An Garda Síochána seconded to the office. Traditionally they are seconded from what used to be the Garda Bureau of Fraud Investigation and is now the Garda National Economic Crime Bureau, GNECB. Detective Inspector O'Keeffe is here with us and he heads up our Garda unit. In addition to having those individuals in house, we also have an excellent working relationship with the fraud bureau and more broadly with Garda management. We participate on an ongoing basis in the training which I referenced in some of the documents, such as interview training and search training and we have only done some of that relatively recently. We have participated in education programmes that it has run and so on. Detective Inspector O'Keeffe may or may not wish to add to this but if, for example, we were engaging in a search operation or in arrests and detentions, he is in a position to call in a dedicated search team from An Garda Síochána to assist. Does he wish to elaborate on that?

Mr. Brian O'Keeffe: We have done that already this year. An operation called on assistance from the Garda National Economic Crime Bureau for resources, as well as for resources from around the country when we were effecting an arrest in respect of an ODCE investigation. I was seconded late last year and we have two detective sergeants and four detective gardaí who are attached and it is full-time secondment to the Office of the Director of Corporate Enforcement. I work very closely with the detective chief superintendent in the GNECB and if required, I assume that I will have access to extra resources if I can make the business case for it.

Mr. Ian Drennan: When we are effecting arrests and detentions and so on, there is ongoing

liaison with whatever station is concerned because when someone is arrested he or she must be brought to a station, so that is all done in advance.

The last point the Deputy raised was around the ODCE versus the DPP. It is important to make the distinction that no more than An Garda Síochána, we are an investigative body. The DPP is entirely independent and decides whether charges should be directed. It is entirely independent and while we have a good working relationship with the Office of the Director of Public Prosecutions, it is nevertheless the case that we each respect each other's independence. The Deputy's question in effect was whether the DPP should be taking a greater role if I understood it correctly. That would probably be inconsistent with our role and with that of the DPP because there has to be clear blue water between us. We do the investigation and submit the file to the DPP, whereupon it decides, based on the evidence before it, whether there is a sufficient case to direct charges against an individual.

Deputy Billy Kelleher: Statements are taken and so on, the ODCE collates the evidence and presents it to the DPP.

Mr. Ian Drennan: Yes, the evidence-----

Deputy Billy Kelleher: Is it the same as within the criminal code?

Mr. Ian Drennan: It is no different because by definition, if we are sending a file to the DPP, it is a criminal investigation file. What is likely to be different is that, given the nature of that broad white-collar category, a great volume of the material that we would ordinarily obtain through whatever course in an investigation of that nature is documentary based, either in hard copies or electronic copies, whatever the case may be. We can obtain that by production orders, which is a statutory order we serve on individuals. A search can be executed as well. That can be supplemented by witness statements and various other information and evidence that has been accumulated. It is all brought together in the same way as any other investigative file. We pull together what we have and then we generally have recommendations on the front based on the evidence we have identified before us. We make recommendations to the DPP and thereafter, it is entirely a matter for that office. In the normal course, particularly in the larger investigations, it engages counsel to provide advices on proofs and so on. It identifies its particular issues with meeting ingredients of particular offences and whether it needs to come back to us for further statements, or whatever the case may be, and then it ultimately will make the decision on whether it is appropriate to direct charges on indictment.

Deputy Billy Kelleher: When the ODCE presents its evidence to the DPP, does the ODCE sometimes have further discussions with the DPP on the soundness of the collating of a statement, of data or of information? Is it just presented, after which the DPP makes an adjudication or is there an ability to go back to the ODCE again?

Mr. Ian Drennan: With more complex investigations, which is effectively the majority of what we do, there is an ongoing dialogue. That ongoing dialogue obviously respects the independence of both parties but generally speaking, the DPP will take in the file and if it is in any way complicated, it generally will engage counsel to give advices on proofs. Issues will undoubtedly arise out of that and there are discussions around a whole range of issues, about which I will not go into the detail, but that dialogue is ongoing and as I said earlier, we have an excellent working relationship with the DPP.

Deputy Lisa Chambers: I thank Mr. Drennan and all of his team for attending the com-

mittee here today. It is most helpful and appreciated and it will assist us in our work. We met for over two hours just before the ODCE's attendance here to discuss the document and the ODCE's submission. We had quite a robust exchange and the majority of members want to see that document in the public domain in the public interest and that is very much supported by the Chairman. I was persuaded by Mr. Drennan's argument that as a committee, we would be unable to reach fact-based and evidence-based conclusions in our pre-legislative scrutiny work without having sight of that document in its entirety. I found that to be a highly persuasive argument from someone who is an officer of the State, having served for a number of years in his role and having considerable experience. That particular advice from Mr. Drennan was quite persuasive. We may have challenges, as the ODCE probably will be aware. The issue around the status of the document, were it to be circulated to committee members, as opposed to through the clerk, was identified and the ODCE is aware of that also. I would be eager to see that go to the clerk and be circulated. The ODCE probably also will be aware that we could have difficulties, in that it is likely that it would be referred to the Office of the Parliamentary Legal Adviser and there could be some blockages there. We certainly will do our best, however, in the public interest to get all relevant information to the public, so I thank the ODCE for that.

On the necessary information to which the ODCE refers and the information it says members need to do our work of pre-legislative scrutiny, can the witnesses give us some idea as to what that information is? I understand the restrictions in giving out that information but can the witnesses give us some broad parameters as to what we might be looking at and what we are missing while we are doing our work? Can Mr. Drennan give an opinion on whether any of the information he seeks to provide might prejudice him in his current role? Could Mr. Drennan articulate why he says we need the information he was seeking to provide in order for us to perform our parliamentary duty of pre-legislative scrutiny of this Bill?

Mr. Ian Drennan: I thank Deputy Chambers for her questions. The first is on what the information is. The first letter I received from the committee in the days following the direction to acquit the accused set out in pretty strident terms what it wanted to discuss. It was perfectly understandable at the time. My concern at that time was that the Parliament has a statutory duty to hold the ODCE to account. As I hope has been abundantly clear from the correspondence issued by the ODCE to the committee, our duty to account to the Parliament is one I take very seriously. In more recent correspondence, there was a specific reference to the question of whether I had views on whether the trial judge's final ruling was a comprehensive analysis of the issues within the ODCE and so on. As I said in the correspondence in reply, the trial judge's final ruling was in respect of two defence applications. The Deputy is a barrister so she will understand that. The ruling was in relation to two defence applications; it was not a full account of the whole investigation of the whole trial. It was not a full critique. Therefore, by definition, that ruling could never provide a full understanding of all the issues that arose before it was made. Given the particular issues and themes that arose in the ruling, including coaching, contamination and cross-contamination, it seems that in order to form a view as to whether this legislation meets the requirements in terms of where it came from and so on, one needs to understand what went wrong. If one wants to understand what went wrong, one must realise that one trial judge ruling that deals with very specific issues arising over any amount of newspaper coverage or whatever will not give one an understanding at the level needed. That can really only be gained by reference to the underlying documents. Clearly, it is not a comprehensive account, nor is it an investigation. I have made that clear before. Rather, it was a matter of pulling together the more salient documents and other pieces of information, correspondence and communications so members could look at the matter in the round and say they understood what happened, what went wrong, what ultimately led the trial judge to rule in

a particular way, and the basis for the defence counsel mounting certain arguments and so on. That specifically relates to the coaching, contamination, cross-contamination, investigative bias and the failure to investigate issues because they are all tied up in the one package. I refer to the two EY witnesses.

The trial judge made reference to the issue of disclosure. The document I had prepared for the committee elaborates on this and where there may have been difficulties in order to give it a better understanding of why the judge might have taken a particular view on disclosure and the deficiency, or otherwise, thereof. The other issue is the destruction of documents, which is in a completely different category. That is the nature of the information. It is to give committee members a fuller understanding of how these issues arose and, in essence, what went wrong.

The Deputy's second question was whether there is anything in the document that, in my assessment, prejudices my functions. In a letter at some time around December 2017 — I cannot remember the exact date — I corresponded with the committee. At that point, I set out the basis on which I had formed the view that it was lawful to give the committee the information because it was information in my possession. I have a statutory duty to be accountable to the committee, as a committee of the Oireachtas. Deputy Kelleher said there is a provision in section 955 that, in effect, means I can avail of an exemption whereby I do not have to provide the committee with certain information if, in my view, it would be prejudicial to discharging my functions. That would be under normal circumstances. What I said in the letter was that these are clearly not normal circumstances. Therefore, it would do a disservice to the ODCE to have the committee trying to assess our performance without being in possession of the requisite information. It does the committee a disservice and certainly does us a disservice. I hope the members accept our bona fides regarding how seriously we take our obligations to be accountable to the committee and put the members in a position in which they can understand what went wrong and make an assessment of our organisation and the legislation they are currently charged with scrutinising.

The third question was on why we need the information. I hope I have answered that at this point.

Deputy Lisa Chambers: I thank Mr. Drennan. That has been very helpful. I agree with him that we need to know what happened and what went wrong in order to assess whether the new legislation is fit for purpose. I am very glad he was able to put that on the record today.

