

DÁIL ÉIREANN

AN COMHCHOISTE UM LEANAÍ AGUS GNÓTHAÍ ÓIGE

JOINT COMMITTEE ON CHILDREN AND YOUTH AFFAIRS

Dé Céadaoin, 30 Eanáir 2019

Wednesday, 30 January 2019

The Joint Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Lisa Chambers,	Senator Colm Burke*,
Deputy Denise Mitchell,	Senator Fintan Warfield.
Deputy Tom Neville,	
Deputy Anne Rabbitte,	
Deputy Sean Sherlock,	

* In the absence of Senator Catherine Noone.

In attendance: Deputy Clare Daly..

DEPUTY ALAN FARRELL IN THE CHAIR.

The joint committee met in private session at 9.45 a.m. and resumed in public session at 9.50 a.m.

Oberstown Children Detention Campus Operational Review Report: Discussion

Chairman: I welcome members and those viewers who may be watching the proceedings on Oireachtas TV to the public session of the Joint Committee on Children and Youth Affairs. The purpose of the meeting is to discuss the non-publication of the operational review report on the Oberstown Children Detention Campus. In the first session today, the committee will hear from the authors of the report, Professor Barry Goldson and Professor Nick Hardwick. In the second session the committee will hear from the chairperson of the board of management of Oberstown Children Detention Campus, Professor Ursula Kilkelly.

I would like to advise the members of the committee that while there have been reports in the media in connection with the operational review, it is important to note that the committee cannot discuss individual cases and members should avoid naming individuals, whether those names are in the public domain or not. It is also important that we do not discuss anything which is likely to be the subject of court proceedings. Members are reminded that there are ongoing legal cases and they should avoid saying anything that could have an impact on these cases or be seen to interfere with them in any way. Members are advised that the contents of the operational review report cannot be discussed and that they should be mindful of the legal issues surrounding the report.

I welcome Professor Barry Goldson, who is a PhD and is the Charles Booth chair of social science in the department of sociology, social policy and criminology in the school of law and social justice at the University of Liverpool; and Professor Nick Hardwick of the school of law at Royal Holloway, University of London. I thank the professors for appearing before us this morning. By virtue of section 17(2)(I) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of the evidence they give to the joint committee. If, however, 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, her or it identifiable.

The opening statements will be published on the website of this committee after the meeting. I understand that witnesses will make a short presentation, followed by questions from members of the committee.

Professor Barry Goldson: I will make a short statement on behalf of us both. We welcome the opportunity to address the committee. Members will appreciate that it is impractical for us to attempt to cover every aspect of the events that have unfolded in the past two years. Instead, we will aim to capture the key issues and will provide the committee with a more detailed written statement that we have entitled: Synopsis of the Operational Review of Oberstown.

In September 2016 we were appointed to undertake an operational review of Oberstown, in

recognition of our international expertise in the fields of youth justice and penal detention. The operational review took place against a backdrop of substantial change and during a period of acute instability at Oberstown. The terms of reference for the operational review are attached as an appendix to our written statement.

The core aims of the review were threefold. First was to evaluate practice and policy in line with international standards and best practice principles. Second was to identify obstacles or barriers to achieving greater implementation of international standards and best practice, and the third was to make recommendations to ensure greater and more successful implementation of these standards.

On 10 October 2016 we sent a detailed memorandum to the chair of the Oberstown board of management setting out our understanding of the operational review, indicating the design and methodology that we intended to adopt in order to undertake it and identifying the key data and information that we planned to examine. The design and methods of the operational review are elaborated at paragraphs 8 to 12 of the written statement and the memorandum is provided as an appendix to the same statement.

In the time available, the design, methods and data analysis were rigorous and robust. Throughout the entire process of designing, undertaking and reporting the operational review, we consulted consistently and closely with the chair of the Oberstown board of management and the director. Illustrative detail is set out at paragraphs 15 to 32 of our submission to this committee. At no time prior to the submission of our report did either the chair of the board of management or the director raise any concerns with us about any aspect of the review process. On 24 February 2017 we submitted to the chair of the Oberstown board of management what we considered to be the final version of our report, together with nine annexes and a summary report. In the same correspondence, we provided a document tabulating, in forensic detail, how we had responded to the written feedback on earlier drafts of the report offered by the chair of the Oberstown board of management and a further document offering similarly detailed explanation as to how we had responded to the director's written feedback.

The body of the report comprises 285 substantive paragraphs, extending over 67 pages, and it includes 95 recommendations. The body of the report does not identify named individuals other than the chair of the Oberstown board of management and the director. We do not believe that there are any other individuals who can be personally identified in the report whose role is subject to direct or implied criticism.

On 13 March 2017 we received a written communication from the chair of the Oberstown board of management in which she stated, "I have formed the view that legal opinion may be necessary prior to publication". On 17 March 2017 we submitted our report to the Minister for Children and Youth Affairs as we were obliged to do in accordance with our terms of reference. On 29 May 2017 we were informed by the chair of the Oberstown board of management that the board had decided not to publish our report in light of unspecified legal opinion. The chair confirmed that the intention was to publish the report's recommendations as a standalone document.

On 11 June 2017 we wrote to the chair of the board of management expressing our concern and disappointment regarding the decision not to publish, pointing out that this was contrary to the explicit written undertaking to publish and disseminate the report that we had been working with from the outset, recalling the detailed processes of consultation and accuracy checking that we had engaged in throughout the process, restating our belief that the publication of the report

would enable progress at Oberstown and serve the public interest, objecting to the publication of our recommendations abstracted from the underpinning context and rationale that is presented in the body of the report and pointing out that to do so would be misleading and, finally, stating that we would be willing to consider redactions to the report in light of legal advice, but that we would first prefer to see the advice that might be deemed to make redactions necessary. Notwithstanding this, the recommendations were published but, as members will be aware, the report is yet to be published.

On 19 March 2018, a year after we first submitted our report to the Minister, we wrote to the Minister asking to be informed of progress being made towards publishing the report. We were aware that the Minister had appeared before this committee on 24 January 2018 when she reported that she was about to “seek additional advice to ensure due process has been completed”. The Minister assured the committee that “when that happens, I will ask for the report to be published”.

On 12 July 2018 we received a letter from the Minister that included the statement: “I consider that it would be misleading to publish the report now, having regard to progress that has been achieved in the interim” and the statement that:

I have sought assurance from the Board that it is satisfied that fair procedures were applied. The Board has not been in a position to provide such assurances to me to date. In the circumstances, I do not propose to publish the full report.

In the period between the time that we first submitted our report and the Minister’s appearance before this committee on 18 December 2018, four quite different rationales for non-publication have been mooted and it is our submission to the committee that each is flawed.

First, there has been reference to legal opinion and risk. The precise nature of such risk has never been made clear to us, however, and we have never had sight of the legal opinion. At the point when we submitted our report, our reading was such that four of the 285 substantive paragraphs might need to be redacted in view of legal cases that were ongoing at that time. In fact, we suggested redacting the four paragraphs in correspondence with the chairperson of the Oberstown board of management as early as 25 February 2017.

The second reason for non-publication refers to due process and fair procedures. At various points the Minister has referred to concerns regarding due process and fairness, most recently during her appearance before this committee on 18 December 2018. Taking account of the fastidious attention that we applied to processes of consultation and factual accuracy in undertaking the operational review and in preparing the report, we find it difficult to understand the basis of such concern. Furthermore, we have not been provided with any specific instances or examples where we have allegedly compromised due process or fair procedures.

The third point relates to the passage of time and progress that has been made at Oberstown since we undertook the operational review. It almost goes without saying that we welcome the news that progress has been made at Oberstown. We note the Minister’s submission to this committee on 18 December 2018 in which she reported that the recommendations that we made following the operational review have been at the kernel of such progress. Nonetheless, we strongly believe that our report should be published, whether or not the situation at Oberstown has improved. We do not believe the right lessons will be learnt by the many individuals and organisations who are involved in the campus unless there is a full understanding of what has happened in the past. Moreover, we note that alongside positive signifiers of progress contained within the HIQA report published in October 2018, following its unannounced inspec-

tion in March 2018, the same report provides that child protection requires some action and that care of children, planning for children, premises safety and security as well as staffing and management require priority action to mitigate the non-compliance and ensure the safety, health and welfare of the children using the service. Such observations resonate strongly with the serious concerns that we raise in our report of the operational review.

The fourth and final point relates to straying from the remit. In appearing before this committee on 18 December 2018, the Minister for Children and Youth Affairs claimed that our report strays from or over-extends the specified remit of the operational review. She referred to the fact that we make recommendations that pertain to national policy and, as such, are beyond the immediate powers and responsibilities of the Oberstown board of management. Yet, it would have been impossible to undertake a robust operational review without situating Oberstown within the wider context of national youth justice legislation and policy. Moreover, from the outset we made it clear to the chairperson of the board of management and the director that we would be considering the wider national policy context as part of the operational review. This is explicitly specified in a detailed memorandum that we sent to the chairperson of the board of management on 10 October 2016. We have attached the memorandum as an appendix to our more detailed written submission to the committee. At no time was it ever suggested that taking account of national policy issues lay outside the terms of reference.

We strongly believe that the rationale for each of the four reasons for non-publication was seriously flawed and that our report of the operational review of Oberstown should be published for at least four principal reasons. The first is to honour the terms of contract issued to us before we undertook the review. The second is to provide transparency and accountability. The third is to serve the public interest and the common good. The fourth is to enable learning.

I wish to be absolutely clear. Our unwavering objective has always conformed to the conception of the operational review as a supportive developmental process framed within the context of international standards and principles of best practice. We can only reiterate our concern to the committee that the right lessons will not be learnt by the many individuals and organisations who are involved in Oberstown unless there is a full understanding of what happened in the past. We believe that such understanding can only be realised by publishing our report.

Article 9 of the terms of contract that we were issued with at the outset of the operational review provides that all disputes between the board and the consultant as regards the application of the contract shall be submitted to arbitration if a mutual agreement cannot be reached between the parties. If the decision not to publish our report continues to stand, we appear to have reached a point where mutual agreement cannot be reached. On 5 August 2018, we wrote both to the chairperson of the Oberstown board of management and the Minister for Children and Youth Affairs expressing our view on invoking Article 9 of the contract and moving to arbitration. On 12 October 2018, we received a reply from the chairperson of the Oberstown board of management declining that request. To date, the Minister has not responded to the same request. We have not had any further communications either to or from the chairperson of the Oberstown board of management or to or from the Minister for Children and Youth Affairs. Yet, we remain of the view that the report should be published and, if necessary, we remain open to the prospect of arbitration as a means of resolving a dispute that is not of our making as a mechanism for ensuring that: the terms of the contract are honoured; the imperatives of transparency and accountability are upheld; the public interest is satisfied; and the lessons that might derive from the operational review are put to best effect.

Chairman: Thank you, Professor Goldson, for your opening statement. I wish to put some

quick questions in advance of Deputy Rabbitte making her contribution. For context, is it your belief or understanding from the terms of reference in the contract you have with Oberstown, Professor Hardwick, that as a contractual term the report should be published?

Professor Nick Hardwick: Yes. That is absolutely our understanding.

Chairman: Have you been paid for your work?

Professor Nick Hardwick: Yes.

Chairman: Have you been paid in full for your work?

Professor Nick Hardwick: Yes, and there is provision in the contract whereby if Oberstown or either party took the view that we had not fulfilled our obligations then the board could have refused to pay us. At no point has it been said to us that we have not fulfilled our contractual obligations.

Chairman: Thank you, Professor Hardwick. That was exactly the answer I was looking for to a question I had not asked. You have made your position clear in respect of straying into matters of policy and your interpretation of the terms of reference provided. Do you have an understanding of the difficulty that presents in terms of what the Minister said to us in December with regard to straying from the terms?

Professor Nick Hardwick: I am rather surprised by that because when we made it clear what the issues we were going to look at were, it was the case that all the information we used was obtained from Oberstown itself. Other parties could not have been confused by what we were looking at. If we should not have looked at some of these wider policy issues, then it is surprising to me that the recommendations addressing those wider policy issues were published. If a party can publish the recommendations, why can that party not publish the material that supports those recommendations?

At the request of the Minister, I had a telephone conversation with her on 21 December 2016 because she wanted a heads-up on what the review found before it was published. At that point she specifically asked me about our views on some of the national policy issues we addressed in the report. At no time did we get any indication that there was concern about us addressing those issues. Of course we accept that some of those were not things that Oberstown itself could deal with, but they were altogether relevant to the difficulties that Oberstown was exposed to at that time.

Chairman: Is it Professor Hardwick's view that to cite the report straying into matters of public policy is not relevant to the context in which the report was based and actually adds to the thrust of the report?

Professor Nick Hardwick: Yes, one could not understand what was happening at Oberstown at that point without understanding the wider policy context and if all of our recommendations can be published, I do not understand why the information that supports those recommendations cannot be published at all.

Chairman: The committee has made that position very clear from the get go. In fact, we had a lengthy discussion about it already. I appreciate the professor adding more context to the opening statement. I call Deputy Rabbitte and then Deputy Mitchell.

Deputy Anne Rabbitte: I will give way to Deputy Mitchell.

Chairman: I will call Senator Warfield first and then Deputy Clare Daly in the context of the membership of the committee.

Deputy Denise Mitchell: I thank Professor Goldson and Professor Hardwick for coming in here today and for the very detailed submission that they gave us. I had many questions but many of them were answered in the submission. The failure of Oberstown Children Detention Campus to publish this review is something that I have made my displeasure known on. It is important that we have this review, we need to know what was going on there and we need to know what the lessons to be learned from it are. I have a few questions around the procedure. What sort of working relationship did Professor Goldson and Professor Hardwick have with the board during the review process?

Professor Nick Hardwick: We did not have a relationship with the board as such. Our relationship was with the chairman and the director and we met lots of staff members. I felt we had a cordial relationship. It was conducted on friendly terms. If one rereads the correspondence and the memorandum it was all conducted in a friendly way. After the report was completed we realised that they were not happy with some of what we said and we had two very lengthy meetings with them to discuss the report. On each occasion I was looking at the emails we had sent each other and we thought that we had resolved it and sorted it out. We are genuinely really saddened that it has come to this pass. We do not want to be sitting in this position. We had a cordial relationship and we thought we had a mutually supportive and constructive relationship while the review was ongoing.

Deputy Denise Mitchell: Professor Hardwick said they had meetings with the chairman and the director and they outlined concerns that they had from the report and there were three redrafts of the report in the end. Is that correct?

Professor Nick Hardwick: Yes.

Deputy Denise Mitchell: Were any of the changes that were requested significant changes? Would they have made a real difference to the report that the board came back with?

