

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM CHUMARSÁID, GNÍOMHÚ AR SON NA HAERÁIDE AGUS COMHSHAOL

## JOINT COMMITTEE ON COMMUNICATIONS, CLIMATE ACTION AND EN- VIRONMENT

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*Dé Máirt, 26 Samhain 2019*

*Tuesday, 26 November 2019*

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The Joint Committee met at 2 p.m.

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Comhaltaí a bhí i láthair / Members present:

David Cullinane,	Terry Leyden,
Timmy Dooley,	Tim Lombard,
Michael Lowry,	Joe O'Reilly.
Eamon Ryan,	
Bríd Smith.	

I láthair / In attendance: Deputy Jack Chambers.

Teachta / Deputy Hildegarde Naughton sa Chathaoir / in the Chair.

*The joint committee met in private session until 2.14 p.m.*

### **Scrutiny of EU Legislative Proposals**

**Chairman:** Is it agreed that EU legislative proposals, COM (2019) 413 and COM (2019) 414, do not require further scrutiny? Agreed.

#### **EirGrid: Chairman Designate**

**Chairman:** The purpose of this part of the meeting is to have an engagement with Mr. Brendan Tuohy, chairperson designate, EirGrid. On behalf of the committee, I welcome him to this session. The format of the meeting is a brief opening statement and it will be followed by questions from members.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of the evidence they give to the committee. However, if they are directed by the Chairman 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 comment on, criticise or make charges against any or entity by name or in such a way as to make him, her or it identifiable. I also advise them that any submission and opening statement made by them to the committee will be published on its website after the meeting.

I remind members 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 everyone to turn off their mobile phones or switch them on to flight mode. I invite Mr. Tuohy to make his opening statement.

**Mr. Brendan Tuohy:** A Chathaoirligh agus baill den Choiste, ba mhaith liom mo bhuíochas a ghabháil libh as ucht an deis a thabhairt dom bualadh libh anseo inniu i mo ról mar cathaoirleach ainmnithe ar EirGrid.

By way of my background, I have over 30 years of experience of working in government, initially in local government and then in national Government. I worked in a number of Departments, including over 15 years in the Department responsible for the energy sector. My last role working in government was as Secretary General in the then Department of Communications, Marine and Natural Resources. In that role, I oversaw the establishment of EirGrid and the creation of the all-island single energy market.

Since completing my role as Secretary General, I have been an independent non-executive director of a number of commercial companies. I have also been involved in a number of non-profit bodies, including chairman of the National Longitudinal Study of Ageing, TILDA, and the Science Foundation Ireland MaREI Centre, which is responsible for marine, climate action and energy transition.

My appointment as chairman designate of EirGrid comes at a critical time for the group. Last September, EirGrid unveiled its response to the Government's climate action plan with the launch of a new five-year strategy that will see it invest €2 billion in helping to decarbonise Ireland's electricity system. The strategy is a clear demonstration of the fact that EirGrid has a major role to play in making the climate action plan happen.

EirGrid is preparing the electricity system for a future based almost entirely on renewable energy. The climate action plan states that 70% of electricity will be generated from renewable sources by 2030, mainly onshore and offshore wind energy plus solar power. EirGrid currently operates the grid with approximately one third of generation coming from renewable sources. This target will require EirGrid to break new ground in how it manages the electricity system. In real terms, EirGrid will need to connect up to 10,000 MW of additional renewable generation to the electricity system. To put that in perspective, the all-island demand for electricity this day last week peaked at just over 6,000 MW.

Integrating renewable energy on to an electricity system is technically challenging. This is because renewable energy is intermittent, which causes challenges for maintaining the frequency of the electricity system, something that is absolutely critical for the system. This will require EirGrid to operate the system in a more dynamic and responsive way. In turn, this will require improvements to infrastructure to make the grid stronger and more flexible. In tandem with these developments, much of heating and transport will switch from carbon-based fuels to electricity, which will increase demand for power. We have also anticipated growth in demand due to the expansion of some key industries such as data centres which, of course, support not only the significant ICT sector in Ireland but most businesses as well as companies as they move their data storage to the cloud.