Deputy Maurice Quinlivan: I thank the director and his staff for attending. We have been waiting a long time for him to come in. His participation will be very useful to us. I hope we can engage today and in the future.

I have a number of questions. The Minister for Business, Enterprise and Innovation, Deputy Humphreys, was appointed on 30 November 2017. How many times has Mr. Drennan met her since? Has he met the Department to discuss the failings in the Seán FitzPatrick investigation and the preparation of the Bill we are now considering?

In Mr. Drennan's opening statement, he said that, until 20 years ago, company law was, to all intents and purposes, unenforced in this jurisdiction. Does he believe the enforcement of company law in Ireland is now as robust as it could be? Could more be done? What could be improved?

Mr. Ian Drennan: I met the Minister, Deputy Humphreys, once. I met the previous Minis-

ter, Deputy Mitchell O'Connor, once. I met the former Minister, Deputy Fitzgerald, once and I met the former Minister, Deputy Bruton, once. That would be in recent years. I have regular meetings with the Department on a range of issues, including on the outcome of the case he referred to, the Bill and more routine matters. Either my colleagues or I meet regularly. For the record, it is important to say I have an excellent working relationship with my opposite number in the Department, and have had for many years.

On the question of whether the enforcement of company law is robust, I believe it is. As I said in my opening remarks, through our supervision and direct actions *vis-à-vis* insolvent companies, we have almost 1,900 people sanctioned through either restriction or disqualification. I am aware that the Deputy has asked a number of questions about this in the past and he has got a lot of data on it. In recent years, and certainly after the Anglo Irish Bank developments, even when the investigations finished, trials were enormously time-consuming in terms of supporting the prosecution and so on, particularly in terms of Garda resources and supporting the disclosure process which is ongoing through trial. Having got that behind us and, as I alluded to earlier, having hired a number of new staff, we are now looking at a range of complex matters that arise from various avenues, assisted by our Garda colleagues. This means we have now got to a point where, in addition to referring files to the DPP, on which process I touched with Deputy Kelleher, and in addition to having recommendations for company law charges, it is now quite common to have recommendations for a possible offence under theft and fraud offences legislation. More recently, we had charges directed by the DPP under criminal justice money laundering legislation because many of these things go hand in hand.

Deputy Maurice Quinlivan: Mr. Drennan said he met the Minister once and each of her predecessors just once. Is that correct?

Mr. Ian Drennan: Subject to correction, that is my recollection off the top of my head.

Deputy Maurice Quinlivan: Were the meetings at Mr. Drennan's request or the Ministers' request?

Mr. Ian Drennan: The meetings with the current Minister, Deputy Humphreys, and former the Minister, Deputy Fitzgerald, were at their request. The meeting with the former Minister, Deputy Bruton, in the immediate aftermath of the first trial, was at my request.

Deputy Maurice Quinlivan: It was before our time here as well.

Mr. Ian Drennan: Yes.

Chairman: After the collapse of the FitzPatrick trial, a major look-back was undertaken by the DPP and ODCE to discuss and learn from issues that arose during the investigation and prosecution. What lessons did Mr. Drennan learn from this look-back? Did it feed into the heads of the Bill we are now scrutinising?

Mr. Drennan said in his opening statement, "the risks associated with taking on a suite of investigations of this scale were not sufficiently appreciated at the time". It is now 2019 and I acknowledge the ODCE has extra staff and access to further staff through the Garda. I appreciate that Mr. Drennan came into his position in 2012. If the ODCE had to face a trial of that size now, does he believe the office would be fully equipped to do so with its current complement of staff and the availability to it of further staff through An Garda Síochána?

Mr. Ian Drennan: On the first issue, the look-back with the DPP, unfortunately these are

highly confidential conversations and to elaborate on the kinds of conversations we have would undoubtedly prejudice the way we do work, so I cannot answer that question.

Chairman: That is fine but, to ask Mr. Drennan in a roundabout way, was he cognisant of this when he was referring to the heads of this Bill? I am sure the ODCE would have worked with the Department when these heads were being-----

Mr. Ian Drennan: As the Chairman will be aware, and I think they confirmed this the last day they were here, departmental officials have seen the main report, if one likes, and we have had extensive discussions about it at both senior official level and, as I noted earlier, ministerial level. The Chairman can therefore take it as a given that these issues were factored into the thinking of the senior officials in their ongoing dialogue with the Minister on these heads.

As for the second issue the Deputy raised, that is, the appreciation of the risk and so on, the reality is that if December 2008 happened again in the morning, we would not be equipped to deal with it. Very few organisations in the country would be, though, because that was off the scale in that there were massive lines of inquiry which in turn resulted in the uplifting of hundreds upon thousands, if not millions, of documents, and that organisation at the time, in fairness, had no understanding of what it was walking into because one does not until one goes in. Now we know, though. The risks are enormous, and much more thought would have to go into identifying and appropriately mitigating those risks such that we would not have a repetition of what has happened.

Chairman: I will ask a final question and then let in Deputy Lawless. Will Mr. Drennan feel better equipped when the new statutory body is in place to address the issues the ODCE dealt with in 2008? We want to try to make this new entity, this new statutory body, as robust as possible in order that the witnesses will have every opportunity open to it to investigate white-collar crime. That is why we are here and that is what we are focusing on. Does Mr. Drennan feel that this new entity that is to be put in place will be robust enough to help him to the best of his ability?

Mr. Ian Drennan: The Chairman's comments are appreciated in both senses of the word. I appreciate them but I also understand what she is trying to convey. As I said, the transition from an office to an agency undoubtedly assists with flexibility around staffing, being more agile in dealing with succession planning and bringing in a greater level of expertise in specialist areas and so on. That said, hindsight is 20-20 vision. I think anyone in that situation again, without knowing what was to come, would run the same risks. It was completely unprecedented - I do not use the word lightly - in the sheer scale of five separate strands of investigation, each of which on its own merits was enormous. The reality of any organisation, irrespective of how big or small it is, is that if one tries to carry that kind of load, that level of complexity and volume, across a relatively small number of people, things go wrong. Unfortunately, in this case they went wrong in a pretty catastrophic way and the wheels came off.

Chairman: I thank Mr. Drennan for his frank answer.

Deputy James Lawless: I thank Mr. Drennan and welcome him and his colleagues to the committee. Listening to and reading his opening statement, if I understand correctly, he is dividing the history of corporate enforcement in Ireland into three stages. The first is the period from 1963 to 20 years ago, when there was effectively no corporate enforcement in place, which is quite concerning. There is nothing we can do about it now, but that is quite a stark statement to make. Then there appears to be a period from the establishment of the office to

perhaps 2009 or 2010, and I think the implication is that the situation left much to be desired even then. Then there is now. Reading on in the statement he made and the material we have been supplied with, a number of actions have been taken in recent years to address any gaps that exist, to increase the resources available in Mr. Drennan's office, including training, and really to ramp up the office and its activities to an acceptable level. I commend him on this. It is good to see this progress being made, albeit from a low bar, as he said himself. The previous position is worrying but is water under the bridge, to an extent.

I might put a few questions to Mr. Drennan for him to respond to together. First, will he clarify whether my understanding of this three-stage categorisation is correct?

Second, quite a number of statistics on restrictions, disqualifications and indeed prosecutions that have been successfully brought are given in the material provided. Mr. Drennan talks about the recruitment and training to which the ODCE's teams have been subject. Again, this is great to see, and I commend him on it. Quite extensive training and recruitment seem to be taking place. One figure that jumps out concerns the recruitment. It appears that many competent professionals, including forensic accountants and gardaí, have been hired into the office, and rightly so. However, it appears that only two barristers have been taken on across the board. This is straying into the DPP and the FitzPatrick trial, and I appreciate it is not the be-all and end-all, but given the high-level finding that there appeared to be evidential issues with presentation and preparation for court, the way in which evidence was processed in court and the nature of that processing and of prior deliberation on it, it appears that the gap was in the areas of courtroom practice and preparation, which constitute the professional skill set of barristers. Would it perhaps be wise to engage further barristers, considering only two appear to have been taken on, or does the ODCE engage with counsel in other ways? Is there a detailed and ongoing engagement with counsel on any case that goes to court? This would probably be wise because while the other people certainly have very important roles and skill sets, given what appears to be the deficiency highlighted, namely, courtroom practice and preparation is very much within the barrister's domain of expertise. Perhaps it would be wise to engage that profession more.

I have another question, but perhaps Mr. Drennan would like to respond to those I have asked and I could ask my other questions when I come in again. Is that okay?

Chairman: Yes. Whatever. What would Mr. Drennan prefer?

Mr. Ian Drennan: I might have a go at those questions first.

Chairman: Perfect.

Mr. Ian Drennan: To respond to the Deputy's first comment, it is a stark comment but the analysis in the material supplied is not really mine. The former Attorney General and Minister for Justice and current Senator, Michael McDowell, produced a report at the time at the request of the then Tánaiste, Mary Harney, when she was the Minister responsible for that Department. It was he who recommended to the Government at the time the establishment of the ODCE. I am paraphrasing but I think the soundbite at the time was that the enforcer's footsteps were never heard. This was at a time when levels of non-compliance with even basic obligations under the Companies Acts, such as the filing of annual accounts and returns with the Companies Registration Office, CRO, were very high. It is a stark statement but it probably does withstand scrutiny. Certainly, that is in essence what Senator McDowell found at the time.