Professor Nick Hardwick: We went overboard in our responses in trying to meet their concerns. We tried very hard to meet their concerns. Many of their suggestions were that they wanted us to refer to policies and developments that took place after the review was completed. We said that we were prepared to say that had happened but we could not really make an evaluation of it because we had not seen it. I have done this a lot in other contexts and we would expect to get some facts back that we had probably not understood and there were a few of those but we were quite surprised that there was not anything substantial. I had a conversation with Professor Kilkelly and she spoke to me about her concerns on the phone. She said to me that the concern was not really about the factual accuracy of the report. It was more the case that they had not expected something that would be critical in some ways.

Deputy Denise Mitchell: Is the reason for the non-publication of this report that it may reflect poorly on Oberstown Children Detention Campus?

Professor Nick Hardwick: As the Deputy knows, I have been responsible for doing evaluations of juvenile establishments in the UK. It is very difficult to run these establishments. The report points out that there are many difficulties and there are things that could be done better but I am quite surprised at their reaction. There are issues of concern that need to be addressed however. What is really clear to me is that simply looking at the recommendations will not

help. It has to be understood what problem the recommendation is trying to fix.

Deputy Denise Mitchell: That is the question I want to ask. We were given 95 recommendations. I will be honest that I was really concerned about some of the recommendations when I read them. I refer to recommendation No. 82 about cavity searches. I need to know in what context this recommendation was put in. Since then, the board has given us information that this does not take place and so on in the context of the recommendations but I am an outsider looking in at recommendations and I do not know what they refer to. I have to ask on the record, were the practices referred to in these recommendations in place in Oberstown when this review was being carried out?

Professor Nick Hardwick: It has to be looked at and of course it was different in some cases. Some were things that were being talked about. Our view is that it should be the Oberstown board that publishes the report and we have been very consistent on that. We will keep our side of the bargain, we will not say what is in the report until it is released and I would not want to do that. I will say that in common with many establishments of this type, there is a distinction between what the policy is - and indeed often what managers think is happening - and what is really happening on the ground. We found a number of examples where that difference was there. We saw examples of what was clearly happening as opposed to what management thought was happening and there was a gap between the two. That is certainly not a problem that is unique to Oberstown. That is very consistent with that sort of closed establishment. In some cases, simply saying that the response to a recommendation is that a policy on X will be produced does not really address the issue unless what was not happening before is clear and is accepted in order to be able to do something different in the future that will address the issue. Quite often, what is happening in Oberstown was that the written policies were great but that was not what we found to actually be happening on the ground.

Deputy Denise Mitchell: So it was not implemented. Professor Goldson and Professor Hardwick have indicated that they were not allowed back to debrief the staff and it is really important that the staff in Oberstown are supported and know what was going on. Were they given any reason?

Professor Barry Goldson: We were always absolutely committed to returning and we retain that commitment to this day. A series of delays are outlined in our written submission to the committee that were pursuant to the chairman of the board of management and the director wanting additional time. The date that was originally scheduled to return to campus and meet with the staff had to be pushed back. At the point at which we submitted the report, it was very clear that the chairman of the board and the director were raising issues so that raised the question of what would be reported back. We kind of assumed that we would be able to report back on what was contained within the report but if the report was effectively being suppressed, it would be difficult to address the staff group. We retain that commitment, however, and we have stated that on several occasions in writing. If I may say so, that includes on 17 March 2017 when we wrote to the Minister, restated our commitment to return and said that we were awaiting an invitation to do so. That invitation has never been forthcoming. An event was organised by Oberstown in May 2017 in which the report was discussed with various stakeholders across the country but we were not invited to attend that event.

Deputy Anne Rabbitte: One of the reasons I asked that the witnesses come before the committee is so that we can understand their point of view. They have not had that opportunity.

The witnesses undertook a root-and-branch review in Oberstown. They should have in-

cluded policy in that if we are to learn from it. The recommendations have no context unless there is a consideration of policy and outlining who is responsible for what. The report contains 285 paragraphs. Of that, perhaps four might have to be put aside for the report to be published.

When the authors first spoke to the Minister, she understood where they were coming from. What was needed in Oberstown at that point was a root-and-branch review. When the authors spoke to the Minister in December 2016, did they get the impression that this was what she wanted? It is was what the Joint Committee had requested and what the board and the chair of Oberstown had bought into. Had the authors any involvement with Tusla during the process?

Professor Nick Hardwick: I will deal with the ministerial point first and then Tusla. I made a contemporaneous note of my conversation with the Minister. Among the policy issues we discussed was whether in addition to Oberstown there should be some smaller units elsewhere for some of the most vulnerable children. We discussed the use of remand, the moving of 17 year olds who were not in Oberstown then- I am not sure if this has happened since - and the detention of girls. All those were national policy issues. The Minister also spoke to me about governance structures within Oberstown. We had quite a wide discussion. She wanted to know what the review would say and we discussed some of the things that were internal to Oberstown and some of the wider issues. Not only did I not get a sense that she was surprised that we had covered that, but my sense was that she wanted to know what we thought about those issues. For it to be said from that that it was outside our terms of reference, I do not follow that.

On the paragraphs that we offered to redact, something about which we were unclear from the start and we are not really clear about it now was what the legal issues were about. It was not spelled out but our first impression was that it seemed to refer to the trials of some of the boys who had been involved in disturbances. We recognised that perhaps we should not include that. The paragraphs that dealt with that were the ones we thought we should take out. Then it seemed to be about the process of consultation and whether the procedure was fair. There seemed to be a shift in what the legal issues were but we remain unclear as to what they were. If we knew what they were, we might be able to address them, but we do not.

Chairman: I find it extraordinary that the organisation went out to tender and found two suitable experts to conduct a review of the operation of the facility, that those two individuals went through the process of completing a review of that facility, and then there was a refusal to inform the authors of the report of the nature of the difficulties that the report has strayed into. It is quite extraordinary, and two years later we are still dealing with it.

Deputy Anne Rabbitte: It is complete madness. We have used taxpayers' money to pay for a root-and-branch report into a unit that is supposed to look after our young people, which is also funded by taxpayers' money. There is what may be a good piece of work that would be a valuable tool. The Health Information and Quality Authority, HIQA, report was mentioned in the opening statements and I have it before me. There are pages where I cannot see any improvements, despite what we are led to believe. There have been some improvements but they are not in the areas in which I would like to see them, such as mental health, pathways for children and reporting mechanisms. Take the latest HIQA report. Why and how was a child left in separation for 12 consecutive days? I want to hear more of what is behind it. Maybe the witnesses cannot tell us. Surely if we are to move forward, the report by Professors Goldson and Hardwick would be the tool that we should use and how we gauge things.

Professor Nick Hardwick: We were committed to return for a discussion of our findings and recommendations. People might have told us then that they did not agree with our find-

ings and we could have discussed that. They could have told us that we had got certain things wrong, but instead we ended up floundering around trying to guess the problem so that we could put it right, which has been very frustrating for us. To emphasise Professor Goldson's remarks, in issues such as Oberstown, if one does not understand and accept what has gone wrong, one will not do what is necessary to put it right. What we are interested in is putting this stuff right and learning from it. One cannot learn if one does not accept where things have not worked as one would like.

I was responsible for this area in the UK and would always tell my teams that they should never forget that it is much harder to run these places than it is to monitor and evaluate them. I accept entirely that the people running Oberstown have a very difficult job. Our intention, and what we had hoped that we had done, was to produce something that would help them in that process.

Deputy Anne Rabbitte: I asked about Tusla.

Professor Barry Goldson: I was just coming to that. We did consult Tusla and, I believe, received a written submission. I do not recall meeting any representatives from Tusla personally, but I can check and come back to the Deputy.

Professor Nick Hardwick: We tried to fix a meeting with Tusla and people from the agency were not available in the time we were at Oberstown.

Deputy Lisa Chambers: I have raised this matter previously. I was disappointed that the report was not fully circulated. I thank Professors Goldson and Hardwick for their work. I agree with the sentiment that if we do not understand the mistakes that were made, we cannot learn from them. Our focus and obligation must be to protect children and do our best by them. They are the most vulnerable in our society.

Deputy Tom Neville: Prior to the report's completion, how many times did the professors meet the people? They said that it was never flagged that there might be legal implications to printing the report. Was there a specified frequency of meetings at which there was an evaluation and a step-by-step indication of progress, for example, two thirds of the way through or three quarters of the way through? At any stage of those, did either Professors Goldson or Hardwick ask if there were any problems? They said that nothing came up, but did they ever ask if any problems might be envisaged or might arise?

Professor Barry Goldson: The processes of consultation and communication, particularly with the chair and director, kicked in before we started the operational review. There was a day-long meeting before we started the review where we discussed how we would address it. Members will be aware that we visited Oberstown on two occasions. Each time, at the beginning and end of the meetings, we met the chair and director. At the beginning, we would explain what we intended to do during the period of the visit, and at the end, we would share preliminary findings and observations. The principal message we received was that nothing that we had found was particularly surprising. We came across some very concerning issues, but the director and the chair assured us that they were aware of them and that they were being addressed.

We working to a fairly compressed timeframe. When we prepared the first draft of the report, that was submitted to the director and the chair, and we invited their comments. We had a day-long meeting in Liverpool with all the data set out in our written documentation. We had a day-long meeting in Liverpool with both the chair and the director in which we went through

and discussed, in close detail, the report after which they submitted their comments. We took account of those comments and provided the second draft of the report. We had a further day-long meeting with the chair of the Oberstown board of management to discuss those.

At the end of that process, this is the second draft, we prepared our final report. To accompany our final report, we also submitted to the chair and the director very detailed written documents explaining, in forensic detail, precisely how we had taken account of the issues that they had raised with us. There were some relatively minor factual inaccuracies, which one might expect in a process. They were put right and we addressed every single other point. That is not to say we revised the report in precisely the way that was being asked of us because we were there as independent reviewers. We were not there to collude with the process at Oberstown and those views but there was some divergence in our views.

Professor Nick Hardwick: The reasons that were given for concern about the report have shifted over time. First, there were these fairly unspecified legal issues. Then there was the question of-----

Deputy Tom Neville: Was that through the process of consultation or at the end when the final report was produced?

Professor Nick Hardwick: This was after we had done the drafts. Then we have the different explanations as to why there are concerns about it. They were not concerns, as I said, that were raised with us at the time, either when we were meeting them directly or when we were asking for information.

Deputy Tom Neville: Was that after the final draft was submitted?

Professor Nick Hardwick: After, yes.

Deputy Tom Neville: Then it started to shift-----

Professor Nick Hardwick: After the final draft was submitted we had explanations and accounts for why it could not be published. In the process of doing the review, we had this detailed discussion with them and an exchange of correspondence about what the review would cover. Every bit of information or person we met, in the review, we arranged principally through Mr. Bergin. So we would say to him that we would like this information or to see that person and he or his staff very efficiently arranged it for us. At no point did they say, "Why are you seeing him or what is that about?" For instance, there was an occasion where one of the Minister's officials wanted to meet us. We were asked whether we wanted to meet her and we said, "Yes." Our reply was that we did want to because we were particularly keen to discuss and deal with some of the national policy issues here. We flagged what we were looking at and what we were doing. There was never any suggestion that we might be going off track. As I said, we met Mr. Bergin and Professor Kilkelly at various points in the review and told them about what we were finding. Their view was, that it was consistent with their own concerns at that point.

Deputy Tom Neville: Inconsistencies have been mentioned. Obviously there would have been toing and froing and inconsistencies, and they shifted. Did that progress as things went on? Do the witnesses know what I mean? It has been said that things shifted. Did the amount of those inconsistencies increase in volume or did they just move from one inconsistency to another?

Professor Nick Hardwick: At different points we have been given different explanations as

to why the report cannot be published.

Professor Barry Goldson: I reiterate that none of the explanations are terribly persuasive.

Chairman: That is putting it mildly. Before calling on Deputy Clare Daly to make her contribution to the committee, I seek a further clarification. The board has stated that they believe that fair procedures were not applied during the process of compiling the report yet I understand that the witnesses were not permitted to follow up matters with individuals cited in the report. Have I interpreted that correctly?

Professor Nick Hardwick: We are not clear about in what way or purpose; we do not understand what that means. There are two things. First, no individuals are referred to in any way that we think can be interpreted as critical in the report, apart from possibly the chair and the director, and we had detailed meetings with both of them. If there is someone else they think might not have been given an opportunity to respond, we do not know who that person could be. If we were told, we would be happy to consult with him or her.

There is a second issue. Our contract made a commitment for us to share our findings. It was not to consult about the report but to tell them what we had found, with the staff and other stakeholders at Oberstown. We repeatedly said that we could not do that yet that needed to be arranged through Oberstown. Of course we could not share our findings if our findings were not in the public domain.

Chairman: I call Deputy Clare Daly and she is very welcome.

Deputy Clare Daly: As we probably have the same questions as do the witnesses, in some ways it is a bit pointless for us to ask them our questions. They have been incredibly forthright, consistent and clear in all of the reports that they have given. In their testimony today their independence and professionalism is apparent. Our job today is to get to the bottom of the reasons for non-publication. As the witnesses have said, four different reasons have been given at different times, none of which stand up to much scrutiny. We are here to scrutinise that situation but that will probably happen later in the meeting rather than now.

I will not repeat points that already have been made but I seek clarification on a couple of points. A lot of play has been made about the fair procedures issue, both in the Dáil Chamber and in correspondence that was released under freedom of information, FOI, legislation. I refer to fair procedures, concerns about people having the right of reply and all that sort of stuff. The delegation last visited Oberstown prior to publication on 8 November 2016. Had they expressed at that stage concerns to either senior management or anybody on the board about what they had uncovered during visits?

Professor Barry Goldson: Yes.

Deputy Clare Daly: The chair of the board has said that the witnesses did not formally present. Did they give an idea of their concerns?

Professor Nick Hardwick: For example, while we were there we were so concerned about what was happening to one child that we made a safeguarding referral during our visit. They cannot have been in any doubt that we were concerned about things, and we fed back. The visits were very concerned with the review process itself. We did not have a very long feedback process at the end of a visit because Professor Goldson and I needed to put our heads together, go through the material and come to our conclusions. They cannot have been in any doubt

about what we were concerned about.

Deputy Clare Daly: That is the issue I am trying to get at. The chairperson is on record as saying that when she got the report it landed like a bombshell. It was a total shock when she got the report. That does not seem to tally with what the delegation present is saying.

Professor Barry Goldson: The committee will meet the chairperson later so the Deputy can address her question to that person.

Deputy Clare Daly: I will, yes.