EirGrid forecasts that the demand for electricity in Ireland will increase by between 23% and 47% over the next ten years. The expectation is that the electricity system will carry more power and that most of it will be generated from renewable sources. This is a once-in-a-generation change that cannot happen unless the power system is transformed. It is a daunting challenge but I am encouraged by the fact that there is growing support across the country for this transformation.

The report from the Citizens' Assembly last year was striking. The members voted by 80% or more in favour of the 13 recommendations on climate change put to them. These included proposals to ensure climate change is at the centre of policy making through new governance architecture, as well as the potentially contentious questions of increasing carbon tax and taxing greenhouse gas emissions from agriculture.

Last week, we had our first ever Youth Assembly on Climate Change here in Dáil Éireann and the assembly's ten recommendations are laudable. We discussed the recommendations at our board meeting last week and in the new year we hope to outline some ideas on how we will respond to them.

I am also very encouraged by the growing consensus here in the Oireachtas. This was demonstrated in March with the publication of the committee's groundbreaking report on climate change. It is fair to say it is the envy of many countries that we have such a consensus across the Oireachtas. It demonstrated that not only are members listening to our citizens but this committee is providing cross-party leadership in addressing what is one of the most significant challenges of our generation. The Government's climate action plan, which is based on the committee's report, is again a very challenging plan. I am confident that EirGrid can successfully meet

its commitments in the plan but it cannot do so on its own. There is a range of stakeholders whose support will underpin its success. These include neighbouring transmission system operators with which it either has or will have interconnectors, as well as customers that generate or use large amounts of power. The company needs partners to deal with the major changes caused by the switch to electric vehicles and electric heating in the home. Perhaps most important, EirGrid also recognises that development of new grid infrastructure requires partnership with landowners and communities. EirGrid alone cannot deliver the necessary infrastructure. We can only do it working effectively with communities across the country.

Although advances in technology are increasingly helping us to find less intrusive ways to move large amounts of power, all electricity grids in any country, depend on a backbone of large-scale infrastructure. This means we will continue to rely on pylons, substations and overhead wires. Asking landowners and local communities to accept new infrastructure has never been an easy task. EirGrid never takes these decisions lightly or without first investigating all alternative solutions but where new infrastructure is essential, we will work with the people and communities affected to endeavour to provide the necessary infrastructure to deliver our collective aspirations. We hope to work with people and communities so that we all not only commit to the vision outlined in the climate action plan but we get a consensus on how this is to be delivered on the ground.

I ask the Members of the Oireachtas to support the critical work EirGrid will carry out over the coming years in addressing the significant energy transition that is required for the future. For EirGrid, the next five years are critical. If it is successful, we will have taken a significant step towards delivering on our long-term climate change goals. We can only do it with the support of the Oireachtas.

**Chairman:** I thank Mr. Tuohy for outlining the challenges that lie ahead for us. One of the challenges is the building out of the grid system and the large potential for offshore energy from wind, particularly off the west coast. What is the timeline for that? I know there is a focus on the east coast but what is EirGrid's vision in rolling out connectivity from the west and tapping into that fantastic resource of offshore wind potential there?

**Mr. Brendan Tuohy:** If we go 100 km off the coast, we are talking about of the order of 72 GW of potential. We and the Government have committed to a number of approximately 3.2 GW minimum over the next number of years as we look to the next ten years. My feeling is that it will be more. We are not going to meet the targets for 2030 unless we embrace offshore energy. The power is still needed most around the east coast and Dublin and the challenges there are not as bad as they are off the west coast. I am talking specifically about depth and the geology of the area. The Chairman knows I also chair MaREI, and we have been working on the marine renewable side for a number of years. The offshore energy production on the west coast will be much more challenging. Tidal and wave is in the second phase and offshore floating wind energy production is likely to start on the east coast and come around.