I refer to the three-stage approach. The first stage certainly lasted until Senator McDow-

ell's report. Then there were the early days of the ODCE, when it was finding its feet and did some very good work. Then Anglo hit and the office was completely consumed for several years thereafter and, as I said at the outset, did some very good work. We have discussed this at some length. Some of this, to refer to Deputy Kelleher's comments earlier, resulted in scathing findings, which were fully accepted. That was the second phase. The third phase follows those events. Now we are trying to enhance the skill sets of the organisation and learn from the issues that arose as a consequence of the second phase to try to leverage off them to engage in our stock in trade, our day-to-day business, which involves files with a view to submitting to the DPP, as opposed to the District Court prosecutions, although we still do those on occasion.

Deputy Lawless is correct that we have two barristers at present. We also have two solicitors, so we have four lawyers in total. He can take it as a given that in any investigation of any significance, certainly criminal investigations, we engage counsel at quite an early stage for a variety of reasons, not least, as I referred to earlier in comments to the Chairman, as part of the learning from mitigating risks. In civil investigations, such I referenced earlier, we similarly engage counsel early. As the Deputy stated, that is a fundamental aspect of risk mitigation. He also referred to specific issues. In light of our earlier conversation, and if the Deputy does not mind, I will not get into those issues pending receipt of the document.

Chairman: I thank Mr. Drennan. I call Deputy Lawless.

Deputy James Lawless: As I must leave, I will come in now and then I will be done. I thank Mr. Drennan. Regarding the issues we are not going to get into today, we did discuss the submission from the ODCE as to whether, when and how we get that submission. One point pertinent to that, as well as to the previous *in camera* discussion before this session, was mentioned in Mr. Drennan's opening statement or perhaps in some of the other materials supplied. It was stated that the report consisted of exhibits and affidavits used in the various trials. Those transcripts are available. Are the transcripts of the relevant trial, and much of the evidence, in the public domain as well?

Mr. Ian Drennan: The transcripts are the property of the court and, as I understand it, they would not be widely available. We are in possession of them and we went through certain processes before I included excerpts from them. Deputy Lawless will appreciate the retrial lasted for more than 100 days and the resultant transcripts are enormous. We included the more salient aspects concerning particular issues in the report. A number of those documents were opened in court. While I do not know if the Deputy would like me to go back into it, as I said in previous correspondence, I did not conduct an investigation or inquiry. It was, rather, a compilation of key documents. Multiple people were named in those documents. Most of them did not give evidence and none of them have had a right of reply, which gives rise to the sensitivities we have referred to earlier.

Deputy James Lawless: I understand that. I thank Mr. Drennan.

Deputy Tom Neville: I thank the witnesses for their attendance. I welcome the establishment of the ODCE as an independent agency. It will have more autonomy, including the ability to recruit people with specialist skills and build on existing expertise. That experience will strengthen the capability available to the ODCE and its ability to investigate increasingly complex breaches of company law. It will also build on the organisational procedural reforms that have been implemented. I will not repeat what was said before but I have some questions. Would the witnesses like to see any additional parts of the Bill enacted? Has there been communication with the Minister or the Department or both regarding additional aspects the

ODCE would like to see added to the Bill? Are there any extra powers Mr. Drennan believes the ODCE could avail of? What are the challenges that may be experienced in the changeover to becoming an agency? Could challenges be faced in respect of recruitment or infrastructure? I may also have a follow-up question, depending on the answers.

Mr. Ian Drennan: Regarding the challenges, I will take the last one first. I will defer to some of my colleagues on the earlier questions. There will be some crossover in the challenges we face. The main challenges relate to the sheer complexity of what we do. Previously, certainly when I trained back in the day, everything was kept on paper. Everything is now electronic and there are many issues with legal, professionally privileged material being embedded within electronic data. There has been much litigation on such issues. Those are the kinds of issues we have to deal with daily. Returning to my dialogue with Deputy Lawless, those are the types of issues that we bring counsel in on at an early stage. I ask my colleague, Mr. Hegarty, to deal with some of the additional powers already in the heads of the general scheme. I ask my colleague, Mr. David McGill, to then speak about some of the other aspects that could, potentially, go into the Bill or certainly those to which we have given some thought.

Mr. David Hegarty: As has been pointed out, the Bill is in six parts. The new powers of the director are primarily in Parts 5 and 6. Part 5 is a civil power relating to an additional ground upon which the director can seek to disqualify an individual under section 819 if he or she fail to hold meetings, AGMs, etc. The other provisions in heads 43, 45 and 46 touch upon the requirement of directors to provide a PPS number to the registrar for verification purposes. That is an additional compliance measure. There is additional security and verification of individual identities when companies file documents with the CRO.

Two of the more significant powers are contained in heads 45 and 46. Head 45 allows for the admissibility of statements from accomplices. Normally, hearsay statements would be inadmissible but head 45 will permit these statements be made admissible. It is based on a Competition and Consumer Protection Commission, CCPC, power and it is normally used in cartel investigations. It is a useful power for us as well. The fourth salient head to which I draw the committee's attention is head 46, which relates to section 787 of the principal Act regarding the power to search and enter premises. I will defer to my colleague, Mr. McGill, in a moment on that aspect because it is more on the forensic side. We have also been in discussion with the Department on various additional matters that could go into the Bill.

I can divide those into three separate categories. There are evidential provisions which could assist us in the gathering of evidence, procedural matters in respect of the conduct of investigations, as well as matters relating to the institutional design of the corporate enforcement authority, CEA. We are discussing those issues with the Department, they are not in the Bill. Some of them may, ultimately, feature in the Bill. Discussions, therefore, have been taking place and they have been subdivided into those three categories concerning what additional material might go into the Bill. The most salient feature, the one that has drawn the most attention, is head 46 regarding search warrant power. Mr. McGill can speak to that aspect.

Mr. David McGill: Head 46 is an innovative head in respect of the new legislation. It allows us to keep abreast of new evolutions in technology. At present our powers under section 787 of the Companies Act allow us to apply for search warrants to enter premises. That search warrant allows us to interrogate any electronic devices found on the premises. We are also allowed to use any devices to search any connected devices, whether at that premises or somewhere else. One of the issues that poses for us comes back to maintaining risk concerning evidence and maintaining best evidence. By using evidential items on-site to access other

evidence, we are actually interfering with evidence. That is not best practice.

We also have a substantial amount of equipment and software that we could bring with us and use that instead to interrogate devices in offices. Our current powers, however, do not allow us to do that. There is also the issue of the proliferation of mobile devices. They have permeated every aspect of our society. Most of the data stored on those devices are now stored in cloud services and not on the physical devices. Trying to transfer data from a device into an evidential item, such as a USB key, is virtually prohibitive. If enacted the way we envisage, this new section will allow us to use our own devices and the log-in credentials from the mobile devices on-site to access the cloud services instead. We can then take the data down way. It is a much sounder and more robust approach.

Senator Kevin Humphreys: Can those cloud services be accessed if they are outside of State?

Mr. David McGill: Yes. We interpret the search warrant as stipulating that once a device is lawfully accessible from a device on the premises, then we have the authority to search it. That is the case even if that device is outside of the State. We have interpreted that as being lawfully accessible because the device or the people using the device are on-site in the State. The current search powers allow us to do that. We are just ameliorating that slightly.

Deputy Tom Neville: Are there any vacancies in the organisation and are there any challenges with recruitment?

Mr. Ian Drennan: We have one vacancy at the moment. I touched on that in the material. As referred to earlier, we have engaged in a significant recruitment programme in recent years. The current vacancy is a senior position. I have taken the view that it is more important to let some of the more senior people recruited lately bed in first, find their feet and allow that process to complete before we fill this position. That is because we are a fast-evolving organisation and we work in a fast-moving environment. How we go about designing a job description will depend, to some extent, on how things pan out. I think it is a more sensible approach rather than filling the position now and perhaps getting it wrong in respect of necessary specifications and qualifications. Sometimes less haste is better.

Deputy Tom Neville: An underspend is listed for 2017 to 2018. Will Mr. Drennan elaborate on this? How is it used? Does it go back into the organisation? What are its implications?

Mr. Ian Drennan: I will ask my colleague, Mr. O'Mahony, to speak on this. As I said earlier, as well as being head of insolvency he is also head of corporate services and he will be happy to speak on it.

Mr. Conor O'Mahony: On the funding side, for most years we have effectively built in a contingency provision that is primarily with regard to legal costs. Anyone who deals with the law knows these costs can be extremely high. Mr. Drennan referred to the appointment of inspectors in the case of INM and significant expenses are accruing on this case. Particularly in 2019, we will probably not be giving back much money. It is a typical departmental subhead, whereby a provision is marked out and if it is not spent it becomes available to the rest of the Department. It is not as if it is-----

Deputy Tom Neville: Anything that is underspent goes back to the Department and does not stay in the organisation.