Professor Barry Goldson: The one issue that was stated to us was that the report was longer than had been expected. The reason it was longer than they expected is because we were told, learned of and observed practices that troubled us to a significantly greater extent than what we had originally anticipated.

Professor Nick Hardwick: The Minister herself has been clear that there was a fact-checking process that went on, and the suggestion that did not happen was incorrect. I do not think the fact that our report came as a bombshell, if it did, to people at Oberstown is a reflection on us in respect of the process of producing a report. It is a reflection of what was happening at Oberstown. While the chair and director told us they knew about this and that, that is a different thing. When these things had been set out in some forensic detail, with the supporting evidence that does that, there would have been bits in that that would have made for some pretty hard reading. I am sure about that and I am sympathetic to that. One can sit on top of it and generally say one knows one has some problems but then something spells it out that perhaps one thought one had fixed something but it had not been fixed. No doubt that made for some hard reading but that was not a reflection on our lack of consultation.

Deputy Clare Daly: That is an important point because the interpretation of that statement is being posed in the context that the witnesses were off the beaten track and had come up with stuff that was completely out of whack and threw everybody and that this was a contributing factor. What Professor Hardwick is saying is that it could have been shocking if the people reading the report were disconnected from the reality of what was happening in the organisation.

Professor Nick Hardwick: Let me be really clear. One of the things I am really clear about is the quality of our methodology. The more serious some of the concerns we identified were, the more care that we took. We used the classic multiple evidence triangulation process. We looked at data, at what people were saying to us, at what the boys were saying to us and at what the staff were saying to us. We pulled the evidence and looked at what we were observing. Some of the stuff we saw with our own eyes. We are very confident about the accuracy of our report which is why at the end, they did not raise any significant issues of factual accuracy. We are very clear about the accuracy of what we said. If that came as a shock to people, that is revealing and is an issue that Oberstown needs to address. Why did it not know this stuff, if it did not know it? It is not a reflection on our report or on our methodology.

Deputy Clare Daly: It is key that that point was brought out because we know from freedom of information requests, for example, that correspondence between the Department and the chair of the board refers to the chair of the board questioning and raising concerns about the lack of consistency in the witnesses processes and that she had concerns about the methodology they had adopted. Professor Hardwick has dealt with that point very clearly.

Professor Nick Hardwick: I am surprised that officials, if they had these reports about concerns on our methodology, did not come to us and say they had an issue as to why did we not do this or we did that and asking for our response. While we are grateful to the committee, this is our first opportunity to put our account of what we did.

Deputy Clare Daly: In fairness to the Department, there was a lot of follow-up correspondence, where it was in dialogue with the board, trying to overcome its objections and push it along. That came afterwards.

Professor Nick Hardwick: We only saw that when we had been sent the freedom of information-----

Deputy Clare Daly: For once, I am defending the Department.

Professor Nick Hardwick: I admit, and to be fair, we were not aware of some of that stuff happening in the background.

Deputy Clare Daly: It is important Professor Hardwick made that point because there is a school of thought, not mine I might add, or I have heard it said or hinted at, that the two boys - kind of blow ins - arrived in town for a few days at a time when the campus was going through a very stressful period, when it was busily implementing changes and when things were difficult and that it was all very well for them to come in for a couple of days, have a little look and to talk to a few people but that the job was being addressed. I do not buy that or, in any way, accept it is a reason for non-publication of something that is in the public interest. If the work was being done, that was great. It should be been admitted and shown. How would Professor Hardwick respond to that view that publication would impede that good work, that the witnesses were just there for a bit during hard times and the people in Oberstown were getting down to the job of work?

Professor Barry Goldson: The first thing about recognising the review was that it was a fairly compressed process and occurred against the backdrop of acute instability at Oberstown. All of that is explicitly laid out in the introduction of our operational review. We explicitly stated that these were exceptional times. Notwithstanding that, it is extraordinarily complacent to assume that it can all be fixed and that it has all been fixed. I have looked at the HIQA report of three years previous to the operational review and at the HIQA reports that have been published subsequent to the operational review and there are some very consistent problems. These are the lessons that have to be learned which we believe our report will assist in.

Deputy Clare Daly: That leads to my next question. It was said, and was said again today by the witnesses, that the review Deputy Rabbitte referred to in 2018 resonated a lot within the report. We have not seen the report but we are deeply concerned about what the HIQA report said. The Minister said that HIQA report was a great success and shows the progress being made but it found that only three standards out of ten were compliant. Five were non-compliant, including care of children, safety and security, dealing with offenders offending behaviour and staffing and management.

Of particular concern is that, very unusually, HIQA singled out an individual for criticism in its 2018 report. Can the witnesses give us a bit more information on the parts of the HIQA report that resonate with theirs, without compromising information that they do not want to give us? Does the HIQA report reassure them that the issues they flagged in 2016 have been addressed because that is critical?

Professor Nick Hardwick: No.

Deputy Clare Daly: That could not be clearer.

Professor Barry Goldson: Can I add one point to a question the Deputy asked earlier? I refer to this argument that we were only looking at what was happening in the two or three days we were there. That is not correct. In terms of what we observed, that was happening only when we were there but what we were getting systematically in different ways from staff, from young people and from external stakeholders was what had been happening over a period of time. The data we examined went back over a considerable period of time so we were not simply looking at that snapshot of that particularly difficult time. We were looking at a wider period of time, using a range of evidence, much of which was supplied by Oberstown itself, that gave us a longer term picture. This idea that it was different the day before and the day after we were there is not correct, as the HIQA report demonstrates.

Deputy Clare Daly: It is really important that those issues are made clear. The witnesses have been really clear that they are open to coming back and to talking to the staff and that they have actively suggested and agitated for arbitration. Is that the case?

Professor Nick Hardwick: Yes.

Deputy Clare Daly: My last point refers to an issue which has been a constant concern to me, namely, the statements the witnesses made that had the contents of the report been made available, the outcome of some of the legal actions in terms of the young people might have been different.

Professor Nick Hardwick: We do not know what we do not know so we are not saying that that material is relevant. However, we are saying that it should have been available in a legal process, so that people could have decided whether it was relevant or not.

Chairman: I do not want to stray into matters that are ongoing, so we need to be careful there.

Deputy Clare Daly: The cases are over but okay.

Professor Nick Hardwick: We are not saying it was relevant.

Deputy Clare Daly: It could have been

Professor Nick Hardwick: We are saying we do not know whether it was relevant.

Deputy Clare Daly: It may have been.

Chairman: That is understood.

I will ask one question before I allow Deputy Sherlock come in. Have the witnesses had any contact with members of staff since the report was sent to the board of Oberstown? Have there been follow-up discussions and so on?

Professor Barry Goldson: We have only had contact with the director.

Professor Nick Hardwick: Part of the process we agreed with Oberstown was we set up a confidential email service, so that people and staff could write to us directly. It is true to say that some of those came in after we had finished the review but not saying anything about what

had happened subsequently.

Chairman: That is fine. I call Deputy Sherlock to be followed by Senator Warfield.

Deputy Sean Sherlock: I am delighted the witnesses are here today because this has given us much clarity and has probably answered some of the questions we had on the processes undertaken. The witnesses should know that neither our committee nor I have had access to or seen the report.

Professor Nick Hardwick: We have been told that.

Deputy Sean Sherlock: This committee is flying blind. We had a sense from the Minister's interaction with us prior to Christmas that the HIQA recommendations were being worked through. I certainly had the impression from that interaction with her that that was as a result of work that had flowed from the witnesses report. My questions are about the terms of reference. We have been given an impression that observations were made by the witnesses that were outside the terms of reference of the report. What are their views on that? I am quoting the Minister directly.

Professor Nick Hardwick: We do not know to what that refers. We included in our submission a very detailed memorandum in which we spelled out what we would be looking at. At no point was there any pushback. As every bit of information we looked at was obtained through Oberstown, they knew what we were looking at. The recommendations have been published and indeed the Minister asked me about some of those wider issues. Personally I do not understand what that is about. Frankly, if there is something outside the terms of reference perhaps it should be redacted. However we cannot deal with it if we do not know what it is.

Deputy Sean Sherlock: In response to a question from Deputy Rabbitte at the last committee meeting, the Minister stated:

The report was written and conclusions, observations and recommendations were made. I answered Deputy Rabbitte's question about observations made that were outside the terms of reference and which went into policy issues. It was not provided for Oberstown House for people to review. People may have been named.

People are named within the report. I ask Professor Hardwick to forgive me if he has answered this question already.

Professor Barry Goldson: We are not aware of naming any people in the report other than the director and the chair.

Deputy Sean Sherlock: On that basis, do the witnesses see any impediment, in the public interest, to this report coming into full public view?

Professor Nick Hardwick: No. We are also open to correction. If we put in something which might be interpreted as a critical reference to someone that we did not understand could be interpreted that way, we would be happy to consider redacting it. We do not have red lines here. We are happy to look at those issues but we do not know what they are.

Deputy Sean Sherlock: Again, I will quote from my own question to the Minister at our last committee meeting about this. I asked her "Was the process designed in such a way that if findings were made against persons or the entity, there would be a right of reply?" The Minister replied:

Yes. They were asked to provide the report for the people concerned before there was a final report. That is what I am saying.

From what I have heard so far, the witnesses are satisfied in their own minds that this actually took place and that they openly said that if anybody wanted to discuss the findings of the report, they would make themselves available to do so.

Professor Barry Goldson: We went through the most rigorous and consistent processes of consultation and communication imaginable at every single stage of the operational review. The single omission to which the terms of reference refer is returning to Oberstown to share our findings with the staff and key stakeholders. With respect, although I am happy to repeat it, we have addressed that question.

Deputy Sean Sherlock: The Minister did say following that-----

Professor Barry Goldson: We are still very open to doing that if Oberstown feels inclined to invite us.

Deputy Sean Sherlock: The Minister said:

The Oberstown centre envisaged that the visit would take place before the reviewers finalised the report - that was included in the terms of reference - in order that comments could be taken into account in the final version of the report. However, the reviewers maintain that it would not have been possible to provide feedback until the final report had been completed. Is that what the Deputy wants to have published? The reviewers consider it to be final.

I acknowledge the witnesses are repeating themselves. What I am trying to reconcile is that while we have not had access to the report, we do have access to the recommendations and we know that HIQA has had access to the report and there is a process of working through it. Ultimately all of this is to ensure that Oberstown is fit for purpose and there are robust procedures, protocols and standard operating procedures.

If there is still a sword of Damocles hanging over Oberstown in respect of this report, we are trying to tease out the fair procedure the Minister told us about in this committee. As she has not published the report, she must have received advices against publishing it. We are trying to reconcile that with the fact that to our minds, the public good is not being served by not publishing the report to date.

Professor Nick Hardwick: What is frustrating about this is that first of all, we are not aware of any individual who could be said to be criticised in the report but who has not had an opportunity to respond to it. If there is, we would be happy to consider that. It is very frustrating because after we submitted the first draft of the report we had two lengthy meetings that practically lasted a full day each, first with Mr. Pat Rooney and Professor Ursula Kilkelly and then with Professor Kilkelly alone. At no point did they say to us that our procedure was flawed and we needed to do X, Y or Z to make this a fair process. They did not say that to us. We got very detailed comments back from them, which were largely about post-review events, and we sent our reply. At no point did they then say that we had not given X or Y a chance to reply. It was only months later that this issue arose. I should also say that we have kept every bit of correspondence. We are happy to make any of it available to the committee if there is some doubt about what we are saying.

Deputy Sean Sherlock: Does Professor Hardwick think the board of Oberstown has noth-

ing to fear from the publication of the report?

Professor Nick Hardwick: I think it would-----

Deputy Sean Sherlock: I mean from a personal responsibility point of view.

Professor Nick Hardwick: When we were asked to do a review, both the chair and the director said very clearly to us that Oberstown was having a lot of problems. They were not saying it was all fine there. Clearly the people with collective responsibility for Oberstown will be looking in that report and as I have said, it will make some quite uncomfortable reading. We have not named individuals. If I was on the board of Oberstown, my reaction would be to find it uncomfortable and I would want to quickly get to grips with trying to sort it out.

Deputy Sean Sherlock: And to embrace it.

As a final question, I wish to ask about the methodology. Professors Hardwick and Goldson are both academics and most of us in this House are not, although we have interfaced with academics. Can the witnesses give us confidence that the methodology they used was in line with international best practice? I am not questioning their bona fides. There may be others who would come before this committee and question the methodology. I want to be sure in my mind that the methodology is robust.

Professor Nick Hardwick: I have only recently started a life in academia. Prior to that I was Her Majesty's Chief Inspector of Prisons in England and Wales, responsible for inspecting youth custody. The inspectorate was the lead body in the UK's national preventative mechanism, established under the optional protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which Ireland is considering. Part of my academic work now is teaching and acting as a consultant to governments and bodies around the world on precisely these issues. I have expertise in this, without meaning to sound boastful. I am very confident about the process we used in this review. Looking across the world, some of the concerns we have run into here happen elsewhere. People think they know what is going on and they do not. I do a lecture about the process whereby poor practice becomes normalised. It becomes "the way we do things around here" and it takes someone from outside to say that it is not right. There is a distinction I talk about at home about the virtual prison, by which I mean the prison the governor thinks he or she is running, and which is very different from the prison that is actually happening on the wings. There is a distinction between the policy and what is actually happening. When someone reads that, it can be uncomfortable if he or she is responsible. However, those responsible will not address it unless they accept it.

Professor Barry Goldson: I would like to answer the question on methodology. I have been working in universities for 25 years internationally. I have sat on review committees for research methods at very high levels in universities internationally. If the committee requires assurance, I can give it absolute assurance that in the time that we had available, the review design, method and performance of analysis were rigorous and conformed with international standards.

Deputy Sean Sherlock: I thank Professor Goldson.

Senator Fintan Warfield: In the time the witnesses have been monitoring institutions and writing reports, have they ever experienced anything like the breach of contract, as has been the case with the board?

Professor Nick Hardwick: I have not done it in quite this kind of way. There would be agreement beforehand if I was doing it in other situations about whether something would be published or not. I am not used to this. When I was chief inspector of prisons in England and Wales, the reports were published at my discretion, not the discretion of the institution, and we would go through a pipecheck process and then we would publish it. The argument could be quite robust. Sometimes people would argue and that is fine.

Chairman: There is a small difference in that Professor Hardwick was performing a statutory function then but not in this case.

Professor Nick Hardwick: Yes, you are quite right, Chairman. I accept that, but we had a very clear contractual commitment that the report would be published, and that if we could not reach agreement there would be arbitration.

Professor Barry Goldson: Neither of those conditions were observed.