We can take this up a level from Ireland and look across Europe. In the future we may be able to connect grids across Europe and although I do not want to jump ahead, we are starting this with our interconnector of approximately 700 MW to France. Over the next number of years we really would be looking at the idea of a grid to which we could connect. In other words, we would not have to bring everything back to the country and we would be part of the European grid.

**Chairman:** It would be a super-grid.

**Mr. Brendan Tuohy:** I do not have the economics worked out but the Chairman asked about the west coast. I have already flagged a second challenge somewhat. Many of the new renewables will be offshore and bringing them to land is one thing, while getting them to where is energy demand is another. We would have to traverse different communities, and that is why I put such a strong emphasis on the importance of infrastructure. It is challenging for communities when they see infrastructure passing over them to somewhere else and it is very important to address the issues of the more peripheral and rural areas in the country. They have to benefit as well from this.

**Deputy Timmy Dooley:** I welcome Mr. Tuohy and thank him for his presentation. He set out a good understanding of the challenges facing EirGrid and he is familiar with the fact that parts of the grid are creaking, particularly in a large urban area like Dublin. He is aware that electricity is generated from gas on mobile generators in certain parts of the city in order to meet the demand of the growing population bases. There are a few challenges ahead. Perhaps he will relay a few thoughts on how this can be addressed.

Following the Chairman's point about the potential for wind energy collected at sea, when it is brought ashore it poses a significant challenge to get it to a point of usage. Mr. Tuohy spoke about the immediate potential in shallower waters in the Irish Sea and there is quite a level of advancement there. When we bring it ashore and especially when it is done over the ground with pylons, particular concern might be expressed. The same applies on the west coast and how energy might be traversed across the country. Does Mr. Tuohy have any views on underground versus overground? We have had some of this debate at the committee before.

Mr. Tuohy correctly emphasised the engagement with community and the necessity community buy-in. Over time communities have demonstrated a resilience if accepting something is necessary for the community but when they are part of a transit point, they have not demonstrated the same resilience in accepting what they might consider visual disruption in their community. We speak about protecting the environment, which is very important, and that is why there is such a significant projected growth in the generation of electricity. It will be needed to protect the environment by moving away from fossil fuel use in society. How would Mr. Tuohy speak to the people concerned about the visual amenity of their environment with the potential for a greater number of pylons? The same challenge is there with wind farms as with pylons. Does Mr. Tuohy have any thoughts on how EirGrid might be able to lead in a different strategic direction in that respect?

**Mr. Brendan Tuohy:** The Deputy mentioned gas use in Dublin for electricity. We all recognise that it is a problem of success in some ways. We have been very successful, as the Deputy knows, and I outlined-----

**Deputy Timmy Dooley:** It is the success of the economy rather than EirGrid.

**Mr. Brendan Tuohy:** Yes. I use "we" to refer to Ireland. I will distinguish between them. As a country we have grown and part of the challenge is to keep up the infrastructure. Over the years one of our great selling points internationally was that we never lost a project because of a failure to deliver electricity. It was a real selling point when in India and other places projects were lost because they could not deliver a secure and reliable system. Gas power is approximately 50% of our generation network. For the foreseeable future, it will be of that order. It is simply the way that one needs stability on the network. As I stated earlier, the renewables come in but one can never guarantee them. They are so-called "non-dispatchable". As for the meaning of "dispatchable", a gas or coal generator will turn on immediately whereas, if I am

waiting for the wind, no matter how predictable it is,-----

**Deputy Timmy Dooley:** I refer to the use of mobile generators powered by gas within industrial units. I am not talking about EirGrid's generation of electricity.

**Mr. Brendan Tuohy:** Sorry.

**Deputy Timmy Dooley:** Because of the state of the grid at present, in plenty of industrial estates around this city there are mobile generators powered by, in some cases, oil but principally gas in order to generate electricity for the demand of that particular industrial zone. That does not seem like a good overall plan. It is something that needs to be addressed in the future.