Mr. Conor O'Mahony: No, not under the current environment. It becomes a little bit different potentially with the agency but-----

Deputy Tom Neville: Does the underspent money going back to the Department have implications for the organisation? Is there a knock-on effect?

Mr. Conor O'Mahony: In fairness, as Mr. Drennan said earlier, the Department is not interfering in our ability to spend the money we need to spend. There are issues, as just because the money is there it does not mean it can be spent on anything else. We cannot move non-pay money into pay money and items of that nature. If we do need to engage counsel, as was discussed earlier and which we do on a regular basis, we have the resources to do so. It is not a problem.

Deputy Tom Neville: Does Mr. O'Connor envisage cost implications after the Bill is enacted, with regard to handing back the money, as has been done over the past two years? Would the office be left hanging?

Mr. Ian Drennan: Irrespective of whether an organisation is an office or an agency, the net effect is the same. The mechanism is somewhat different. As an office we are a subhead of the Department so at the end of the year we give back what we have not spent. At the agency I was involved in previously, at the end of the year if it had cash in the bank it did not hand it back but it was offset against the following year's budget. The cash movement is not really an issue. When we get to mid-year we begin to budget for the following year and we approach the Department and state whether we have an issue with inspectors or that we are likely to have legal costs or digital forensic expenditure. It is all factored into the routine early. The irony of one of the functions of the underspend that leaps off the page is there is a significant amount for contingency because, by definition, a contingency fund is not normally used. What we do has peaks and troughs. When we get to a particular point where we hit superior court litigation, the costs ramp up very quickly but we might not have another such case for two years.

Senator Kevin Humphreys: I apologise for having to leave for a vote and if I ask questions that have been asked, I will check the record for the response. Could anything else be included in the heads of the Bill that would be of assistance to the office? Have the proposals boxed off everything? Is there a need for additional assistance with regard to legislation?

Mr. David Hegarty: To a certain extent it is an ongoing process. The 2014 Act is relatively new. As we work with the 2014 Act and apply it to real life situations we frequently come across instances where if the law was slightly different it might suit us slightly better. There are very few things we can point to that present significant problems, if I can put it in these terms. When situations arise with potentially significant problems, we are in a position to seek to include them in legislation and to liaise with Departments. I anticipate that most of what is in the heads and has been discussed with the Department will address most of the issues that are raised. It is an ongoing process and new issues arise all the time.

Senator Kevin Humphreys: The office is happy enough that the Bill will deal with what it has seen in its experience.

Mr. Ian Drennan: The short answer to the question as to whether we have sufficient powers is that for the most part we do. We have significant powers. Anything in the Bill or that we might discuss with the Department, and anything to which the Department is giving consideration for further down the line, is with a view to further enhance our ability to do particular

things. We can take it as a given that if we had a particular issue whereby we did not have the power to do something we needed to do on a day-to-day basis, it would have been subject to discussion with the Department and, generally speaking, in fairness to the Department it would be acted upon pretty quickly. They are no fundamental major lacunae. As Mr. Hegarty said, we identify issues in a fast evolving environment and there are particular opportunities for nuance or further enhancement. I will ask Mr. McGill to speak briefly about the telecoms issue.

Mr. David McGill: We have had one or two discussions with the Department with regard to the powers of our sister organisation, the Competition and Consumer Protection Commission, CCPC. One of the powers being considered for the CCPC is that it be included as part of the communications (retention of data) Bill. This would give it access to retain telecommunications data, and proving communication can form a significant part of white-collar and criminal investigations. Another power the CCPC has that we are considering is with regard to the Garda being able to bring in non-gardaí to question people detained under section 4 of the Criminal Justice Act 1984. This is a significant power for the Garda because it allows it to bring in experts to the questioning of someone who is a technical or financial expert. We also discussed gaining access to suspicious transaction reports under money-laundering legislation so it can be considered as part of other investigations. There are also powers with regard to the intimidation of officers. They are subject to ongoing discussions.

Senator Kevin Humphreys: The staff in the office are very technical and they need to be highly trained and experienced. This training and experience will make them more attractive to other companies who may headhunt them. Does the office have a policy on retention?

Mr. Ian Drennan: I can quite honestly say that is a question I had not anticipated. There is no particular mechanism. We do not have golden handcuffs, unfortunately. We hire good people, as I hope is evident, and they know what they are about. I hope the committee has got a sense that what we do is very interesting work. It is high-risk work but it is very interesting. Certainly, my sense in recent years is this is what motivates people. Clearly people have other life imperatives but the staff would say to a man and woman that it is certainly not a boring job. Thus far-----

Senator Kevin Humphreys: It is something we see very much in the private sector. Over the years, the office will build up expertise and private firms will come in to look for its staff.

Mr. Ian Drennan: It has not crystallised thus far.

Senator Kevin Humphreys: To get sense of capability and resources, I notice the UK Secretary of State for Business, Energy and Industrial Strategy, Greg Clark, has called on the UK Competition and Markets Authority to investigate the big four accountancy firms. If we look at the size of companies in sectors such as aircraft leasing and of other companies, such as PwC, does Mr. Drennan feel he has the resources to carry out a major investigation? The Anglo Irish Bank investigation was quite a while ago but it caused reputational damage to the State. In the context of Brexit and corporate headquarters setting up in Ireland, we are open to reputational damage if we do not have the capability. It is a judgment call for Mr. Drennan but is the Office of the Director of Corporate Enforcement strong enough to carry out a major investigation into enormous companies with very powerful backing?

Mr. Ian Drennan: Regarding the Senator's final question, I will take him up on his offer to read the record because I answered it earlier.

Senator Kevin Humphreys: That is fair enough.

Mr. Ian Drennan: With regard to the big four audit firms, in my previous job I regulated the accountancy profession. Thankfully, I do not do that any more and most of them are not companies and therefore do not come within our remit. On a serious note, for example, most of the companies relocating the Republic of Ireland as a consequence of Brexit thus far appear to be in the financial services sector. That came up with the departmental officials on a previous occasion. There was a particular report about a proposal to transfer substantial sums of investments to this jurisdiction. Those entities all clearly come within the remit of the Central Bank. They would need to be authorised and go through that whole approval process. Unless there was a particular company law or criminality issue, the general risks attaching to the large-scale financial institutions and the sorts of issues that can arise would very much come within the remit of the Central Bank and not the Office of the Director of Corporate Enforcement.

Senator James Reilly: I apologise, I had to go for a vote and thereafter to deal with the Personal Injuries Assessment Board (Amendment) (No. 2) Bill. Forgive me if some of these questions have already been asked and I will afford Mr. Drennan the same courtesy that Senator Humphreys did. I can read the record if Mr. Drennan directs me to.

There was mention of new staff and recommendations around gardaí and I welcome Detective Inspector Brian O’Keeffe before the committee. Have those new gardaí particular training in the financial area or are they there more to advise on proper process and procedure and are accompanied by the relevant digital forensics or whatever, as Mr. McGill spoke about?

Mr. Ian Drennan: I will defer to Detective Inspector O’Keeffe in a moment. One thing we have learned is that one needs horses for courses. We have seven or eight accountants with very impressive backgrounds in financial services, private practice, forensics, law enforcement and a whole range of areas. They are the workhorses, if they would pardon that phrase, for analysing complex financial data. The interaction is that they analyse the data and prepare what we call interview packs, which would then be handed over to Detective Inspector O’Keeffe and his colleagues who would do the interviewing of witnesses, or suspects, or whatever the case may be. Generally speaking, if it is a witness, one of our Garda colleagues would lead the witness interview and might be accompanied by an accountant if it is a particularly complex issue. There is a complementarity there.

Detective Inspector O’Keeffe might want to say something about the skill set of our Garda colleagues.

Mr. Brian O’Keeffe: The vast majority of these gardaí have undergone the fraud course which is run by the Garda National Economic Crime Bureau. One of the members of An Garda Síochána is a trained accountant. I am a trained senior investigating officer. We have a broad range of skills but, as Mr. Drennan has alluded to, for investigations of a complex nature we can call on the extensive skill set available to us with forensic accountants and our digital forensic capabilities. We can confer with them to build our knowledge.

Senator James Reilly: I will bank a few quick questions. What does Mr. Drennan think was the major thing the office could have done differently in the Seán FitzPatrick trial? I acknowledge that he has outlined how successful the office has been in many other prosecutions. Does Mr. Drennan believe that the changes required to successfully prosecute major cases, like those relating to Anglo Irish Bank, are there now? Representatives from the Department who appeared before the committee stated there was no legislative failure involved in the prosecu-

tion of that trial. Does Mr. Drennan agree, notwithstanding his earlier contribution about suggested changes to the Bill, that his office now has the wherewithal to prosecute cases like that? There obviously has been a significant amount of change.

Mr. Ian Drennan: On what we could have done differently, while I do not want to avoid the question, members need to read the document. They will have a much better understanding when they have done so.

Senator James Reilly: Okay. With that in mind, I hope that, having read the document, we will have the pleasure of Mr Drennan's company again.

Mr. Ian Drennan: I have made it clear in previous correspondence that I am quite happy to come back before the committee. I have no problem with that.