Senator Fintan Warfield: Do the witnesses regret in any way that they did not ensure that the report would be published at their discretion?

Professor Nick Hardwick: As the Chair said, we did not have a statutory function. In the end, we were clear that the publication of the report was ultimately a matter for the Oberstown board. We are not going to go off course and do something ourselves. We have been very discreet about it. We will put up with it but we would not have entered into the contract if we had not had agreement that the report would be published. We gave assurances to the people we were dealing with that it would be. When we were interviewing people and talking to them, we told them in good faith that is what would happen.

Senator Fintan Warfield: The witnesses have spoken about the principle of transparency and accountability, the public interest and the common good. In light of the alarming and serious nature of the issue, have they considered what position they would be in if they left the report on Tusla's doorstep?

Professor Nick Hardwick: We have considered that we are not going to do that. We think it is for Oberstown or the authorities in Ireland to publish the report, not for us, and we have been very careful that we will abide by our side of the contract. We want to be able to look people in the eye and say that is what we have done. It is noteworthy that there has not been any suggestion that the report has been leaked. We have not done that.

Senator Fintan Warfield: What the witnesses say matches what the director says, that there was a meeting in Britain in 2016 and that inaccuracies were highlighted. Were many changes made at that point, after December 2016?

Professor Barry Goldson: There were some changes made to the report after two processes of consultation in the way we have described to the committee. There were few factual inaccuracies but, inevitably, there will be issues about accuracy that need to be corrected, and they were all addressed.

Senator Fintan Warfield: It is basic stuff. The report informs the recommendations. In this case there were 95 recommendations. Are the witnesses aware of which areas of the report the board suddenly said required legal advice?

Professor Nick Hardwick: No.

Professor Barry Goldson: No, the legal concerns have never been explained to us. In the committee meeting of 18 December the Minister also appeared to imply that the legal concerns had not been explained to her either.

Senator Fintan Warfield: The Minister appoints 12 ordinary members to the board, which includes representatives from the Department of Children and Youth Affairs. Is there anything to suggest that the Department has had an overreach or any influence in the attempts to bury the report?

Professor Nick Hardwick: We have not seen anything. The only material we have seen concerning the issue is some material released under a freedom of information, FOI, request, which we looked at. In a sense, we are not aware of what is going on behind the scenes. At the risk of repeating myself, there is frustration, because if we knew what the problem was, perhaps we could have done something about it.

Senator Fintan Warfield: What would the witnesses say to the Minister, Deputy Zappone?

Professor Barry Goldson: We think the report should be published.

Chairman: Are there any follow-up questions from members?

Deputy Anne Rabbitte: I just want to follow on from what Senator Warfield said. Professor Goldson finished the questioning curtly by saying he thinks the report should be published. Why is that?

Professor Barry Goldson: For the four reasons we have described, namely, to honour the terms of the contract, to respect questions of transparency and accountability, to serve the public interest and, perhaps most important, to ensure that the lessons derived from the report can be put to best effect.

Professor Nick Hardwick: That for me is the key thing. One has to understand where things have gone wrong in order to fix them. It would be very good if Oberstown has subsequently improved, but there clearly was a way to go and that needs to happen.

Chairman: Deputy Mitchell mentioned at the outset the abstract nature of the recommendations as a separate entity from the body of the report which provides the detail. As we have expressed at previous meetings on this subject, it is very difficult for us to do our job in terms of oversight of both the Department and Oberstown without seeing the nature of the difficulties at the campus.

Professor Nick Hardwick: We hope the Minister will agree to making the report available, including to the committee. We have no objection to anybody seeing the report. We would be happy to talk about it. We could talk to the Minister about it. If we talk about the concerns, we could perhaps help resolve them.

Deputy Sean Sherlock: Professor Goldson made a point about the Minister's interaction in respect of the legal advice. I will go back and quote directly what the Minister said.

I have indicated in terms of the legal advice as well as the experience of the board, the staff and my officials, that fair procedures were not followed. Therefore there is a lack of fairness there, which leads to the legal risks, which is why there is not a publication.

I do not in any way wish to put words in Professor Goldson's mouth but perhaps he can en-

lighten us. Does he agree with that statement?

Professor Barry Goldson: We strongly dispute that statement.

Deputy Sean Sherlock: Okay, so there is no reason from a legal standpoint for the report not to be published.

Professor Barry Goldson: We simply do not know. We are aware that the Oberstown commission council took legal opinion and it was communicated to us that there were perceived risks. The nature of the risks and the question of who might be affected by those risks have never been explained to us.

Chairman: I think it is important to put on the record for anybody who might be watching these proceedings that the legal advice with regard to the report cost the Exchequer €26,000, which exceeds the total cost of the report by €10,000. We are now talking about €40,000 worth of product, which has not been provided to the public. It is perfectly justifiable for Oireachtas Members of all parties and none to be able to stand over expenditure within the Department of which we have oversight, but I cannot and I am sure that my colleagues cannot either.

Professor Nick Hardwick: It is not clear to me whether the legal advice is about somehow or other that we did not follow fair procedure or if it is about some other matter. If one looks at some of the initial comments about legal advice, they seem to be distinct from the fair procedures issue.

Deputy Sean Sherlock: To be helpful, the legal advice to the Minister is from the Attorney General's office and we do not have access to that legal advice in this House. Therefore, one can assume the representatives of Oberstown do not have access to that legal advice either. It would be contrary to the law. On that basis, my understanding is that the Minister has discretion, on the basis of the advice, as to whether to publish. What we are hearing here, based on what has been an enlightening interaction with the delegates, is that there is now a clear need for the report to be published and put in the public domain so the questions that arise may be answered satisfactorily and so members of this committee can make some determination as to their interpretation of matters.

Professor Nick Hardwick: That would be helpful. If, subsequent to our appearance before the committee, members want further information or clarification, they should note we have very detailed records and all the correspondence. We can do as proposed if there is any doubt about what we are saying.

Deputy Lisa Chambers: The delegates have been transparent and could not have been more helpful. When the Minister was here previously, we were all very critical of the fact that the report was not before us or published. I do not believe anybody accepted the explanation for non-publication. That is what prompted the delegates' appearance today.

Citizens looking at this could certainly draw their own conclusions on why the report is not published. It is possible that the wider public might feel something is being covered up. We do not know that. I am merely suggesting individuals might feel not publishing the report is to protect the wrong people, that the protection of children is being put to one side, and that the protection of those who care for children is being prioritised. In any event, that is what someone might say.

Professor Nick Hardwick: We are sorry it has got to this point. We are very keen to come to a constructive solution. It is our concern to provide a supportive report that is critical in

part but that people can act on to make improvements for the children and staff and to help the leadership of Oberstown to make it the world-class facility it wants it to be. That is what we are trying to do.

Chairman: I thank Professors Goldson and Hardwick for their contributions this morning. As stated by Deputy Chambers, those contributions have been absolutely forthright and beneficial to our consideration. It would be unsurprising for the delegates to hear we believe the non-publication of their report stands in the way of our performance of our function of oversight of the Oberstown campus. Given the volume of legal advice provided to the board and Department of Children and Youth Affairs, but not to the delegates or us, the non-publication of the report presents a severe difficulty to us in the performance of our duties. I thank the delegates for their presentations this morning.

I propose that we suspend for five minutes to facilitate the changing of our witnesses. I suggest we resume at 11.20 a.m. with the chairperson of the board, Professor Ursula Kilkelly.

Professor Nick Hardwick: I thank the members of the committee.

Sitting suspended at 11.15 a.m. and resumed at 11.25 a.m.

Chairman: I advise members again that while there have been reports in the media on the operational review report, the committee cannot discuss individual cases and should avoid naming individuals, whether their names are in the public domain. Members should not discuss anything which is or likely to be the subject of legal proceedings. They are reminded that there are ongoing legal proceedings and that they should avoid saying anything that could have an impact on the cases involved or be seen as interfering in them in any way. They are also advised that the operational review report cannot be discussed and that they should be mindful of the legal issues surrounding it.

I welcome Professor Ursula Kilkelly, chairperson of the board of management at Oberstown Children Detention Campus. She is accompanied by Ms Emer Woodfull and Mr. Don O’Leary who are members of the board of management. I welcome them and thank them for attending. I also welcome members and viewers who may be watching the proceedings on Oireachtas TV.

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 entity by name or in such a way as to make him, her or it identifiable. I advise the delegates that any submission made or opening statement submitted will be published on the committee’s website after the meeting.

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 members and delegates to switch off their mobile phones as they may interfere with the sound system and make it difficult for the parliamentary reporters to report the proceedings of the meeting. Television coverage and web streaming may also be affected.

Following the presentation, there will be questions from members. I call Professor Kilkelly to make her opening statement.

Professor Ursula Kilkelly: I thank the joint committee for the invitation to attend. As the Chairman knows, I have sought the invitation and I am grateful for the opportunity to speak to members about this matter.

I was appointed chairperson of the board of management by the Minister for Children and Youth Affairs, Deputy Zappone, when a new board was appointed for the amalgamated campus in June 2016. I am a professor of law with over 20 years' experience in the areas of children's rights, youth justice and detention, in addition to my substantial academic and research experience. I have worked for years on matters of national policy and international law and undertaken multiple research projects commissioned by national and international bodies. I fulfil my voluntary responsibilities as chairperson of the board of management on top of my full-time university roles. In so doing I am very grateful for the support of my employer, University College Cork. I appear with my fellow board members, Mr. Don O'Leary and Ms Emer Woodfull.

The board of management has a membership of 12 and was appointed by the Minister for Children and Youth Affairs. It includes representatives of the Department of Children and Youth Affairs, Tusla and the Department of Education and Science. There are two elected staff nominees, two elected community representatives and five members selected following an independent process governed by the Public Appointments Service. All members have volunteered to be of service to the Oberstown campus and the public in this role. It is critical to state all board members have a shared commitment to the interest and welfare of young people. They fulfil this commitment through all of their functions on the board. In addition, many come with very substantial expertise in matters of governance, risk, law, finance and human resources. The board is an experienced and professional body. It operates to the highest standards of governance. There is excellent attendance and participation by all board members at all of our monthly meetings. Since our appointment we have supported and challenged management to provide the best possible care to young people in Oberstown on behalf of the Minister. As the committee knows, in that time we have overseen substantial improvements in the care provided to young people and the organisation as a whole although, of course, many challenges remain.

When the board was appointed we were aware the process of merging three schools, in a substantial €54 million building project, would be exceptionally demanding. Industrial relations issues, which have been a feature of the schools for many years, created a challenging backdrop to the change agenda that was essential to the modernisation of the entire operation. On my first day, I attended the Workplace Relations Commission as part of the director's efforts to resolve differences with staff. It was in the context of this extraordinary change programme and against the backdrop of multiple other reviews that were ongoing under the WRC process, on security, health and safety, behaviour management and other matters, that the process now known as the operational review was conceived. At the time, it was decided by the board that a facilitated review based on observation and engagement would help to move the campus forward and create a platform of engagement and discussion on how best to provide care to young people in a secure environment. In addition to these multiple other ongoing reviews, the board took this voluntary step to commission its own review which was, as we know according to the terms of reference, designed to support the implementation of best practice to ensure Oberstown fulfils its potential to provide the best care for young people.

The review was designed as a supportive developmental process to enable continuing reforms to take place in line with international best practice. We have heard the terms of reference

set out. These were to evaluate practice and policy, to identify obstacles or barriers to achieving greater implementation of standards and best practice, and to make recommendations to ensure greater and more successful implementation of the standards. In line with the process, as a review rather than a commissioning of a report, the terms of reference explained the pattern of the process would involve observing and engaging with staff and young people, consideration of Oberstown's policies and procedures, speaking with relevant stakeholders including young people, staff, management, the board and others as required by the review, presenting findings and recommendations to staff, management and the board, and delivering a final report to the board and the Minister. As the terms of reference made clear, the emphasis was on engaging with staff, young people and other stakeholders, considering the policy framework and reflecting this learning back to staff and management before a final report of the process was presented to the board and Minister.

With the appointment of the two reviewers, Professor Barry Goldson and Professor Nick Hardwick, whom I contacted as a colleague in the academic sphere, a preparatory visit took place in October with the scheduled two-day visit taking place on 7 and 8 November. An itinerary of meetings was scheduled for the reviewers entirely at their discretion. They were provided with extensive information on the campus, which they sought and we sought to provide. The reviewers were free to engage with young people and staff on an *ad hoc* basis throughout their visit. They also received emails to a confidential inbox that Oberstown established for the review. At a brief informal exit meeting with the chairperson and director the reviewers provided a summary of the issues but no formal presentation of their findings took place.

The first draft of the report was submitted to me at the end of November 2016. Substantial concerns about the report were flagged to the reviewers at the time and a meeting took place between the director, myself and the reviewers in December 2016 to highlight factual inaccuracies. A further version of the report was received just prior to Christmas 2016, and in January 2017 I again met the reviewers to seek to address the ongoing concerns with the report. By that point, the date for the reviewers' return visit to the campus, which was envisaged as a forum to present the findings and engage with staff and the board on the issues, had passed. To my mind, the reviewers wanted to finalise the report before undertaking the visit and, as we have heard, it has not been rescheduled.

The reviewers forwarded to me what they consider to be the final version of the report at the end of February, at which time it was flagged to the reviewers that legal advice would likely be required and a decision on when and in what form the report would be published would need to be determined by the board in line with its legal responsibilities. On 9 March, the board decided to independently seek legal advice on the publication of the report and this was notified to the reviewers on 13 March. The report was forwarded to the Minister by the reviewers on 17 March 2017. In April, the board established a sub-committee to deal with the matter and in May the independent legal advice was received, following which we sought and received additional legal advice on the possibility of publishing a redacted version and on the management of the legal risks in dealing with the matter. On 22 May, at a special meeting, the board decided in light of the independent legal advice not to publish the full report.

It is important to stress that throughout this process the board, which represents a broad cross-section of people with an extraordinary commitment to the interests of young people in Oberstown, sought to deal with the matter fairly and prudently in light of its substantial legal responsibilities to the young people in Oberstown and the staff who work there. In light of our commitment to transparency and to reflect the important progress made since the review was

commissioned, the board published recommendations of the review in July 2017 following a meticulous and detailed process that considered the implementation of each recommendation. At the same time, the board published a summary of all of the reviews undertaken into aspects of the campus and throughout 2017 I chaired the review implementation group, which was established by the Minister, comprising representatives of staff, trade unions, the board and the Irish Youth Justice Service and an independent child welfare expert. We collated and analysed the hundreds of recommendations that arose from all of the reviews undertaken on Oberstown throughout 2016 and 2017. This very complex task was completed on schedule in December 2017, when, along with progress reports that were published in 2018, it was presented to the Minister and published by her. I am very pleased to say a further progress report on the implementation of the recommendations of all of the reviews was presented to the Department in January 2019 indicating all of the relevant recommendations have now been implemented.