**Mr. Brendan Tuohy:** In the longer term, and medium term, the idea of having independent generators everywhere does not work. As one must, we are responding. The time lag from agreeing on infrastructure to delivering it can be quite horrendous for various reasons, including the judicial process and the planning process. The demand is growing fairly quickly. We can see the demand there. What Deputy Dooley is talking about is a short-term solution. Obviously, it is not the long-term solution.

More generally, technology is having a big impact. One will see, although not today, on the system part of what we are trying to do. One will see the impact that technology has and see the demand-side management as well. Then one will see the challenges we must face, even for some of the new data centres or extensions to existing data centres where they will move from a so-called "firm connection" to a much weaker connection so that they will not be guaranteed the power at a certain time and will have to make their own arrangements.

The gas generator the Deputy talks about is not an ideal situation. We want the grid to provide in the normal way but then we also, as I started out by saying, want to transfer up to 70% of that to renewables. That will be challenging.

**Chairman:** Had the Deputy other questions?

**Mr. Brendan Tuohy:** I will quickly go through the other ones.

On the transmission lines on the shore, the last report done that was commissioned by the Government was approximately a year and a half ago; it was an independent report on the North-South interconnector that members would be familiar with. In summary, it stated that the overhead lines were still the most suitable approach. I am not an expert in this area but I read the report; it was the top experts who said that. On the underground versus overground, that is the latest one. More generally, on the underground versus overground issue, overground is easier. First, it is cheaper. Second, it is easier to maintain. Third, when one goes underground, if one has faults, one must dig them up, etc. The advice from the experts refers not only to cost. It is very much about its operation. All we can do on this is bring in the best experts and see what they say.

Community engagement is a big element to which I am committed. I have been involved in the Dingle Peninsula project for the past two years where we have tried to imagine what the Dingle Peninsula would look like in the future. We have been working closely with ESB Networks, with the local community and with the local development agency, North, East and West Kerry Development, NEWKD. What is interesting is the importance of community engagement. For instance, ESB Networks is involved with five ambassadors, including individual houses. Also, we have a project just starting with six ambassador farms to look at what farming

needs to do to change - that is 35% of the problem. On that, the idea of involving and engaging the community is not about visiting and telling them what we will do. It is about visiting, listening and engaging. There are 20 batteries installed in Ballyferriter. With that, three have solar PV and others are purchasing their own solar PV. What is happening there is changing the way we deal with energy. When we talk about activating the energy citizen, people are basically smart if one gives them the opportunity. On community engagement, I suppose my message is that we all must engage in a much more collective way. I deal with some of the academics in Marine and Renewable Energy Ireland, MaREI, and they would totally support the assertion that it is about community engagement. I am an engineer by background. Engineers have certain solutions but these are not always the best solutions.

On the visual amenity issue, when one is putting in any type of infrastructure there is a visual impact but we have the planning process to deal with these issues. The original design of the national system with which the Deputy will be familiar was, out of Moneypoint, two big 400 kV lines coming up through the country serving north and south of Dublin, and then the ring around it. These are the backbone of the network. Now we are seeing the changes happening. For example, Moneypoint will close, we are told, by 2025. We saw the changes in the midlands recently as well. This is really happening. The challenge we have is whether we do something to the network. However, we will still need poles and some sort of infrastructure but that must be done in as neat a way as possible with community engagement.

Finally, on providing people with an incentive, the Deputy talked about the transition. I have an empathy with communities where the infrastructure is passing through to service something else. That is different from where people embrace it and use it themselves. Collectively, we must look at how we can make sure that we can support these communities so that they benefit from it, not in a one-off but in a long-term way. In my experience, most communities want to be living communities. They want people to come and live there. I spoke of the Dingle Peninsula. In 1840, there were 40,000 people on the Dingle Peninsula. In 1850, there were 30,000 people. Ten years ago, there were 16,000. Today, there are 12,500. It may be a bit more stark, but that is a reflection of the movement from the rural to the urban areas. We will not stop that but what we need, what parents tell me they want for their children, and what the young people say, is that children will at least have the ability to come back and live there if they so choose. They know all the children will not come back and live there, but they want the choice.