On the question regarding Anglo, I answered it earlier but I note that at any given time, we are undertaking a number of investigations that are quite large in scale. I said earlier that were December 2008 to hit again and we were faced with what the people who were there at the time were faced with, we would not have the resources to deal with it. It was enormous and in all fairness to those people who were there at the time, they had no inkling at the outset as to the scale it ended up being. There were, regrettably, some serious failures but the people who were there at the time also deserve a lot of credit for the positive outcomes to which I alluded earlier. Significant work was done in bringing four other lines of investigation to successful prosecutions. Very few organisations in the State would be equipped to take on something of that sheer scale. We have learned to have a greater appreciation of the risks involved and how to go about mitigating them by trying to narrow the number and scope of investigations we take on, to supplement what we have internally with external expertise and a range of other avenues that need to be explored. In 2009, we were in the depths of the aftermath of a financial crisis and people at the time were cognisant that the Exchequer was under enormous pressure and it was a perfect storm in many respects when one considers what subsequently transpired.

Senator Aidan Davitt: Like Senator Reilly, I was tied up with the Personal Injuries Assessment Board (Amendment) (No. 2) Bill so I had to leave for a while. I kept a check on the screens and many of the questions have been answered. I acknowledge much of the great work the Office of the Director of Corporate Enforcement has done. As Mr. Drennan said, the office had four big results out of five and the one is tagging the office down. Most people perhaps thought that the head of the snake would be the most obvious result but that is the way these things go. There have been high-profile cases recently relating to insurance, print and whatever else. The office and its staff have to be commended. They have shown themselves to be no shrinking violets and I acknowledge that.

The last paragraph of the report that Mr. Drennan gave us on DPP v. FitzPatrick refers to the fact that the case came at a considerable human cost in his department. That is a poignant line and Mr. Drennan might like to expand on that.

I appreciate the lack of staffing and resources for a case of that size and I have no doubt it was a mountain to climb, to say the least. I certainly feel for Mr. Drennan and his staff and the work that was thrown at their door when they were so short of resources and I understand that Mr. Drennan would like us to get the full report. That said, the judge stressed the point about cross-contamination and coaching and, evidently, the destruction of files. That is not something that any normal arm of the State carries out and, to be fair, something has to come out of today's proceedings other than the lack of staffing and resources. A lack of staffing and resources does

not lead to this. I cannot see that, even if we say that one or two staff members were rogue or whatever. As we know, some of that has come out through the media and we might hear more of that at a further case. I would appreciate a little elaboration on that point. The committee, after long and considered work on this today, would appreciate if Mr. Drennan could broaden that slightly for us.

Mr. Ian Drennan: I thank the Senator. Human cost is a poignant term and I hope none of the individuals concerned will mind me saying so but many people were badly damaged by this experience. There is not much else I can say about it, other than to point out how there is a narrative in the public domain which, suffice it to say, is not complete. There are dots to be joined and bits missing. If and when the full story comes out, it will put a different complexion on things. Certain issues were ventilated in court, while certain others were not. In fairness to the individuals concerned, one in particular, it would not be appropriate or fair for me to go beyond that, other than to say I have observed this at first hand and chosen my words carefully.

I appreciate the sentiment in wanting more to come out of this. I will go this far and give the committee a high-level response. In the normal course of events, if the Senator sees Mr. A hitting Mr. B over the head on the street with an iron bar and a garda asks him for a statement, the Senator will say he was walking down Molesworth Street when he observed Mr. A hitting Mr. B over the head with an iron bar and that he was wearing a red jumper or whatever the case may be. Compare that with trying to take a statement from an audit partner. An audit of a listed company is a large undertaking, takes a considerable amount of time and involves a substantial number of individuals. It is not really something that lends itself to rocking up to someone's door and asking for his or her statement. It requires a great deal of thought. Like any professional services firm, audit firms must, rightly, have regard to their reputation which they guard jealously. They must guard against their litigation risks carefully. As such, giving a statement in that context would not be the same as someone making a statement about what he or she had seen. What subsequently ensued in the way the statements came into being was, to some extent, a reflection of that and its complexity. The trial judge formed the view that all concerned either completely lost sight of the fact that what was happening was inappropriate or failed to recognise, in the first instance, that it was inappropriate.

While I appreciate the Senator's position, it is difficult for me to go much beyond that. Suffice it to say, however, the document I prepared and that we discussed at some length earlier will, if and when he reads it, give the Senator a much better understanding of how the process came to crystallise and the moving parts within it ultimately fell foul of the prohibition on the coaching of witnesses. The contamination issue is tied to it, as are the judicial findings surrounding a failure to investigate and investigative bias. These issues all relate to the two witnesses and the mechanism or manner in which their statements were obtained over two years or thereabouts. It is completely different from someone stating he or she witnessed something which happened on Kildare Street at X time.

Senator Aidan Davitt: I appreciate that and Mr. Drennan's answer. Did the ODCE feel pressure at any stage to get a result at all costs, something that might have led to this situation? I have examined the matter in some detail and it seems like a result had to be achieved at all costs in this case and that, apart from staffing and so on, it possibly led to further problems.

Mr. Ian Drennan: I have tried to avoid uttering this line all day, but I was not there at the time. Therefore, I cannot answer that question. I cannot put myself in the mindset of the individuals who were there at the time and the pressures they were under. The document will help the Senator to some extent. These matters were ventilated at length during the course of exami-

nation and cross-examination. I do not imagine for one moment that the Senator wants to read all of the transcripts, but if he ever chooses to do so, it is laid out at length. In fairness, senior counsel for the defence did so forensically. As I said, I cannot put myself in the minds of others.

Senator Aidan Davitt: Mr. Drennan was not put under pressure as head of the ODCE to get a result. He did not feel there was-----

Mr. Ian Drennan: No. That has never been-----

Senator Aidan Davitt: I just wanted to hear that.

Mr. Ian Drennan: Absolutely not.

Senator Aidan Davitt: I thank Mr. Drennan and appreciate the honesty of his answer.

Chairman: Does Deputy Kelleher wish to contribute again briefly?

Deputy Billy Kelleher: I have some short questions.

Under the legislation, the new authority will have a structure of up to three commissioners. Is Mr. Drennan satisfied with the proposed structure? Will the statute give the authority enough flexibility to, for example, appoint individual commissioners to separate investigations?

In what common law or similar legal system across the globe is there an exemplary office of director of corporate enforcement or an enforcer of corporate governance and corporate law?

In reading Mr. Drennan's opening statement, the bottom line stands out for me. According to him, "An enormous level of high-quality investigative work was done over that period, an achievement that, unfortunately, came at a considerable human cost." We alluded to this matter in our discussions before Mr. Drennan's attendance. We have to see that 450-page document in order that we can have a statutory process in place that protects the integrity of corporate law and the State internationally and ensures financial services, those overseeing them and the underpinning legal system can be upheld and vindicated. That can only be achieved by having an office with the statutory powers and administrative supports necessary to go about its business of upholding corporate law in a way that does it credit, but we can only ensure that will happen by seeing the document and reflecting what is learned from it in the legislation and the resources provided for the office, whatever guise it will take once the statute is concluded.

Mr. Drennan referred to the "considerable human cost." Does the office now have a proper code of conduct and supports in place for staff? Does "human cost" mean threats and intimidation or just workloads? Is Mr. Drennan satisfied that the office now has sufficient oversight and HR systems to ensure its employees are protected and looked after in taking on large caseloads?

Mr. Ian Drennan: Regarding the three commissioners, that is a policy issue for the Government; therefore, I am precluded from opining on it and I will sidestep the question, if the Deputy does not mind. I will ask my colleague Mr. Hegarty to address the Deputy's question about other jurisdictions.

To reply to the third question, the Department of Business, Enterprise and Employment has a well developed and sophisticated HR function. In my experience, it is one that operates well and on a compassionate basis. I have already answered this question to some extent in response to Senator Davitt and I am not sure whether there is much more to be said over and above what I have said.

Deputy Billy Kelleher: The Department's HR system oversees the ODCE's staff.

Mr. Ian Drennan: Correct.

Mr. David Hegarty: Internationally, there is normally a division between competition regulators, financial regulators and the third type of regulator - corporate enforcement regulators. It is important to point out that the ODCE is not a white collar crime agency. To a certain extent, it is not even a corporate crime agency. It is responsible for the enforcement of the Companies Act 2014 which I believe will carry over in head 8 of the new Bill.

Some of the main comparable regulators are the Serious Fraud Office, SFO, in the United Kingdom and the Securities and Exchange Commission, SEC, in the United States, but they are probably not directly comparable to the regulators in Ireland. The Swedish Economic Crime Authority is a one-size-fits-all organisation. It employs 600 people and has a budget of €61 million a year. It engages in a broad range of work. The 2016 report talks about prosecuting gross fraud and obstruction of tax inspections, raiding illegal tobacco factories, prosecuting exercise of serious improper market influence, raids regarding unreported employment in the restaurant industry, raids against driver schools and it focuses on tax evasion and false accounting. Other countries have organisations that do different things but that would be an example of a broad range, and much broader than what the ODCE does. In this country, traditionally, the division has been along sectoral lines, if I can put it like that.