The decision not to publish the report was taken by the board following a process of exceptional care and diligence. The decision was not one the board wanted to make. It was its full intention to publish but, regrettably, we were left with no alternative when the serious legal risks associated with publication were brought to our attention in the form of independent legal advice. In particular, the board was advised that placing the report in the public domain would be fraught with legal risk in the absence of the protections of the fair procedures and due process that Irish law requires.

There is no doubt the campus faced real challenges between 2014 and 2017 in particular, which peaked in 2016. Efforts in all areas of staff and management, with leadership and accountability provided by the board, have played an important role in bringing about the transformative change that has been documented by our statutory inspector, HIQA, following its two full five-day inspections in 2017 and 2018. In addition to the significantly improved environment, the board has taken a range of initiatives to improve and enhance transparency and the oversight and accountability the board provides. It is developing and adopting the campus's first strategic plan, with full details of the implementation and progress reported and published by the Minister in December 2018. There is also a communications and engagement strategy and the Oberstown strategy on the participation of children and young people in decision-making. We also have the review, development and approval of a range of policies, and an entire new policy framework is under development in line with international children's rights standards and best practice. There is also the first adoption of a governance handbook for Oberstown that sets out the respective responsibilities of all of the parties. The board has been evaluated by the Institute of Public Administration, another first in the organisation's history.

Throughout my time as chair of the board of management I have worked consistently and tirelessly with fellow board members to ensure Oberstown continues to provide the best possible care to young people although many challenges remain. Together with staff and management we have delivered and enhanced a more stable environment with objectively documented improvements happening in all areas of responsibility. This has been done to ensure young people detained in Oberstown now and in future have the best possible care and life chances. This has and continues to be our exclusive focus.

Throughout this time also, the board has delivered accountability through regular reporting to the Minister and her officials and to the Oireachtas through our annual reports and appearances at the committee - this is my fourth time to come before the committee - and in many other formal and informal ways. Notwithstanding the very regrettable decision not to publish the report, during our term the board has delivered substantial improvements in the transpar-

ency of operations at Oberstown. In that context, I am very happy to be here with my fellow board members. I will endeavour to answer any questions from the committee.

Chairman: I thank our guests for attending and being so quick to offer to come before us. That happened shortly after - if not during - our discussion with the Minister on this matter in December. I have two points to raise with Professor Kilkelly in advance of Deputy Rabbitte's contribution. It is difficult to understand the rationale for preventing the authors of the report from engaging with the board on any concerns it may have had about parts of the report. Professors Hardwick and Goldson repeated at length that they did not have the opportunity to address any concerns that the board might have had in terms of being in the position to redact or remove certain elements of the report presented to it.

My second point is on the associated costs relating to the report. Our guests know that I am also a member of the Committee of Public Accounts. I find it very difficult when I see the cost of legal advice exceeding the value of the product purchased in the first instance, which in this case was a report costing just over €15,000. We are now looking at €26,000 in legal and associated costs. I appreciate that the board has a job to do and that it is independent. It is still difficult for me, both as Chairman of this committee and as a member of the Committee of Public Accounts, to see how that cost is justified. I cannot see the product. During our earlier session, Deputy Mitchell stated that there are 285 paragraphs and 95 recommendations in the report. A number of them are a cause of concern for the members because we do not know the rationale behind them. This presents us with a difficulty, particularly as we are charged with oversight of the Department, Tusla and operations at Oberstown. Therein lies the problem for us, as parliamentarians. We recognise that the board has a job to do, as does Tusla. However, it is exceedingly difficult to do our job because we have not been provided with a product that effectively cost €41,000.

Professor Ursula Kilkelly: I will deal with elements of the questions in turn. I completely agree with the Chairman's points on the legal costs and the overall cost of the review. I have the same concerns and the board has had a discussion on the matter at its two most recent meetings to ensure that we produce value for money in all the professional services on which we rely in order to fulfil our role and deliver the legal responsibility we have as a board of management. As has been mentioned, we are almost all voluntary board members but we must do a very serious job very carefully. We rely on professional services from time to time. It is a measure of the gravity of the matters at stake here that we sought to rely on independent legal advice and, in particular, that we were really careful to ensure we would not cause difficulties that would have much greater costs attached to them in reality. It was really a matter of being cautious and prudent, ensuring we had all the available advice at our disposal. I agree with the Chairman about the cost and we have asked management to review the cost of professional services and the decision-making around it. I share the concerns on the matter and it is something we are addressing.

The Chairman mentioned the reviewers' opinion either that they were not able to return to the campus or that they did not have oversight. I have been responsible for many reports commissioned by bodies who undertook to publish a report or where there was a discussion about finalisation or publication. It is completely understood that the matter is with the discretion of the party that commissioned the report. There would always be a process of fact-checking and engagement to ensure that what ends up being produced is fit for purpose. It is not always possible to get to that point and in this instance, unfortunately, there was something of a deadlock when it came to finalising the report in a satisfactory outcome.

The Chairman's comments are important but I, as chairperson of the board, engaged with the reviewers in order to seek to produce a positive outcome. It was the intention but it was very difficult in the context of the dialogue that occurred to see how we would get to that satisfactory point. I will come back to the process that the board subsequently followed because it was specifically focused on legal risk in particular.

The Chairman made a general point about oversight. The report has been seen by HIQA and the board has deliberated on that report. There has been a particular focus throughout the process on the implementation of the recommendations, as that is how value for money can be demonstrated when one runs into the kinds of difficulties we did. It is about focusing and prioritising the implementation of the recommendations, seeking to maximise the positive potential of a process. It is particularly important to note that the review happened alongside multiple other reviews, with various aspects of those reviews published in different ways. In addition, we had two full HIQA inspections, with five inspectors coming on two occasions for five days, since the operational review was undertaken. It continues to be a matter of regret that this report has not been published but there is no question about the amount of information in the public domain about Oberstown and its operations released by its board and management. It is significantly more than has been the case at least during my time on the board and the life of the organisation as a whole.

Transparency has been a focus and part of the issue with publishing the recommendations was about striking the most appropriate balance within our control and what we felt was prudent. It was about putting the recommendations in the public domain with a narrative that responded to them. It was considered to be the safest or least risky approach in light of the public interest, our need to focus on improvements and the significant work put into the report.

Chairman: In my experience of legal advice, it is often the quality of the instruction that determines the advice received. It is often a very confusing aspect when one is trying to determine the best approach to take. The quality of the instruction to the law firm or whoever was used would have most likely coloured the response received. That is why I find it difficult to understand, with the available information, how Professors Hardwick and Goldson were not provided with the opportunity to be informed. They have clearly indicated they are not aware of what is offensive within their report to the board. Therefore, they could not offer to redact certain sections; this went to the law firms hired to provide the board with legal advice and coloured the decision not to publish. I am sure the board comprises experienced professionals and that there are all sorts of individuals on the board and in the management structure who expressed a viewpoint.

As a former member of other boards of management, one of my first actions would have been to ask the authors of the report to come before the board and have a discussion about it. That did not happen and, therefore, the authors were not aware of what was offensive within the report, as was clearly articulated earlier. As a result, the board could not be informed by the authors' viewpoint as to what could or could not be redacted and later published, subject to legal advice.

I cannot help but feel that the board has been robust in its approach but perhaps it has omitted something, unintentionally or otherwise, from its contribution to the committee or else overlooked it. I wish to understand the lengths to which the board has gone to produce value for money by publishing the report, as Professor Kilkelly rightly pointed out. I do not suggest for one moment that there is some malevolent plan because I do not think that is the case. Rather, I wish to understand the lengths to which the board went to publish the report because it is not

immediately clear. Does Professor Kilkelly wish to respond before I invite Deputy Rabbitte to make a contribution?

Professor Ursula Kilkelly: There are a couple of issues. One of the concerns that arise when one considers the matter is that there was a gap in the fulfilment of the terms of reference with respect to the feedback visit, which, according to the terms of reference, was due to happen prior to the report being finalised. It was clear that the feedback was about the process of engagement with staff. We did not seek a root and branch review of Oberstown at that time. Rather, we sought expertise and insight from a different perspective of what was happening on the ground, with a view to creating a dialogue that would enable changes to be implemented. It was intended to be an unlocking of hearts and minds on the issues. It was not intended to commission - nor would it have been possible to do so in the timescale - the kind of root and branch review that perhaps should have been commissioned. It was very much intended to be a process to enable staff to move forward.

An extraordinary amount of time has been spent on this process by me as chair and the board as a whole. In the early days, while responding to the initial drafts of the report, the focus was on factual accuracy checking. Extraordinary attention was paid to concerns that arose from the report at the time and they were flagged early on to the reviewers in detailed form. It was also flagged early that because of the nature of the report, that is, the way in which it was written, the tone and the implication of what was being said rather than the substantive or critical nature of it, we became aware of legal matters that would require review, particularly in the context of Irish constitutional law and the fair procedures law that has recently been outlined by the courts. In the context of that broader responsibility of the board, whatever the reviewers could do in response would always be limited. The key issue was that the board did its job in ensuring that it was taken care of adequately and prudently.

At every stage, I flagged that legal review would be necessary as a prudent step and that the nature and timing of any publication was a matter for the board in the light of its broader legal responsibilities, not only under the Act but under broader Irish law. Those matters were brought to the attention of the reviewers and I was clear about them. It is the distinction between, on the one hand, a process of factual accuracy and what that can yield and, on the other, a more substantive process that is essential to ensure fair procedures are followed. The review of that was subsequently the specific interest of the board.

Deputy Anne Rabbitte: I thank the members of the board for appearing before the committee. From my point of view as a member of the Oireachtas committee on children, the purpose of the review was that it would be the safety net for the committee and that independent external assessors would do a review of Oberstown. As Professor Kilkelly stated, this is the fourth time she has appeared before the committee. The review was set in a context where Oberstown was continuously in the media in 2016. There was an incident with gardaí and the centre was on the front pages of the papers week in, week out. It was at such a dangerous stage that I felt a life could be lost.

When we learned that an external group would review the issue, it brought some calm and comfort that we, as an Oireachtas committee, were doing our job. That was part of the communication among the committee, the board and the operational manager on campus, and it was part of the dialogue we had with the Minister. As spokesperson for children for my party, I never expected not to have the whole document, because that is what it was all about, whether it was a redacted version or whatever. Having the recommendations without the other part of the review does not make sense.

Professor Kilkelly spoke about unlocking hearts and minds, but it was about a root and branch, as far as I was concerned. That was what I wanted for Oberstown and it was what I needed to know. I agree that many reports and reviews were taking place, one of which related to the buildings, and I acknowledge there were many staffing and other issues. My core issue, however, is the protection of the children in the centre. There are 90-odd recommendations but I cannot tell what policy is part of the pillars of its foundation. Whatever part of law it relates to, we need to know where we can steer Oberstown. We are working in a vacuum. I do not accept that time ran out before a final version could be produced because given that the two gentlemen, Professors Goldson and Hardwick, appeared before the committee, I imagine there was a meeting of minds of both parties to produce the report somewhere along the line.

Does the board of directors of Oberstown have liability insurance? If so, how much does it cost? As someone who is examining the issue from outside, I note that only two people are named in the whole report. I think the production of the report has created fear in the board. Anybody who has sat on a board of directors would have ensured there was insurance to protect it.

Professor Kilkelly referred to HIQA and noted that while recommendations have been made, Oberstown has made progress and taken numerous steps forward. I have a copy of the HIQA report, which outlines two five-day inspections with five inspectors. I cannot find comfort in reading the report. While the situation might have improved, the report refers to external parties to the board not attending meetings, and states that Tusla had not attended “a number of months” of meetings. Why is Tusla not required to be present at all board meetings? Page 30 of the HIQA report states: “In addition, the chairperson of the board of management told inspectors there was no Tusla representative in attendance at board meetings for a number of months [...] and the absence of a representative from Tusla directly impacted the Boards ability to prioritise and address these inter-agency matters.” That is an important factor when talking about decisions to move forward. I accept that the purpose of the meeting is not to discuss the HIQA report, but it is relevant if we are to place the recommendations in context and if the aim is to move forward. Why and how was a child left in separation for 12 days? Why was physical intervention used in ten incidents and what kind of physical intervention was used? I am giving only a background. We are like mushrooms in this regard. We do not have the report and it needs to be given to us. At no point along the line have the Minister or Oberstown given us any comfort that what was produced is working and that those key recommendations are being followed through on. That is where I am coming from and I would like the witnesses to respond to what I have said.

Professor Ursula Kilkelly: A number of issues were raised and I will attempt to respond to them. In respect of the Tusla nominee, I brought to the attention of the Department that the Tusla nominee intended to step down due to other responsibilities and there was a time lag in the nomination of the replacement for that person. I repeatedly brought it to the attention of the Department. We now have the Tusla nominee on the board in full attendance. These matters arise from time to time as board membership changes. When gaps arise, I always bring the vital nature of Department nominees in particular to the attention of the Department very quickly. I can only do so much in this regard but I stand over what I reported to HIQA in the consultation with it as part of its process. There was a gap at the time that has been rectified.

In respect of the named individuals and insurance, we always endeavour not to deal with risk at the brink but to take the proactive measures that will prevent us being in that situation in the first place. While there has been reference to two named individuals, the legal risks arise

with regard to identifiable individuals, not just named individuals. The nature of the implications expressed in the report arise in that context. It is a much wider issue than named individuals and that is an Irish legal concept that is very pressing in this instance. In the context of the vacuum, I understand completely the Deputy's concern and appreciate very much her long commitment. We have engaged on these issues a number of times when I have appeared before the committee. The Deputy was in Oberstown at the time. I also appreciate her levelling with us on the gravity of what we faced. We were utterly aware of the gravity of what we faced at that time. Throughout that time, we never had a Pollyanna view about how things are on the floor of Oberstown.

It is very unhelpful to suggest that there is a lack of understanding of the true nature of the problems and what needs to be done to root out and unseat deep-seated practices that have built up over the years. This is part of the difficulty regarding where we are. We are utterly aware and have worked non-stop on these issues. I have daily contact with the campus. We have routine meetings, but in between that, at least two days per week are spent on it. It is simply not true to suggest either the board or management do not have full understanding of and oversight regarding what is happening on the ground. I am not suggesting for a second that notwithstanding the improvements, we do not have a long way to go. We do, but that is very clear.