**Chairman:** I will move on to Deputy Cullinane.

**Deputy David Cullinane:** I welcome Mr. Tuohy and wish him the best of luck in his role when he is officially appointed to his position. I wish him well.

In his opening statement, Mr. Tuohy referenced the climate action plan and the target of 70% of electricity being generated from renewables by 2030. My first question is, will we reach that target by 2030?

**Mr. Brendan Tuohy:** Yes. To put the conditions on it, we must go offshore and we must be successful in the offshore. I noted last week the publication of the new structure for marine offshore planning that will be critical for this to happen. Certain targets were put in the climate action plan and so far they seem to have been met. I refer to the delivery by the system of the various documents, regulations, etc. However, we will not do it if we do not meet the offshore targets.

**Deputy David Cullinane:** Is Mr. Tuohy saying offshore is the one area where we need to

do more?

**Mr. Brendan Tuohy:** No. I am saying we are on target but the big game-changer is off-shore.

**Deputy David Cullinane:** Many of the environmental groups that we meet would have more ambitious targets - some 80% and others 90% - by 2030. Would it be possible to exceed the 70% target? Could we be more ambitious in this area?

**Mr. Brendan Tuohy:** I suppose one could be ambitious but let us-----

**Deputy David Cullinane:** What is Mr. Tuohy's view about where we potentially could go? What is the closest to 100% that could we get to?

**Mr. Brendan Tuohy:** One is balancing two things here - what happens on the adequacy of supply and security of supply. The one thing one does not want when doing this is for the system to collapse. Nobody wants that.

We are out on what is called the system non-synchronous penetration rate in Ireland. We are world leaders at 65%. That is the instantaneous amount of non-synchronous, non-traditional wind, etc., on the system. We are up, with Australia, at No. 1 on that. There is no question that we will move that but one must distinguish between the instantaneous and the long term. When one is building out a system like this one will have renewables on top of it but at present I cannot see a situation where one will have all renewables because one will not have the level of certainty in the system.

**Deputy David Cullinane:** I understand. That was my question. Mr. Tuohy is confident that we will reach the 70% target comfortably. If environmental groups are saying that we can be more ambitious, in Mr. Tuohy's experience, given the caveats put on it, what would be the closest to 100% that we could achieve?

**Mr. Brendan Tuohy:** I would change the timeline slightly, if I could. By 2050, we are talking about decarbonising the networks. Then what one is talking about doing, as one puts on gas or one moves towards an unfossilised gas, in the sense that it could be other generation type; one could even have hydrogen or one could have a mixture of things such as carbon capture sequestration where even though one is producing fossil fuels one is treating them again. The aspiration must be to have a decarbonised network by 2050. That is what Britain and others have announced. To get to the first stage of that, our challenges will be in the mid-2020s, as we see some of the traditional coal and other plants coming off stream and making sure that the new systems are in place to deal with that. That is challenging.

**Deputy David Cullinane:** One of the challenges which we just discussed as part of the climate action strategy is to have more electricity generated from renewables. We talked about the targets. It is not as simple as that because there are other issues. For example, we also want more electric cars on the road. We want to decarbonise public transport and have electric buses and trains. We also want people to retrofit their homes, which would mean more electric fuel pumps. That would mean more people would be dependent on the grid. What has been factored in, in terms of targets that are also being set for electric cars, fewer people heating their homes with oil and gas and more from electric, and public transport switching from carbon also? What demand will that have on the grid and is it factored into EirGrid's view in terms of us not just reaching our targets but being in a position to exceed them?

**Mr. Brendan Tuohy:** I am sure Deputy Cullinane is familiar with the all-Ireland generation capacity statement that is published every year and updated. It provides a ten-year look ahead. This is a really good document and the people who have done it have put a lot of effort into it. They are at the forefront of it.