Senator Pádraig Mac Lochlainn: I must apologise. I had to step out for two votes in the Seanad. We were dealing with legislation. Apologies for the crossover of responsibilities today. However, I heard the ODCE's opening statement. As the ODCE representatives will be aware, the committee will be receiving its documentation and engaging on those issues.

First, I want to go back to 2012. In 2012, Mr. Remy Farrell SC made an intentionally provocative statement that it was the best time to be a white collar criminal. He pointed to the dearth of resources in the ODCE at that time. This was four years after the economic collapse of the State. Most people would agree that sharp practice in the banking and business sectors that led to the collapse of the State. One would have assumed that four years after that, we would have had a properly resourced corporate enforcement agency in the State. I draw the ODCE representatives attention to those comments and ask for their thoughts on them. The second point is the issue of policy cohesion. As they will be aware, the Law Reform Commission in recent times has talked about a corporate crime agency. I would draw their attention again to an article they may recall, written by the columnist, Dr. Elaine Byrne, in *The Sunday Business Post*. Dr. Byrne pointed to the need for all the agencies in the State, including the ODCE, the Data Protection Commissioner, the computer crime investigation unit of An Garda Síochána, and the Garda Bureau of Fraud Investigation, that are tasked with looking at corporate crime to come under one roof. I want to hear the ODCE's thoughts, both on this issue of resources and on the issue of cohesion and proposals to join up all the agencies of State under one roof.

Mr. Ian Drennan: I know Mr. Farrell and he is happy to be provocative. In fairness, those comments were delivered in a particular context.

On a serious note, I need to make an important point that sometimes gets lost in the narrative. None of the investigations that we were involved in related in any way to collapse or the issues that gave rise to the collapse of Anglo Irish Bank or any other bank. Bar one, they were all issues that manifested themselves in the dying days of that organisation, for example, the share support scheme. They were particular, if you like, end-of-life issues. It is a common

misperception but the individuals in question, in fairness to them, were not on trial for bringing Ireland to its knees or for bringing the banking crisis. That is not the purpose of the company law charges. Indeed, there were other charges as a consequence of Garda investigations which were similarly not for that purpose.

That brings me neatly to the Law Reform Commission report. I heard the Senator speak of it on the previous occasion and it is clearly something he has studied carefully. I could talk to the Senator about that report all day. Implicit in the very fact that there was a recommendation in that report that this idea of egregiously reckless lending should be criminalised is a recognition that what happened, albeit unpalatable, was not necessarily criminal. That is probably what brought them to that point. I will come back to the Law Reform Commission, LRC, in a minute.

Given that Senator Mac Lochlainn referenced Dr. Byrne, he may be aware that one of the other limbs to the Government's package of white collar measures that accompany the proposed Bill that we are discussing today was the establishment of a group under the former DPP, Mr. Jim Hamilton. Myself and Mr. Hegarty sit on that committee and, indeed, Dr. Byrne is a member of that committee. If the Senator does not have the terms of reference, we can get them for him - there is no difficulty with that. Some of the issues the Senator touched on are some of the issues that we are looking at within that committee. That committee, the Senator can take it as a given, will have the benefit of Dr. Byrne's perspective on those issues. We can send the terms of reference through to the Senator tomorrow.

Returning to the LRC report, as I said, I am quite happy to talk to the Senator about that all day. I certainly have particular views on chapter 1 of that report which deals with the ODCE. While I take no pleasure in saying so, there are a number of quite significant errors in that chapter. Indeed, some of the analysis contained in that chapter, specifically, around *DPP v. FitzPatrick* is not supported by the facts and is demonstrative of a certain lack of understanding of some of the issues involved in that.

As a separate issue, there is a disconnect in that the report starts out saying we had a financial crisis and we need to identify a mechanism whereby we ensure that we as a State never repeat that financial crisis, then seems to take a quantum leap into *DPP v. FitzPatrick* which had nothing to do with that - I said earlier that trial had nothing to do with causes of the financial crisis - and then seeks to leverage off certain deficiencies in that as a means of recommending the creation of a corporate crime agency. We would have some quite significant observations around the level of analysis or otherwise that underpin that recommendation. First and foremost, in the report the LRC stated that it endorses the vehicle that is in the proposed Bill notwithstanding that this agency that we are talking about is an entity that will continue to have the same functions as the ODCE, namely, company law, but then goes on to talk about corporate crime, which is a much broader remit. The first difficulty is that whereas the report discusses at length the issue of corporate crime, it does not define it anywhere. It, in some instances, likens it to fraud, then likens it to white collar crime and then it likens it to corporate crime, all of which mean different things. If one takes that at its broadest - white collar crime is even wider - let us leave it at corporate crime, that is, any crime that involves a corporate entity. That includes everything from company law to, say, tax evasion of VAT in a pub or something like that, or to a company that owns the building site whereby the trench collapses on some poor unfortunate, to the company that constructed Grenfell Tower, the *MS Herald of Free Enterprise* or whatever the case may be to a company that is being used as a moneylaundering vehicle. We issued a press statement about this some considerable ago. The breadth of the scope is enormous.

Are going to denude Revenue, ODCE, the Health and Safety Authority, etc., of their en-

forcement activities and put these into one entity or is the corporate crime agency to do the more serious corporate crime and the other entities continue to do what they are doing, in which case the Revenue Commissioners, for one, would certainly have a view in terms of the implications that would have for its intelligence gathering?

There is a very obvious issue in that if, for example, one sets up a corporate crime agency and its mandate is to deal with more serious corporate crime, I can predict - it is fairly close to a fact - it would become a dumping ground because anybody who does criminal investigation and who wants to get rid of a difficult case or one that will be contentious would merely refer it across to it. That is as sure as night follows day. It is a recommendation that is worthy of consideration, but one that requires a lot more thought.

Senator Pádraig Mac Lochlainn: Going back to the issue of resources, would Mr. Drennan dispute the assertions of Mr. Remy Farrell in 2012 that the ODCE was under-resourced?

Mr. Ian Drennan: I would have to look back at his remarks. I cannot remember the specific context. I know the conference involved but I would need to look at his remarks so I do not wish to comment.

Senator Pádraig Mac Lochlainn: I will put it a different way. Does Mr. Drennan believe that he had adequate resources in 2012?

Mr. Ian Drennan: I was appointed in August 2012 and one of the first things I did, having come from another organisation, was an analysis or assessment, which was only my opinion, of the ODCE's capacity in terms of the resources at its disposal to discharge its functions to the standard I would like. One of the key conclusions I arrived at was the need for far more accountancy expertise. At the time we had one in-house accountant. Perhaps I look at that perspective because that is my profession but, ultimately, everything we do comes down to numbers and transactions. In my assessment an organisation carrying out that type of work cannot function if it does not have people who understand those transactions and the way accountants, auditors and businesses operate. I had a discussion with the Department. I sent in a proposal at the time and that subsequently evolved into hiring some of the people here now.

As I said earlier, I have met with nothing but supportive attitudes from any Minister I have dealt with in that respect. As a consequence, these people are here now. For me it is not about more people or bodies but the right people and bodies. Broadly speaking, we have the same head count as when I was appointed, but the profile of the organisation is different in terms of its staff complement and the capabilities, backgrounds, experiences and willingness of staff to accept risk. In fairness to the people who were there at the time some of these things happened, some of them ended up being at the business end of risks that they probably never envisaged when they were appointed ten years prior to that, whereas the people who are appointed now fully understand the risks involved. They will confirm that. I have interviewed them all and the conversation we have is about whether they understand the risks that are attached to doing this type of work and whether they are prepared to take on those risks. It is the same numbers but the composition is very different.

Senator Pádraig Mac Lochlainn: Mr. Drennan said in his opening statement that there were five components in the Anglo Irish Bank trial. There was huge public interest in the Seán FitzPatrick trial. Would he have requested additional resources to assist with all of that? As that arrived on his desk, would he have said to the Department that he needed additional resources as this was big stuff?

Mr. Ian Drennan: That is an impossible question to answer. We are all individuals. I am sure I would have arrived at my own analysis which may or may not have been different from that of other people. To some extent it is an impossible question to answer but I know now, and I mentioned it earlier, that if something like that descended upon us now, I believe the thought processes would be entirely different. Hindsight is 20-20 vision but when one has been through it and when one appreciates how badly things can go wrong when these risks crystallise, one looks at everything through a completely different prism. With everything we look at now, be it civil or criminal investigations, we look at it through the prism of risk.

Senator Pádraig Mac Lochlainn: Mr. Drennan also referred in his opening statement to the Independent News & Media investigation and the finding by the court that it should progress. When I was questioning the senior departmental officials last week I mentioned that significant financial assets are being transferred due to Brexit, including €190 billion alone from Barclays. Mr. Drennan will understand that there are legitimate concerns that the ODCE is resourced adequately to monitor all of that, not just from Britain but also from other states. Is the office currently adequately resourced to deal with the major challenges all of that presents?