The Deputy is right in the context of separation. This has been a really intractable problem. In response to Deputy Sherlock, I would say that we engaged on this last year. We have put a new policy and framework in place regarding separation, but we have focused much more on the way it is recorded. We have an entirely new data collection system to manage that. That is prompting a much greater level of detailed oversight, accountability and approval, including daily monitoring by the director. That is what has driven down the practice of separation dramatically - 50% in 2017 and 2018, respectively. The board has been very clear and has issued a statement on the use of restrictive practices, the unacceptable nature of those practices and how we need to take various steps to ensure the policy and its implementation are correct.

It is simply not true to suggest that we are satisfied with good policy. In the earlier session, Professor Hardwick mentioned that we had good policies. I do not agree. We did not have good policies. We have done a raft of work to put our policies on a firm and solid footing. We are about to develop and improve an entirely new policy framework that will set this up for the future. The extent of the work on policy and the implementation of policy is relentless, but we should not be under any illusions about the complexity of that work or its demanding nature. None of it would be possible without bringing all of the staff on campus - new and old staff who do this work on a day-to-day basis - with us. The key issue in the context of the broader concerns about the report was the fact that it had to enable us to move forward. I accept that Deputy Rabbitte's interest in it was perhaps slightly different. She wanted this root-and-branch approach and that comfort. I accept that completely. Clearly, we need to work better to make sure the Deputy is better informed and feels that she has the assurances that she needs.

Deputy Anne Rabbitte: I do not need reassurance. What I need to know is that the children who go to Oberstown are treated correctly because the HIQA reports coming to me year on year do not give me that comfort. They do not provide me with any reassurance. I feel that a complete cover-up is taking place, and one that has gone on for the past number of years. The fact that there would be independent involvement was the only reason I agreed to this review two years ago. I ask Professor Kilkelly to answer my question about board members' insurance.

Professor Ursula Kilkelly: We would have the same insurance as any public body. It is not something with which I would be familiar.

Deputy Anne Rabbitte: Does the board of members have insurance - “Yes” or “No”?

Professor Ursula Kilkelly: I understand that we do but I would need to clarify that. I am not sure.

Deputy Sean Sherlock: This is a political domain, not a legal one. To reiterate the points made previously, we do not have sight of the report. However, we do have sight of the recommendations and take in good faith the statements made in respect of the implementation of those recommendations. What we find hard to reconcile is the non-publication of the report. I listened very carefully to Professor Kilkelly in respect of the constitutional element in terms of implicating people in the report. I appreciate that dynamic because Professor Kilkelly states that while nobody was specifically identified, the language of the report could be deemed to identify individuals. In light of what Professor Kilkelly said, what was the exact nature of the independent advice given to the board?

Professor Ursula Kilkelly: Received.

Deputy Sean Sherlock: What was the nature of the independent advice given to the board? Could she be more specific about it? What was the nature of the interactions with the Minister or her officials regarding that independent advice? When the Minister appeared before us, she stated that she had been advised by the board that its decision not to publish the report of the operational review was not one it either expected or wanted to make and that it resulted from a lengthy, careful and extensive process of consideration that weighed up the legal risks associated with publication in light of the independent legal advice. We are in the political domain and we perceive that the non-publication of the report could arguably be perceived to be covering up or protecting practice, culture or individuals. We need some reassurance from Professor Kilkelly that the board’s independent legal advice is robust and some greater articulation of what Professor Kilkelly means by the implications of that advice.

Professor Ursula Kilkelly: I know different reasons have been set out for non-publication. For its part, the board has been entirely clear and consistent about its concerns. The other matters that have been raised were considerations that the Minister took into account. It is her prerogative as Minister to have supplementary or additional reasons she had those concerns. In the context of the report, the legal advice pointed to an absence of an opportunity for identifiable individuals to inform the findings of the review.

Deputy Sean Sherlock: Could I ask Professor Kilkelly to hold it there? In light of that very statement, was an opportunity given to those individuals, or were discussions held with them with a view to interacting with the two eminent experts in respect of the content and language of the report?

Professor Ursula Kilkelly: There were opportunities given by the reviewers to the director and me with regard to checking for factual accuracy.

Deputy Sean Sherlock: That is not what I asked.

Professor Ursula Kilkelly: I am being very specific.

Deputy Sean Sherlock: There is a tendency sometimes in this House to go after people and witnesses. The dynamic of this committee has been such that it has been very patient on this issue. We seek to ensure witnesses’ bona fides are respected. That is why we need very clear, succinct and simple language. My question was very simple. I want to know whether

the individuals who might be implicated by virtue of the language of the report were given an opportunity to interact with the eminent professors in respect of the report's content or the implications of the language used in the report. Yes or no?

Professor Ursula Kilkelly: I am endeavouring to answer. The answer is "Yes", but with qualification. The key issue was that multiple issues were raised with the reviewers throughout the deliberative process but that all happened when the report had been produced. There is a very specific issue with regard to ensuring findings are informed by those affected by them.

Deputy Sean Sherlock: I believe Professor Kilkelly used the word "property" in respect of the report.

Professor Ursula Kilkelly: That is what would normally be used.

Deputy Sean Sherlock: I am just quoting the professor and she may correct me if I am wrong. She said the report is the property of those who commissioned it. On that basis, who owns the report?

Professor Ursula Kilkelly: My understanding is that the board owns the report.

Deputy Sean Sherlock: The board owns the report. If the board owns it, notwithstanding the issues of timing, the fact that the committee has demanded the publication of the report, and our interactions with the Minister, is there still scope and time, on the basis of the evidence of Professors Goldson and Hardwick in respect of their willingness to engage at all levels and with all stakeholders, to go over the report again and work through its content if it is deemed that there are adverse findings against or implications for certain individuals? From my perspective in seeking to address the issues concerning the recommendations published in July 2017, even if those recommendations are implemented, the sword of Damocles of this report will still be hanging over us. As I said at the outset, we are in the political domain, not the legal domain. Reports perceived to have been suppressed always get published, one way or another.

I say respectfully to Professor Kilkelly that I perceive defensiveness here on the part of the board. I did not perceive the same defensiveness on the part of Professors Goldson and Hardwick. This is perception; it is reality in the political domain. Both sides need to go through this report again and find some common ground, irrespective of whether this process is brokered by the Minister or someone else. One way or another, the report will have to be published. The public interest absolutely demands it.

Professor Ursula Kilkelly: As I said earlier, one of the challenges is that the law as we now understand it requires that the engagement and response are essential before findings are reached. It was clear in the deliberations that findings and recommendations did not change, notwithstanding any corrections.

Deputy Sean Sherlock: Is there not a contradiction there? Professor Kilkelly is saying findings have been reached. Has she not accepted the findings and content of the report on the basis that she is implementing its recommendations?

Professor Ursula Kilkelly: What we are endeavouring to do is take as much as possible from what is positive about this process and use it to the maximum benefit.

Deputy Sean Sherlock: Arguably, then, the report is not a final report.

Professor Ursula Kilkelly: It has been made very clear to us by the reviewers that this is

the final report.

Deputy Lisa Chambers: I thank the witnesses for appearing before us. We are trying to obtain facts and information; it is not about trying to undermine anyone. Considering the impact on the reputation of the two professors, Professors Goldson and Hardwick, I am conscious that Professor Kilkelly's opening comments are not overly complimentary. Our interaction with the two professors was very positive. I certainly found their evidence to the committee to be very persuasive.

The constitutional law aspect is, of course, always balanced with the public interest. Professor Kilkelly is asking our committee to accept she was advised the tone or implications of the report were such that they prevented her from publishing it and that we just need to move on. We are not accepting of that. I can speak only for myself, obviously. With regard to looking after the interest of children in the facility, it is my belief that the public interest is best served by publishing the report. I have heard nothing so far that would convince me otherwise.

An aim of the review was to evaluate practice and policy in line with international standards. We do not know whether that was done because we do not have the report. Another was to identify obstacles or barriers to achieving greater implementation of international standards. Again, we do not know whether this was achieved because we do not have the report. The final aim was to make recommendations to ensure greater and more success in the implementation of the standards. We have the recommendations but no context. Therefore, we have half achieved our target in that respect. The aims of the review have not been met, therefore, but obviously the State has incurred a cost.

With regard to the terms of reference, was the process followed? Professor Kilkelly referred to the meeting that should have happened before the terms of reference were finalised but then she said a summary was provided to her before finalisation. Is Professor Kilkelly saying the process referred to in the terms of reference was not followed? I refer to the five points she identified in her opening statement.

Professor Ursula Kilkelly: That is correct. The terms of reference provided for a sequence of events. In that sequence, quite deliberately the feedback session was to take place prior to the report being finalised. Had the sequence been adhered to, we might not be in this position. As we heard earlier, no one is afraid of criticism here. We are subject to criticism and scrutiny routinely. We absolutely do not shirk from that. We would not be here if we did. We are very open to that as an objective process and it would have been helpful. For whatever reason, however, the reviewers were keen to finalise the report prior to an engagement session with staff and the board. I accept their bona fides in this regard. In hindsight, we should have insisted that the feedback session take place in the informal way in which it was intended. It was not intended to be a launch of the report; it was intended to show what was found and how it sits. That was the indicative process set out.

Deputy Lisa Chambers: Is Professor Kilkelly saying the presenting of findings and recommendations to staff, management and the board did not happen at all?

Professor Ursula Kilkelly: No, it did not.

Deputy Lisa Chambers: Was there engagement with staff members and the board throughout the process to get feedback on how things were going? A first draft was presented. Professor Kilkelly says there were factual inaccuracies. Were they addressed before the second draft

was presented?

Professor Ursula Kilkelly: I undertook to provide feedback of that nature for the reviewers. It was at their discretion to take it into account. The committee heard by their admission that they had done so. There are probably some differences in terms of interpretation and the extent to which the points were made, but it was within their gift to decide how matters we had raised would be addressed by them.

Deputy Lisa Chambers: Professor Kilkelly told Deputy Sherlock that an opportunity had been given to those who had been implicated in the report to interact with and give feedback to the reviewers. Did that satisfy point No. 4 in the process before the report was finalised?

Professor Ursula Kilkelly: No. Two issues arise, the first of which is its limited nature. That is why I made the point, probably pedantically, about factual accuracies. It was a limited response. In providing for the safeguards that are necessary in a legal context before a report of this nature is published, it is vital that a substantive feedback process take place before findings are reached. By its nature, when the report was concluded prior to the feedback session-----

Deputy Lisa Chambers: Did the board raise these concerns with the reviewers and tell them that it did not want them to finalise the report until after the feedback session in the format it wanted?

Professor Ursula Kilkelly: Yes. There was some dialogue at the time about how the sequence should be as set out in the terms of reference, but their preference was to finalise the report first. I understand why they wanted it that way. In hindsight, I should have insisted on it being done differently, as that would have better honoured the nature of the process. However, we are where we are.

The Deputy made a valid point about the balance of the public interest. We accept that, which is why we have grappled with this issue at 22 meetings of the board. No one wants to see this resolved more than us. We did not just get our own independent legal advice. Further separate legal advice and a review by the Attorney General of the matter determined the balance that was struck that we see today. The decision was not based solely on advice provided for the board but also on other sets of advice.

Deputy Lisa Chambers: Had the feedback session occurred, would it have changed the report's findings substantially?

Professor Ursula Kilkelly: As the process of engagement was intended to be what the report was about-----

Deputy Lisa Chambers: Yes, but my point-----

Professor Ursula Kilkelly: ----- the answer is absolutely.

Deputy Lisa Chambers: Was there an expectation at the outset that the report would be complimentary of the facility?

Professor Ursula Kilkelly: Absolutely not. I have mentioned the number of reports and reviews that were ongoing at the time. It is fair to say there was no lack of information on what was wrong at Oberstown and how it needed to be fixed. The report was intended to try to get to the heart of some of the issues with which we were struggling. I do not mean in a substantive way or a way that dealt with the details, *per se*. If the Deputy recalls, there was discussion

about the use of, among other things, riot gear and whether the Oberstown campus, effectively a high security facility, was the right place for young offenders, older offenders, more serious offenders, remand prisoners, etc. These important debates were ongoing at the time and the report was designed to get at these issues.

Deputy Lisa Chambers: The intention was good. To be fair to the two professors, they dispute Professor Kilkelly's interpretation of how the process worked. They say they engaged all the way through, were open and willing to change and interact, welcomed feedback and wanted to engage with staff and the board. They have a different interpretation and presented that evidence to the committee.

If the only issue is that the feedback session did not happen before finalising the report, is it Professor Kilkelly's understanding the reviewers were willing to address concerns with the final report and make changes? When it was realised this would be an issue for the board and those implicated - I mean "allegedly implicated", as we do not know the nature of the implication - did the board discuss with the reviewers how to fix it, how to go about publishing the report, whether the review session could be held immediately, if doing so would have a material impact on the findings and whether the tone could be altered in some way? Alternatively, did it just decide not to proceed because the process had not been followed in the absolute order?

Professor Ursula Kilkelly: It is fair to say we had that extensive engagement - I did, in particular - and that we reached something of an impasse in how to move forward. It was made clear that the report was final, that no substantial changes had happened throughout the process, despite there being some changes and that, unfortunately, the matter could not be addressed through further dialogue. That was not where we wanted to find ourselves, but it was the reality of the risk we were managing at the time.

Deputy Lisa Chambers: What happened in the month from the end of February 2017, when the board had the final report, to the end of March when it decided to seek independent legal advice? Who had sight of the report and flagged that there were issues on which the board might have to receive legal advice? Did Professor Kilkelly decide or did the board make the call collectively? Did the Minister-----

Professor Ursula Kilkelly: The board made the decision at its meeting. The time lag is reflective of our meeting cycle.

Deputy Lisa Chambers: Did the staff implicated have sight of the report and come to the board to raise concerns? Did the board then decide that legal advice was necessary? What prompted the seeking of legal advice?

Professor Ursula Kilkelly: Having had sight of the report, the board was concerned about the issues raised. It was a collective board decision to address the issue in this way.

Chairman: A final question, please, Deputy.

Deputy Lisa Chambers: We do not know the extent of the legal advice received as it has not been published. I see no reason it should not be, as it is not the Attorney General's advice. The board received independent legal advice. Will it publish that advice?

Professor Ursula Kilkelly: It is a matter the board has considered. The reviewers have sought a copy of the legal advice, but the view of the board is that it is confidential to the board. There are matters pertaining to the substance of the report included in the legal advice.

Chairman: What about a summary?

Professor Ursula Kilkelly: I could look at that request, if it would be helpful.

Chairman: It would.

Professor Ursula Kilkelly: I can bring it back to the board for its consideration.

Chairman: I am sure the providers of the legal advice could supply the board with a summary that could be provided for the committee and the authors of the report. It would be beneficial.