To go back to the issues Deputy Cullinane raises, at the moment, if one takes the bigger issue of emissions, agriculture is at 33% to 34%, transport is about 22% and electricity is about 20%. We are seeing a move towards heat pumps and the like and there will be a movement towards electric vehicles. The numbers from the Government are factored into the documents, for obvious reasons. That is the way it should be. We will probably move up to 30% at that stage, but 70% of the 30% then will be renewables in terms of overall energy, which would mean we would be up at around 20%. Any way one looks at them, these are really challenging targets. That does not mean we should not have them. I agree that we should have them, but the only way we will deliver on this is that as we move to electrification we must have, first, the infrastructure that I talked about. The second thing is we need to have a public that understands what heat pumps are, what solar photovoltaics, PVs, are, and for that we need a big educational initiative, which the committee recommended. I would not underestimate the importance of that because this is difficult stuff. We are asking people to switch their cars and to put in heat pumps and other such infrastructure. We can provide some grants but this is expensive for families and the just transition issue becomes really important in that regard. What we do not want is that it is an elitist thing that one has solar PV. I will build on the experience I have seen in Dingle. I can see the interest from the local community and among all the different groupings such as schoolchildren and farmers. They all want to change.

**Deputy David Cullinane:** I thank Mr. Tuohy for his very comprehensive replies. I genuinely wish him well in his role.

**Deputy Eamon Ryan:** I should declare that I worked with Mr. Tuohy when he was Secretary General when I became Minister. I hope he will not mind me reminding him that on my first day in office he handed me a box set of “Yes Minister” and recommended I watch it, which was very good advice. I feel like giving him a box set of “The Sopranos” or “Game of Thrones”. I am not too sure which, because he is going into a critical and important job.

Almost ten years ago we started thinking about the French interconnector and it has taken ten years to get the contract. I am really pleased it is going ahead. I guess it will be another five years before it is built. I will return to the question raised by the Chairman and by Deputy Dooley. I think we need to start working now on our method of being part of the bigger, wider European grid network to ship power from the west of Ireland, not just within the country but to the rest of Europe. That will require EirGrid to commission, build and own several new interconnectors with our nearest neighbours. Does EirGrid have the resources to be able to take on that project now so that we are ready in ten, 12 or 15 years’ time to turn it into reality, having developed the Irish Sea and learned from that experience?

**Mr. Brendan Tuohy:** Before I answer that, I should tell the committee that the day Deputy Eamon Ryan first came into the Department as Minister, he came on a bike and I had a phone call from the Taoiseach’s office to ask if we could get him to take a car because there was no way of handling the files.

**Deputy Eamon Ryan:** It was lashing rain as well.

**Mr. Brendan Tuohy:** Yes, it was lashing rain. On the wider grid, I have been hugely im-

pressed by the calibre of people I have met in recent weeks since I came into EirGrid. It is a very specific skill set or series of skill sets. We have only one company of its type in the country and it has an all-island remit. We have EirGrid and we have SONI in Northern Ireland, and we have the Single Market, with which Deputy Ryan is very familiar. The skills base there is really interesting. To be honest, such skills are very hard to get. The other side of that is there is a tangible commitment to delivering the type of targets we are talking about. The CEO, Mark Foley, who has been in before the committee, has presented to the staff and the board has fully bought into it. There are certain skills we will need. One never has them all in-house. The Minister recently asked us to look at the future security of supply and other such issues. A letter was sent to all the chairs of the ESB, ourselves, Ervia and others. We are responding. The Minister has commissioned a review. On the wider grid issue, I will go back to the statement I made earlier, there is no way that we can stop at just the 3.5 GW that we are talking about, which is in the current plan. I think the opportunities on the offshore are huge but it can only be done in conjunction with Europe. In fairness, we have got fantastic support from Europe on the interconnector from France. We recently got more than 50% support from Brussels of €530 million to be signed off next week. There are two issues at play: one is that we are connecting into Europe and if Brexit does happen it gives us direct access, but on the other side, Europe realises that the wind off the west coast of Ireland in particular is part of its resource as well. The land mass of Ireland is 80,000 sq. km, but the Irish water that we own is about 840,000 sq. km. That makes us the third largest country in Europe, if one looks at it that way. In that sense, we have a fantastic opportunity in the long term but we must bring our colleagues in Brussels with us on this.