Mr. Ian Drennan: The Senator had to step out of the meeting when that subject was covered earlier to some extent. I am aware that he had specifically referred to that issue. It is a huge sum of assets being transferred. However, as I said earlier, what we have observed thus far is that most of the businesses that appear to be relocating or are giving consideration to relocation on foot of the risks they perceive Brexit causing for them in the UK appear to be in the financial services area. All of those entities have to be authorised by the Central Bank and thereafter must operate in accordance with Central Bank rules and regulations. The Central Bank is a regulator so it authorises, supervises and so forth. Our office is an enforcer so we do not have an engagement with an entity unless an indication of a potential issue has come to us. I am aware the Senator expressed a particular interest in this at the last meeting, but for the most part when we are on a business as usual operational footing we would have no engagement with such entities. It would only occur if a particular issue arose from an auditor or whatever the case may be. Generally speaking, in our experience and without breaching confidentiality, and Ms Sterritt might wish to speak about auditor reports, a very significant proportion of auditor reports do not attach to large financial institutions because of the nature of those entities.

Ms Sharon Sterritt: One of the provisions of the Act allows for auditors, while they are reporting or auditing their financial statements, to report to us if they come across anything that indicates a wrongdoing, a failure to keep company assets or a proper accounting of records and so forth. There is a provision for them to report to us. We have seen an increase since the Companies Act 2014 commenced. That is something on which we are working with accountancy bodies and professions. We have technical liaison groups so we are keeping abreast of changes and challenges in that area. As the director pointed out, different trends are emerging. There is an increase in financial services entities in the State. This is something I and my colleagues are keeping track of.

Senator Pádraig Mac Lochlainn: I am conscious that when we discuss the Remy Farrell comments there was one accountant in the office in 2012. Obviously that is not enough. Hindsight is 20-20 vision but the ODCE was given major responsibilities on behalf of the people of the State. The lives of many people were utterly destroyed in many ways by the economic collapse and the office carried responsibility for holding people to account, if necessary and if it found that to be the case. One of the matters the body politic has examined is the area of regulatory oversight and the role of auditors who gave the banks a clean bill of health. In the case

of Anglo Irish Bank, Ernst & Young were the auditors that gave the bank a clean bill of health. Was there any sense in that case or others of wondering how that happened? How could it have given Anglo Irish Bank a clean bill of health?

Chairman: I do not think the director can answer that question.

Senator Pádraig Mac Lochlainn: I have to ask the question. If members of the public were here, they would want to ask it. Perhaps we will get more light in the documentation and we will revisit this on another day. However, I leave that question hanging there as it is a question that is asked regarding the show trial of one individual and whether there is an issue where other bodies gave these institutions clean bills of health. It is a little like when one travels in an aeroplane. One trusts the pilot can fly the plane, one puts one's life in his or her hands. We put a lot of trust in people much of the time. In this State, we put our trust in people who presented themselves as professionals who conducted audits and gave organisations clean bills of health. We, and investors, put our trust in them. It seems there maybe more work to do in this area. I will leave the question hanging there as the officials cannot be drawn into specifics but maybe we can revisit the matter again.

Chairman: Has the Senator concluded?

Senator Pádraig Mac Lochlainn: No, I have another question. The Law Reform Commission discussed six core powers. I will not read them but the officials will be familiar with them. What are their thoughts on the six core powers as a framework for the future? Do they accept them as prudent? Should they be reflected as we work our way through this legislation and any possible amendments thereto?

Mr. Ian Drennan: Before I defer to Mr. Hegarty on the latter part of the Senator's question, I need to say something on his earlier comments. We are violently in agreement that people's lives were destroyed. That is a given and we all accept that. I said earlier, and need to reiterate it, that the ODCE's remit under law is company law. The various investigations in which we involved and subsequently resulted in trials, irrespective of what way those trials went, were concerned with alleged breaches of company law. There are parameters within company law. Company law was never intended to be designed to deal with the component or contributory factors that gave rise to some of those financial institutions becoming insolvent. This has been well documented. That is much more in the area of financial services law regarding the manner in which those entities were stewarded, the manner in which those entities were understood, appreciated, calibrated, mitigated and all those good things, which are squarely within the scope of financial services. In terms of company law, similar to tax law, there are clear parameters around it. Bringing a bank to its knees, to use that parlance, is unlikely, in the circumstances that gave rise to the issues about which the Senator spoke, to ever come within the remit of company law. That is financial services law.

Second, as the Chair has suggested we will not get into a particular issue but the area of audit is something about which I would be quite happy to speak to the Senator at length. An audit is a very misunderstood thing in terms of what it is that auditors are charged with doing. A corner shop is relatively easy to audit, that is quite straightforward. However, with a bank, whether there are complex financial instruments and huge levels of judgments and estimates involved, the accounting standards were applicable and they in turn had come directly from the likes of Enron and the issues which arose as a consequence of that. These things must all be seen in the round. It does not lend itself to a straightforward analysis as these are complex issues. Those things must all be understood before one can start to think about the performance

of auditors. I am not opining on that but I am saying that there are a huge number of moving parts around all those complexities, the fact that audit is not forward looking, it is rear looking. It is not a certificate that these financial statements are correct, it is an opinion based on a particular methodology. Those things all factor into it. Mr. O'Mahony may want to supplement my remarks as he is a member of the board of the Irish Auditing and Accounting Supervisory Authority, IAASA, which has a specific role in that area. There have been huge developments in recent years that I have probably lost touch with since I was there.

Before I hand over to Mr. O'Mahony, and give him a chance to formulate his thoughts, I will ask Mr. Hegarty-----

Senator Pádraig Mac Lochlainn: It strikes me that in his response, Mr. Drennan has almost made a case for an overall agency if the ODCE could not have been tasked with the matter of looking at audits. From the perspective of the ordinary layperson, which is what I would regard myself as in this regard, that the full picture was not fully examined. This committee has received submissions which pointed out that in a court of law in a particular case only matters pertinent to the case can be examined, even where there are issues outside that that would provide the full picture. I strikes me that what Mr. Drennan said strengthens the case for everything to be under the one roof that the full range of potential catastrophic failure, particularly for this State and its people, would be fully examined, that all persons who had any hand, act or part in that failing would be examined. It is a case for an umbrella agency where there are defined roles but someone is up there in a helicopter, if one likes, ensuring that everything is being held to account.

Mr. Ian Drennan: If what I said was construed as being suggestive of the merits of an overall agency for those particular issues, that is absolutely not what I meant. I want to be clear on that. What I mean by that is what we do is enforcement, that is non-compliance with the law. The issues that the Senator speaks to are about performance, so the performance of auditors in this particular instance. That is like apples and oranges. If one follows the logic of that through, there would be one entity that prosecutes company law but also invigilates the performance of solicitors, for example, because the performance of solicitors, of doctors, of auditors is a performance issue. There would be no logic to that because their natures are so completely different. What auditors do is highly specialised but is also a performance issue. It is not a wrong-doing issue but one of performance, the same way as a doctor, lawyer or whatever acts in a way that is substandard *vis-à-vis* his or her obligations to their professions, that there are mechanisms there. IAASA does accounting, the Law Society or the Legal Services Regulatory Board does solicitors and barristers and so on. They do that for a reason, because they are two very different things. That is not what I was suggesting and with the greatest respect, I do not think that what I said necessarily brings one to that conclusion. I hope that is helpful.

Senator Pádraig Mac Lochlainn: Do investors in a company look to an audit as reassurance that their investment is a safe one, for example?

Mr. Ian Drennan: I do not purport to speak for them but I guess that if one were to ask the average institutional investor when he or she is making the decision to invest in listed company X in Dublin, London or wherever how much weight he or she would attach to the audit opinion, the answer would be somewhere around zero.

Senator Pádraig Mac Lochlainn: Is that not terrifying?

Mr. Ian Drennan: No, it is not. It is a function of what the audit report is. It should be born

in mind that if the year end is 31 December, the investor will not get it until March or April. When one makes an investment decision one is looking forward not backward. One is making one's decisions on whether an entity is profitable and what is coming down the line in terms of income streams and so on. One is not looking at the rearview mirror. The audit report is addressed to the shareholders and serves an entirely different purpose.

Senator Pádraig Mac Lochlainn: Okay.

Chairman: Does Mr. Drennan want to let Mr. Hegarty and Mr. O'Mahony come in to answer?

Senator Pádraig Mac Lochlainn: That is my fault.

Chairman: I will let Senators Humphreys and O'Reilly in and then we will conclude.

Mr. David Hegarty: It is important to reiterate the point that the director just made. There is a difference between enforcement and regulation. Enforcement is different. The Law Reform Commission report sets out what three distinguishing features of a regulator would be. One is the setting of standards, the second is a supervisory function and the third is enforcement. Unequivocally, we perform the third function. There is no real supervisory function in the way that there would be with regulated entities. That is where the Law Reform Commission report speaks more to regulators than to enforcers. It talks more about the supervisory functions.

There are two further issues relating to the existing powers. The Law Reform Commission summarised the existing powers of all the regulators and enforcers, namely, investigation and inquiry, search and investigation, negative enforcement - we have all of those powers. We do not so much have powers in civil financial sanctions. There is provision in sections 957AA to 957I of the 2018 Act to allow for limited administrative financial sanctions in discrete circumstances under Part 13 of the Act, but that is a subset. There are summary prosecutions and so on. Those are the powers that regulatory enforcement agencies have. A great deal of significance is attributed to the regulatory toolkit in the LRC's report.