Deputy Lisa Chambers: It is necessary. Whatever about the Attorney General's advice not being published, for which there is a precedent, Professor Kilkelly is asking us to take a leap of faith and trust that we would come to the same interpretation as the board of the other advice received. I see no good reason it should not be published, even in redacted form, if it references specific parts of the report that the board does not wish to be published.

Chairman: It is exceedingly difficult for us to take that leap.

Professor Ursula Kilkelly: I understand the concerns the committee is expressing.

Chairman: I thank Professor Kilkelly.

Deputy Tom Neville: I thank the delegates for attending. I was listening to Deputy Chambers's questions. To be clear, Professor Kilkelly is saying No. 4 in the sequence of events - presenting findings and recommendations to staff, management and the board of the Oberstown campus - was reversed with No. 5. Is that correct?

Professor Ursula Kilkelly: Yes.

Deputy Tom Neville: In the light of that, the board believes the proper process was not followed. If it had been reversed, the findings would have influenced the final report, whereas we now have a final report and new findings-----

Professor Ursula Kilkelly: That contributed to the challenge.

Deputy Tom Neville: At what stage did the board decide to seek legal advice?

Professor Ursula Kilkelly: At the stage outlined earlier in the session.

Deputy Tom Neville: Was there a discussion on seeking legal advice at any time during the process? Obviously, there were discussions and, given the board's experience, there might have been implications. Was there ever a discussion on seeking legal advice before the decision to seek it was taken?

Professor Ursula Kilkelly: My memory is that there was. I flagged early on that it was a matter of concern for consideration and that undertaking a legal review would be important.

Deputy Tom Neville: Why was that decision not taken before the final report was generated, given the influence it would have had on it? As Professor Kilkelly said, the board wanted to find a solution, as we all do, that would ensure everything would be open and transparent. Taking that decision before the final report was produced would have fed into it.

Professor Ursula Kilkelly: As risks emerge, one deals with them. It was not flagged suffi-

ciently as an issue at the time the Deputy is describing. I am unsure why it appeared as an issue when it did. That is the stage at which legal advice was sought.

Deputy Tom Neville: At no stage prior to the final report did the board consider that it may have to seek legal advice.

Professor Ursula Kilkelly: No, it did consider that.

Deputy Tom Neville: The board discussed it and before the final report was completed, decided that no legal advice would be sought until after its submission.

Professor Ursula Kilkelly: There was no decision to rule out legal advice. I brought to the attention of the reviewers that a legal review would probably be necessary. The board was briefed in that regard.

Deputy Tom Neville: I am trying to understand why that legal advice was not sought before the final report was compiled. Such legal advice would feed into the final report. Why did the board not seek legal advice before the final report was generated?

Professor Ursula Kilkelly: The advice was on publication of the report. It only came to be considered in that specific context.

Deputy Tom Neville: The board made its decision on a process matter, that the process was-----

Professor Ursula Kilkelly: Every effort was being made to resolve the matter satisfactorily. Nobody wanted to go to the expense of or extraordinary efforts involved in resolving the matter in that way unless it was absolutely necessary.

Deputy Tom Neville: In light of the fact that Professor Kilkelly flagged to the reviewers that legal advice would probably be required before the final report was completed and that the board knew that this was coming down the tracks, did it not consider it prudent to seek legal advice before the report was submitted?

Professor Ursula Kilkelly: In hindsight, it may have been prudent to do so. We can only do the best we can at the particular time. We can continue to learn from processes such as this. I did not want to go for legal review unless it was absolutely essential. It became critical at the point of the insistence on publication. That is where it became a real issue.

Deputy Tom Neville: After the final report was completed and it had been decided to seek legal advice, was there discussion of how to resolve the potential problem of the legal advice being contrary to what was in the report? Was there any such discussion before the final report was completed? Before the report was printed, was there any consideration of what would be done if the report was produced and legal advice obtained, which was contrary to what was in the report? Was there any discussion, before the report was printed, on what the board would do next?

Professor Ursula Kilkelly: We dealt with it in sequence.

Deputy Tom Neville: I understand that. Was that possibility discussed as risk management or risk planning, such that a fall-back plan was in place for certain scenarios? Were there any discussions in that regard?

Professor Ursula Kilkelly: We were focused on trying to reach a positive outcome, to determine the best way forward and to maximise the transparency of the report. That is why, although it may seem unhelpful, we chose to publish the recommendations and the board response, rather than the report itself. The legal advice regarded the specific matter of publication. We considered and sought input on whether a redacted form would strike that balance effectively. Again, the advice was that it would not and that it would be very difficult to produce anything of substance or meaning. That was separately considered.

Deputy Tom Neville: On redaction, Professor Kilkelly is stating that when the board looked at the report and decided to publish the recommendations, the legal advice was that none of the rationales behind the recommendations and how they were arrived at could be produced. Did the board or those providing the legal advice consider whether the rationale behind each individual recommendation could be published? Was it segmented for consideration in that manner when the board was seeking legal advice?

Professor Ursula Kilkelly: It was not.

Deputy Tom Neville: The committee is completely in the dark in this regard.

Professor Ursula Kilkelly: Unfortunately, the report is not structured in a way that would enable that to be done. We considered whether certain parts of it could be published. I do not want to go into the detail of the report but there are some helpful examples that might illustrate why its structure meant that could not be done. However, in the context of where we are, I am reluctant to go into that detail.

Deputy Tom Neville: I thank Professor Kilkelly for her time.

Deputy Denise Mitchell: I thank the professor for her presentation. The handling of this issue has been a complete and utter mess. The two professors who authored the report appeared before the committee earlier today. They submitted a significant number of references regarding the procedures through which they went. The committee was originally given four different reasons that the report was not published, which is confusing. I ask Professor Kilkelly to explain that. We were then told of legal advice that was not shared with the professors who wrote the report. I may be wrong but it seems that Professor Kilkelly is suggesting that the feedback not taking place is another factor in the report not being published. We are being told of four separate reasons for the lack of publication and reference is also being made to feedback, which is confusing. The professor must be specific. Why was the report not published? The committee has heard many different answers to that question, which is not acceptable. I and other members believe the professor is obstructing the committee in its work. To do so is a very serious matter. She needs to be upfront and tell us why it was not published. Is it uncomfortable reading? Is that why it was not published?

Professor Ursula Kilkelly: That is absolutely not the case. We have read and commissioned multiple reports about Oberstown which are uncomfortable reading and highly critical of the facility. I wish to categorically state that that is not the reason it was not published.

On the Deputy's point regarding four reasons the report was not published, the board has only ever reported one reason. The other reasons are for the Minister to articulate. I believe she has done so, both to the reviewers and publicly. The board has consistently stated that its concern is with fair procedures. I am trying to help the committee understand how we got to where we are. I do not do so in a critical manner but in an attempt to explain that if the feedback

session had taken place, it would have provided an opportunity for the reviewers to engage, reflect and understand the context and related matters-----

Deputy Denise Mitchell: We have nailed it now. It is about fair procedures.

Professor Ursula Kilkelly: Yes. That was the consistent-----

Deputy Denise Mitchell: The report is not being published because the feedback did not take place.

Professor Ursula Kilkelly: No. My point is that, on reflection, I believe the feedback session would have mitigated that concern.

Deputy Denise Mitchell: What other fair procedures were affected? What else was there?

Professor Ursula Kilkelly: The feedback session would have provided an opportunity for the requirements in Irish law in regard to fair procedures to have been met prior to the report being finalised. That sequence was set out in the terms of reference and would have avoided where we now are, whereby the legal risk associated with a breach of fair procedures only affects publication. The board has been consistently clear on that issue. In the context of reference to reasons why the report should be published, the point was made earlier that the report may be in some way offensive or that lessons will not be learned. I reiterate that this is a constant process of improvement and learning from multiple reviews, HIQA inspectors' reports and so on. The process of getting behind the problems and understanding and remedying them is ongoing on a daily basis. I do not think it fair to suggest that a report completed over two and a quarter years ago is our only source of wisdom on these issues. We are open to expertise and insights from anywhere but the work must be done by those in Oberstown and that is crucial.

Deputy Denise Mitchell: All present acknowledge that 2016 was a difficult year for Oberstown. There is no doubt about that. However, we need accountability. It is about accountability and transparency. Accountability requires the publication of the report in order that we can see why these recommendations are in place. Does Professor Kilkelly agree with that?

Professor Ursula Kilkelly: I completely understand that.

Deputy Denise Mitchell: We know that good things have taken place in Oberstown and that HIQA reports have noted improvements. However, the latest HIQA report indicates that much more must be done.

Professor Ursula Kilkelly: Of course.

Deputy Denise Mitchell: Nobody is disputing that. We need to see this report in order to ascertain how the recommendations came about. It is simple. It is not rocket science. I want to touch on another issue. Does Professor Kilkelly believe there was a breach of contract by the authors of the report?

Professor Ursula Kilkelly: I do not think it is helpful to engage in that-----

Deputy Denise Mitchell: I think it is relevant. My understanding is that they have been paid in full.

Professor Ursula Kilkelly: Yes, that it correct.

Deputy Denise Mitchell: Why pay somebody for a report if Professor Kilkelly and the

board are not happy with it?

Professor Ursula Kilkelly: Because we were-----

Deputy Denise Mitchell: If a painter came into my house, painted my ceilings and did not do a good job, he is not going to be paid. These authors did a job which was acceptable; was right and with the recommendations. The board, however, is not publishing the report.

Professor Ursula Kilkelly: Personally, I am not in the business of arguing over contracts when it comes to payment for work done. The reviewers did lengthy and detailed work and paying them was the right thing to do, notwithstanding related concerns and issues. Treating people properly was an element in dealing fairly with the authors. On Deputy Mitchell's point on transparency, Oberstown is one of the most scrutinised organisations and facilities in the country. It is absolutely right and vital that is the case.

As I mentioned, since we have come into place we have overseen significant increases in the amount of information about Oberstown in the public domain. This committee has been out there and is invited out routinely, as is anyone else who wants to come out to see the campus and the operation and to meet with staff and perhaps young people. Multiple other reports have been either published or shared with the relevant stakeholders. HIQA has access to this report and of its inspections were published in full.

A full constitutional action aired many of these issues in the High Court last year. That is ultimate accountability. We have produced annual reports. We have published extensive data on our single separation process and other restrictive practices. We have regular stakeholder meetings and multiple mechanisms are used, statutory and otherwise, to ensure there is as much transparency as possible in what we do. I completely understand Deputy Mitchell's frustration on the issue of the recommendations.

From our perspective, however, it had to be safe to place the full report in the public domain. Regrettably, that was the stumbling block we came across. We had to deal with the reality of the risk presented at that time in the way we did. I am confident that if we did it again it could be done differently but there is no cover-up.

Deputy Denise Mitchell: Is there a way around this? Is it final that the report is not going to be published? Will there be any further meetings? Is there any arbitration that can take place so that this report can be made public?

Professor Ursula Kilkelly: This is clearly a matter of concern to the committee and I understand that. Deputy Mitchell has spent much time on this issue. I appreciate and respect her time. The board, as I mentioned, has also spent multiple hours and days on it. We are endeavouring to do that alongside everything else this voluntary board is doing. It is a greatly onerous responsibility on everybody. I will, however, take the comments and feedback from the committee back to the board.

Deputy Sean Sherlock: I have a question before Professor Kilkelly concludes.

Professor Ursula Kilkelly: I am not concluding, I am just responding to the particular point about where we are and on moving forward. I will certainly continue to do that.

Deputy Denise Mitchell: Will Professor Kilkelly look at that?

Professor Ursula Kilkelly: If Deputy Mitchell requests me to do that, I will do that.

Deputy Clare Daly: I have not heard anything that convinces me of the board's decision not to publish the report. I will start with that. Professor Kilkelly made the point that the board, prior to its decision, evaluated these matters with exceptional care and diligence. She added that the decision not to publish was taken at a meeting on 22 May 2017. Had all of the members of the board received and read the report before the decision?

Professor Ursula Kilkelly: All of the board members were given an opportunity to read the report.

Deputy Clare Daly: Had they received a copy of that report which they were allowed to read and take away?

Professor Ursula Kilkelly: No. They were given an opportunity to read the report in full.

Deputy Clare Daly: They were given that opportunity on the day of that meeting. Is that correct?

Professor Ursula Kilkelly: Yes, that is correct. There was also a subcommittee which took responsibility for dealing with the matter in much more detail on behalf of the board, in light of the legal risks.

Deputy Clare Daly: Who were the members of the subcommittee and how many times did they meet?

Professor Ursula Kilkelly: I do not have information on the meetings to hand.

Deputy Clare Daly: Who were the members?

Professor Ursula Kilkelly: The members of the subcommittee were Ms Emer Woodfull, Mr. Diego Gallagher and Mr. Liam Walsh.

Deputy Clare Daly: Did they have a full copy of the report to read?

Professor Ursula Kilkelly: Yes, they had the report.

Deputy Clare Daly: We have heard about the board's decision in multiple items of correspondence and in information that turned up in FOI. Professor Kilkelly, however, has just confirmed that the membership of the board did not have a copy of the report which they could read in their own time at their own leisure prior to taking a decision to not publish the report. They had sight of and were allowed to read through the report, without taking a copy, on the day of the meeting when the decision was taken not to publish. Does Professor Kilkelly not think there is a contradiction in calling that the board's decision not to publish?

Professor Ursula Kilkelly: The manner in which the report was handled was informed by the legal advice we had received. The way in which the board handled the matter was also informed by legal advice. Our legal advice was that the risks were considerable. Much more time was given to members to read the report than Deputy Clare Daly is indicating. I made it very clear throughout that board members who wanted more time to consider the report in more detail would be given that opportunity.

Deputy Clare Daly: Why was the board not given a copy of the report? Does Professor Kilkelly not trust them or is there a problem with some of the membership?

Professor Ursula Kilkelly: I was advised that was a prudent way to manage the matter.

Deputy Clare Daly: By whom?

Professor Ursula Kilkelly: By legal advisers.

Deputy Clare Daly: Legal advisers. That is fine. Looking at some of the correspondence in respect of FOI, we know the Department of Children and Youth Affairs stated Professor Kilkelly had concerns that the reviewers might not have been aware of some of the legal matters in progress that could have affected some of the narrative in the report. We discussed this with the two professors earlier. Is Professor Kilkelly referring to legal proceedings regarding the damage to the campus in 2016?

Professor Ursula Kilkelly: No, it is not.

Deputy Clare Daly: It is not about that. What is it about?

Professor Ursula Kilkelly: There are multiple matters in ongoing legal cases, involving litigation of a civil and a criminal nature, which impact on the decision to publish the report.

Deputy Clare Daly: Is Professor Kilkelly stating that none of the legal matters to which she is referring have been concluded in that time?

Professor Ursula Kilkelly: There is such an extent of legal matters ongoing that it is hard to give a definitive answer. I can say that the criminal cases Deputy Clare Daly is referencing are ongoing and live. They are not concluded in respect of 29 August 2016.

Deputy Clare Daly: The legal matters which Professor Kilkelly stated the researchers might not have been aware of are multiple. How many are there?

Professor Ursula Kilkelly: There are probably 15 legal cases.

Deputy Clare Daly: Do they involve the young people or the staff?

Professor Ursula Kilkelly: Both.

Deputy Clare Daly: How many are civil and how many are criminal?

Professor Ursula Kilkelly: It is probably half and half. I do not have that definitive information in front of me. I do not think it would be fair to give-----

Deputy Clare Daly: I imagine the public will be shocked to know that not only do we have this specific scenario but behind it there are at least 15 cases ongoing now for multiple years, supposedly. All of those are impacting on the situation in Oberstown and no information has been given on this. It seems-----

Professor Ursula Kilkelly: Much of this information is in the public domain in other fora. This is not confidential information.

Deputy Clare Daly: Professor Kilkelly has not told me any of it. Will she give me some of those examples? I specifically asked her what were the legal matters and she told me she could not talk about any of them because they were ongoing. Will she comment on the ones she referred to which she can talk about? If they are in the public domain, then I presume she can speak about them.

Chairman: She cannot.

Deputy Clare Daly: It is in the public domain.

Professor Ursula Kilkelly: I would prefer-----

Chairman: I understand that but if Deputy Clare Daly listens carefully to what I read out at the beginning of every meeting, it is very clear. It is not me, I would love to hear the answer to the question.

Deputy Clare Daly: I will let the facts speak for themselves. I do not see why the report could not have been redacted. I want to move on to some of the issues regarding the excuse for non-publication. This idea of fair procedures and right to reply smacks of an excuse for non-publication. I do not understand what that means. Having examined all the documents released under freedom of information legislation, it seems to be elastic. According to the board, its decision not to publish was based on Irish law and constitutional matters. However, it took that decision prior to the Attorney General's input into the process. The Office of the Attorney General was trying to deliver a pathway towards publication in November 2017. I mean no disrespect to the board of Oberstown but it is not on the same level as the Attorney General, one of the chief guardians of the Constitution. The Attorney General's only caveat was that staff be given an opportunity to respond to concerns. That was the pathway to publication he set out. What was done? From material released under freedom of information, we know the director was given a chance to make an input into the process. How many other staff were given an opportunity to make an input into that process?

Professor Ursula Kilkelly: On that specific issue, the board was entitled to make the decision that it made informed by legal advice. People will not like it but the board has the authority to do so. Having commissioned the report, that decision was within its gift to make. The subsequent process involving the Attorney General was with respect to the Minister's decision on whether to publish the report.

On consultation, the board's view was if we were to start circulating the report and asking for input and feedback, it would partly, if not fully, realise the very legal risks we were mitigating against. In particular, the concern was that this would also create a dynamic that would not help us to resolve the matter but which would exacerbate the situation.

Deputy Clare Daly: Does Professor Kilkelly accept that the Minister requested that staff be given such an opportunity and that she asked that the report be published?

Professor Ursula Kilkelly: Yes. The report was at the time formally referred to the director, both on behalf of the director's office and campus management, to undertake that consideration on behalf of that group.

Deputy Clare Daly: Subsequent to receiving the input from the Attorney General who was seeking to facilitate publication in the public interest, did the board go back and get further legal advice based on the Attorney General's input, as the guardian of the Constitution?

Professor Ursula Kilkelly: My clear understanding is that the Attorney General expressed the same view on publication as the legal advice to the board, which was not to publish.

Deputy Clare Daly: In the correspondence released under freedom of information, the Attorney General said that people who could possibly be identified would be given a right to reply or make an initial input.

Professor Ursula Kilkelly: My understanding was that was not with respect to general publication but with regard to specific access to the report by this committee.

Deputy Clare Daly: That is certainly not my understanding.

Professor Ursula Kilkelly: I believe that is the case.

Deputy Sean Sherlock: I will reinforce the point made by Deputy Clare Daly. Correspondence was made available on 13 November 2017 as a result of a freedom of information request. The board had received legal advice on 13 March 2017. The correspondence is from a principal officer, who I will not name, in the Department of Children and Youth Affairs. It stated that the Department was of the view that the following mechanisms to progress matters in order to ensure that the matters raised by the board were addressed. This is the independent legal advice. There follows a set of proposals. The first was a response to the authors of the report pointing out the existence of concerns about fair procedures and suggesting a further process of engagement with staff and management of Oberstown in order to ensure that persons criticised in the report had been fairly heard. Alternatively, the board of management of Oberstown campus could make a submission on behalf of the persons criticised in the report to be disclosed to HIQA and the joint Oireachtas committee along with the report. To reinforce Deputy Daly's point, members are very much of the view that everything was done to try to facilitate the board, either through further engagement with the authors of the report or through the legal mechanisms of the highest offices of the State, to publish the report, yet it refused to do so on the basis of its own independent legal advice. The arguments the witnesses are making do not hold water.

Professor Ursula Kilkelly: My clear understanding is that the Attorney General reached the same view on non-publication as the independent advice to the board had decided. The board was dealing with this matter month by month and had been dealing with it extensively and exhaustively, as had I as chair. The suggestions and recommendations that were made to the board by the Minister's office were given consideration by the board. Ultimately, the board's concern was twofold. The first was that publication would not be productive and would not yield the sort of outcome that we all wanted, namely, to resolve these difficulties, and that we had reached a level of impasse that would not make this productive. The second was that the very risks we were trying to mitigate against would be realised through this process. That was our understanding of the issue.

Deputy Clare Daly: I do not understand what that means in English. I would like an answer in English.

Chairman: I ask the Deputy to ask her final question.

Deputy Clare Daly: No, I would like an answer to my previous question before I ask my final question. Professor Kilkelly first told us there was a legal impediment and then she said that it would not be productive. What does that mean? What are the risks?

Professor Ursula Kilkelly: It means that it would not have produced a report that was legally safe, that it would be so difficult to resolve----

Deputy Clare Daly: Professor Kilkelly confirmed to Deputy Sherlock that the board did not respond to the points raised by the Department in the correspondence. The board had old legal advice and did not test what the Department asked it to do legally.

Deputy Sean Sherlock: The board decided not to go along with that suggestion.

Professor Ursula Kilkelly: The board's understanding was that there were risks associated with publication and we were effectively being asked to place the report in the public domain as part of that process.

Deputy Clare Daly: The board was being asked by the Department of Children and Youth Affairs to follow a set of steps, on which the Department had first got legal advice. Professor Kilkelly says that the board did not do so based on legal advice but the board had not sought legal advice in response to the advice proffered by the Department.

Chairman: To be fair, the board of management of Oberstown spent more than €19,000 between February 2017 and April 2018 on legal advice pertaining to the assessment of the operational review. All that money was expended in the provision of legal advice but, from the questions Deputy Daly has asked, it does not appear that any of it related to the correspondence with Tusla.

Professor Ursula Kilkelly: The correspondence was with the Department, not Tusla.

Chairman: Yes.

Deputy Sean Sherlock: I placed on record the contents of the Department's correspondence with Professor Kilkelly. By any interpretation, the Department was seeking to suggest further engagement with the staff and management to ensure that persons criticised in the report had been fairly heard. Notwithstanding the point that a finding had been made, which Professor Kilkelly made previously, there was still scope for further engagement with the various stakeholders before the publication of the report. Professor Kilkelly seems to be saying that in spite of those suggestions, the board decided to proceed on the basis of its independent legal advice. A pathway was being sought for the board but it refused to take it.

Professor Ursula Kilkelly: There are two issues. The board had made its decision. My question was whether we were being asked to revisit that decision. That was not clear to me. The other question is that the reviewers had made it clear that the report we received from them in February was final. That was made clear and it is also clear in the correspondence with the Department.

Chairman: I ask Deputy Clare Daly to conclude.

Deputy Clare Daly: This is crazy stuff. The pathway put forward by the Department to allow the board to publish the report was that staff and management be given a right to reply, as it were. It seems from the actions taken - Professor Kilkelly can correct me if I am wrong - that the director was the only person who was given some type of right to reply and that no one else's views were sought. Professors Goldson and Hardwick told us that the only people identified in the report are the director and Professor Kilkelly. In contrast to what Professor Kilkelly said, they do not believe anyone else can be identified as coming in for criticism. Having not seen the report, there are only two possible conclusions I can draw from that. Either the director was the only person criticised in the report and somehow threatened to resign if the report was released, or else the whole thing is something of a puff of smoke. It does not add up in any other way. Why did the board not give other people a right of reply? We know the director replied. Is it the case that the director was the only person criticised? The Chair wants me to get an answer to the point made by other Deputies as to whether the board accepts all of the recommendations of the report.

Chairman: Under any other circumstances, I would not have allowed that conversation to have taken place. However, I came to exactly the same conclusion as Deputy Clare Daly, and I believe all members of this committee have done similarly.

Professor Ursula Kilkelly: Is the Chair referring to the recommendations?

Chairman: I am referring to the identity of individuals. It gives me no pleasure to point that out, but I came to the exact same conclusion.

Professor Ursula Kilkelly: I have already stated that the concern was around the risks relating to identifiable individuals, not just named individuals.

Deputy Clare Daly: Professors Goldson and Hardwick have said that nobody who is up for criticism can be identified by this report.

Professor Ursula Kilkelly: That is their view, but I do not agree.

Chairman: Deputy Clare Daly can ask another question if she wishes. However, the point has been made and I do not necessarily want to travel down that particular rabbit hole. The report has not been published on foot of legal advice, and we are now delving into it in a manner which I believe is not appropriate for this committee, for the very reasons I outlined at the beginning of the meeting.

Deputy Clare Daly: It is now a matter of record, and it is not in dispute, that the director was given a right of reply. We know that everyone, including the Department, asked that anybody criticised in the report be given the right of reply. We know that the director was the only person given that right of reply. In light of the earlier comments on resignations, either there was some manoeuvring around that or there is some other reason I am missing.

Professor Ursula Kilkelly: Can I answer some of these points before-----

Chairman: I will allow Professor Kilkelly to respond.

Professor Ursula Kilkelly: To respond with regard to the Department's correspondence and recommendation, a formal process took place at that point to refer the report to the director, who is not just the director but also has a statutory authority. It is, therefore, a substantive role, in addition to being director and manager of the campus. The response from the director on that matter on behalf of Oberstown, in addition to being on his own behalf, dealt with a range of issues, which raised the concerns we then brought to the attention of the Department and ultimately the Attorney General, I presume. It is simply not true that the Department made this recommendation and we refused to respond. The process put in place was that it was referred to the office of the director for consideration, and a further correspondence came back on that raising a range of concerns was then referred on to the Department. It is not fair to say that we stood there and did nothing or that we resisted. We endeavoured to respond to ensure that whatever mechanisms that were available to us were used.

Deputy Clare Daly: The only objection the Department had was that people who could be potentially identified for criticism should have the right to reply. Professor Kilkelly is saying that the director, in addition to the points of criticism about him, made other points. Were those points about other people who were criticised?

Professor Ursula Kilkelly: They were largely about fairness and the extent to which safeguards had been met in the finalising of the report. The crucial point about that is that it is

required that the opportunity be given prior to finalisation, not as a responsive mechanism.

Deputy Clare Daly: We heard that point.

Professor Ursula Kilkelly: That is crucial because it explains the limited nature of the-----

Deputy Clare Daly: We have heard some very clear evidence today, but accusing academics of flouting fair procedures - an accusation the board has levelled against the two visiting professors - is an incredibly serious charge which should only be put with evidence to back it up. I have not seen any evidence in any way to undermine the work done by the two professors. Does Professor Kilkelly support their recommendations? One of the recommendations was that the board commission an independent review of senior management to ensure is suitable to direct Oberstown. Has that been done? The management is still the same. The recommendations refer to a rupture between senior management and staff. Has that rupture been healed?

Professor Ursula Kilkelly: On the question of a review of management, an independent review of management was undertaken. That was one of the first recommendations and the review was under way at the time of the report and was completed early in 2017. Nobody was as aware as we were of the challenges presented by the rupture and the challenges between staff and management. None of the content of this report was a surprise to us. We were working tirelessly on this and have continued to do so. I will not labour the point, but all of these issues were on our table in one form or another. That is not the concern here. I take the Deputy's point about the criticism. I have deliberately not sought to articulate things in more detail because I do not want to cast any aspersions on the work done. However, if this is viewed through the constitutional perspective of the legal responsibility the board has, we arrive at a different place. That is my view.

Deputy Clare Daly: Can Professor Kilkelly explain-----

Chairman: Sorry, we have to conclude.

Deputy Clare Daly: The HIQA report of 2018 identifies somebody in Oberstown. That report was carried out under the same constitutional prerogative as this one. The same Constitution and the same law applied to that report.

Professor Ursula Kilkelly: It is fair to say that HIQA has an established methodology which ensures triangulation. Inspections take place, and there are five inspectors at a minimum.

Deputy Clare Daly: The issue is that there is no legal impediment to criticising someone in a report.

Professor Ursula Kilkelly: That is true. Once the appropriate procedures are followed, there is no legal impediment. I agree with the Deputy.

Deputy Sean Sherlock: Fair procedure has been the defence here. I believe that Professor Kilkelly's argument in respect of the findings militated against fair procedure. The Department made an offer to the board of Oberstown to discuss the issue of fair procedures. Professor Kilkelly is saying the board took up that offer. I do not understand her answer to that, because the evidence we heard from Professors Goldson and Hardwick today would suggest otherwise, namely, that there was no further qualitative engagement with them on the issue of fair procedures. It is very hard to find Professor Kilkelly's answer to be credible.

Professor Ursula Kilkelly: I do not need to add anything else. I have explained my re-

sponse to that issue. A response was sought from the director on behalf of the management team on the campus as a whole, and that was forwarded on to the Department for its determination of the matter.

Chairman: I thank Professor Kilkelly for her presentation today and for dealing with the questions posed by members in such a comprehensive manner. The meeting of the joint committee is now adjourned until 9.30 a.m. on 13 February, when we will hear from HIQA and Tusla on the recruitment and retention of social workers as part of our consideration of the matter under the work programme of 2019.

The joint committee adjourned at 1.10 p.m. until 9.30 a.m. on Wednesday, 13 February 2019.