We have many of the powers that an enforcer needs and others would not be appropriate for us to have in all circumstances, or it could be argued that it would not be appropriate to have them as an enforcement authority. Those include the powers to enter and search premises, to impose administrative sanctions and to bring summary prosecutions. While it would be a policy decision, it could be argued that others relating to a wide range of regulatory compliance agreements or settlements might not be appropriate. If an enforcement agency detects criminality and it is sufficiently serious to invoke the criminal resources that the agency has, it probably is not an appropriate matter for a regulatory settlement. Chapters 3, 4 and 5 of the LRC report refer to administrative financial sanctions, settlement agreements and deferred prosecution agreements. Of those, deferred prosecution agreements would be most relevant in some senses but that would be a matter for the Director of Public Prosecutions to determine, not the ODCE or other corporate enforcement authorities.

The overarching thrust of the LRC report is more directed towards regulatory agencies. An enforcer does not have that kind of interaction with a supervised body. The director spoke to that earlier. If one had one overarching authority and left each of the other agencies with a right of election as to whether to keep a prosecution themselves or pass it on, there is a theoretical possibility that each of those might say that they will pass one on and keep another for various reasons. By centralising everything, there is also a nexus between the regulator and regulatee

that would be very important in broadcasting and other sectors where highly technical expertise is necessary. That is not strictly as relevant to the performance of the ODCE or the corporate enforcement authority of their functions. That ultimately all comes back to the distinction between an enforcer and a regulator. I do not want to say the LRC report conflated the two but it was much more focused on addressing issues relating to regulatory governance.

Mr. Conor O'Mahony: I thank the director for that little hospital pass he gave me. While I am on the board of the Irish Auditing and Accounting Supervisory Authority, IAASA, I am not here in that capacity and I am not authorised by the board to answer these queries. I will give some very high level observations. Following the collapse of the banking sector, there were not just banking problems in Ireland but across the world. A significant debate at the time was whether the auditors had been asleep at the wheel or if the auditing standards had been up to scratch. There was intense debate on that around the world. Auditing standards were changed to try to address what happened in Enron some years earlier. When that revised standard was tested by what happened in the financial maelstrom of 2007 and 2008, there were strong arguments that the revised auditing standards were found wanting. The auditor certainly argued that they were required to give a pass to what was going on. It was quite unsatisfactory.

The standard has subsequently been changed dramatically. It was an incredibly complex area. IAASA required the Chartered Accountants Regulatory Board, CARB, to conduct reviews of all of the major, Irish-registered bank audits and required them to get an independent expert in from the UK. I think Mr. Drennan was involved in requiring that in his previous capacity and there was in-depth work on that. That ended up being delayed for a number of years because it could not be progressed while the Anglo-Irish investigations and criminal proceedings were ongoing. The whole thing was complex. I know that is not a very satisfying answer in that it does not attribute blame but these are complex areas. It goes back to what the director said, which is that auditors do a particular job but it is probably not the job that the man on the street expects them to do.

Chairman: Senators Humphreys and Reilly can ask a brief supplementary.

Senator Pádraig Mac Lochlainn: I have a final question.

Chairman: It should be very final.

Senator Pádraig Mac Lochlainn: It will be. I talked about how, when one goes on an aeroplane, one puts one's faith in the pilot being adequately trained and one's life in the pilot's hands. We have perhaps a foolish perception that auditors sign off on accounts and give a company a clean bill of health. If an engineering company cleared an aeroplane and it goes down, my life is gone. I would like to think that my loved ones would ask questions of the engineering company that gave a clean bill of health as part of the investigatory process. I feel that we are not getting a complete picture. If the witnesses' response is that this was all that they could look at, that is good enough for me, but my sense is that there are missing elements that somebody else should have been examining and that was not done. If their response is that, in the terms of reference of the ODCE, that is all they could investigate, that is fair enough. There is something in the public interest that the witnesses could not have fulfilled but that we as a State have not ensured that somebody was fulfilling.

Mr. Ian Drennan: To be clear, it is not that we could not examine auditor performance. Auditor performance does not fall within our remit. It is not that there was some sort of impediment but that it falls completely outside of our mandate. IAASA is an entity which also comes

within the committee's remit, given its jurisdiction with the Department. Up until recently, it had a specific mandate which has now changed on foot of European legislation and it has a direct relationship with the audit firms that the Senator refers to. Back in my time, one could not go into an audit firm and carry out an inspection on an audit file. That has now changed to where they can, and do, do that. That entire regulatory mechanism and framework has changed in recent years. There is a statutory entity that not only can, but does, look at auditor performance. It just does not happen to be the ODCE because we do something completely different. I hope that helps. I am quite happy to talk about that outside the committee.

Senator Pádraig Mac Lochlainn: Mr. Drennan will be back so we can develop that further.

Chairman: Senator Humphreys has been patient.

Senator Kevin Humphreys: I have two questions. Mr. Drennan just answered one comprehensively so I will not repeat it. Page 1 of the opening statement refers to vindicating the rights of members of a property management company. I understand that statement but I am involved in assisting several management companies and some very brave directors that stepped in on a voluntary basis to try to sort out the mess of what a management company is, especially in this city. I am not sure what it is like outside Dublin but most management companies we have tried to resolve issues in respect of are a mess. Some were never even registered with the Companies Registration Office by the developer. I am dealing with one where the developer has been gone for 12 years and we have now discovered that the management company was never registered. There have been no returned accounts for 12 years and brave individuals in the apartment block are trying to resolve it. Those are the individuals it falls on and there are significant costs in trying to resolve those messes across the city. We have to re-register them as companies.

Mr. Ian Drennan: My colleague in the Gallery could speak at length about that issue if he was here. The Senator is more than familiar with how those entities came about-----

Senator Kevin Humphreys: And how they were registered.

Mr. Ian Drennan: We seek to try to help people where, for example, the directors have not convened an annual general meeting for some time, which denies members access to financial statements, voting on who directors are and taking on new directors. This denies the members access to financial statements or a vote on who the directors are or whether to take new directors on. We seek to help those individuals to vindicate their rights, thereby addressing some of the issues that have been alluded to, which have a very significant impact on people's daily lives. To whatever extent committee members might be interested in the material we have provided, there is a suite of data around the directions we have issued to people. I am quite happy to provide further information on that if the committee members want it.

Senator Kevin Humphreys: I would be happy if Mr. Drennan would provide that. I do not want to delay the meeting any longer.

Dr. Conor O'Mahony: In one case we prosecuted a management company over deficiencies. That was a few years ago. We have taken that action in the past.

Chairman: I will take a final short question from Senator Reilly.

Senator James Reilly: No, I have been listening for a long time, for the last hour, and I

have lots of questions.

I thank the witnesses very much for coming in and I mean that genuinely. They have explained a lot of stuff that would not necessarily have been obvious to us. That is the first thing to say. A number of issues arise. I share Senator Humphreys's concern around management companies. Has the Office of the Director of Corporate Enforcement prosecuted somebody for misdemeanours of the type he has outlined, rather than prosecuting a company? In those prosecutions, somebody pays a bit of a fine. Good luck.

Mr. Ian Drennan: We have, yes.

Senator James Reilly: Good. Much of what was referred to a few moments ago is still problematic in the city. There is an expert sitting behind us. That is very much a fact. The other issue I wanted to briefly address was raised by Senator Mac Lochlainn, namely, auditors and the value of an audit. The ordinary man on the street sees companies like Enron, Anglo Irish Bank, and so many others. The big four firms go around the world, sticking their chests out, auditing and charging big fat fees for it. What does it actually mean? The witnesses mentioned the Irish Auditing and Accounting Supervisory Authority, IAASA. Mr. O'Mahony is on its board. Is he saying that is the body we should invite in to discuss this issue with us? I would be very happy to do that, and do a service to the public and perhaps a service to IAASA. I would like to highlight and explain to people what auditors do and what they do not do. People put a misplaced trust in an audit and in audited accounts, as Senator Mac Lochlainn said. Audited accounts only look backwards and cannot predict with any certainty what is going to happen in the future. That is fair enough. Nobody can do that. However, surely they should have picked up much of what was going on in Enron for quite some time.

Mr. Ian Drennan: The chief executive of IAASA is a former colleague of mine. I suspect there is a text on my phone as we speak.

Senator James Reilly: I am sure it says "Thank you for the invite". I thank the witnesses.

Chairman: I thank Mr. Drennan and his team for coming in today to brief the committee. It has been very worthwhile. I would like to put on the record that there has been much communication to and fro, but at no stage did the witnesses ever refuse to appear before the committee. If we have some more questions and if we need them to come back before we conclude our pre-legislative scrutiny of this Bill, would they be willing to do that?

Mr. Ian Drennan: Absolutely.

Chairman: I thank Mr. Drennan.

The joint committee went into private session at 8.35 p.m. and adjourned at 8.45 p.m. until 9 a.m. on Thursday, 21 February 2019.