**Deputy Eamon Ryan:** I think EirGrid should do that, and that it should go for it now. I worked in this area when I was not a Deputy and I know that Brussels is ready and waiting to do further funding, and it is our big project to add to a European climate response. We have to work on the UK Government on it as well because it is critical. We must work east-west as much as North-South. When does Mr. Tuohy expect the North-South interconnector to proceed? What is his assessment of the legal or other difficulties in Northern Ireland that are holding us back?

**Mr. Brendan Tuohy:** I was in Northern Ireland last week and I had a board meeting in Belfast with SONI. A public consultation has concluded. There was one objection and 11 comments and submissions, some from local authorities are very positive. SONI must now decide whether to make a decision on that before 17 January when the broader decision has to be made about the future of the North in the sense of whether the power is taken back or if there is an election. The feeling is that it is going very positively but when one is in a process like that, all one can do is hope for the best and respond to the things that should be done. We are waiting for that to happen. The backstop would be January. The Secretary of State gave the power in order that the officials in the North could make decisions. Previously, there was a planning permission issue and the application was withdrawn simply because of another court case. We are very positive about the impact of the interconnector. It connects the two networks, North and South, so that we would have a seamless North-South interconnector. It is a 400 kV line. It has a power capability of 1,500 MW, which is significant. The benefit of having a single electricity market is the stability I talked about. Everyone does not have to carry extra capacity. We can do that on a national basis. As we discovered, what interconnectors do is allow the electricity to flow depending on the prices, so that one gets reductions in prices. We have seen that and the regulator has seen that.

**Deputy Eamon Ryan:** If we do not build that quickly, I believe they will end up building another interconnector to Scotland and we may see the break-up of the all-Ireland market,

which would be a tragedy. My presumption is that EirGrid would own the interconnector and I presume it would own a half share with the French transmission operator of the interconnector with France. Given those circumstances, where EirGrid's asset base is increasing, including ownership of the existing east-west interconnector, does Mr. Tuohy think it is time for the Government to again consider whether EirGrid should own all of the transmission assets, rather than the ESB, thus giving EirGrid greater flexibility, control and financing capability to expand the network?

**Mr. Brendan Tuohy:** That is a policy issue ultimately.

**Deputy Eamon Ryan:** Mr. Tuohy is the chair designate and is no longer a civil servant.

**Mr. Brendan Tuohy:** There are pros and cons for everything. By not owning the assets, the regulator or anybody cannot say that we are trying to enrich ourselves by doing whatever investments we are doing. It is a complex system. There is an infrastructural agreement. Originally, when EirGrid was set up the asset ownership stayed with the ESB as a company. EirGrid oversees the maintenance and specifies it but ESB Networks does a lot of the work. The system is quite complex, as the Deputy has said. From EirGrid's point of view, we own the east-west interconnector. When one takes on board all of the borrowings and everything it is about €400 million. For the Celtic interconnector we have a 65% to a 35% arrangement and, again, that is going to be about €1 billion and then one takes out about €530 million so we are getting a very good deal.

As members will see when EirGrid's accounts are published, it is challenging when one has a very small asset base. As for a lot of what EirGrid does, it is a regulated utility so we cannot pick a price and decide to charge it because everything is governed by the regulator. Should a discussion take place? A discussion should always take place on these issues in the sense that one must keep them under review. Is it critical at the moment? Are we in a position that we need more money? I am only in my post a week and I have not done that analysis. Will I keep an eye on the matter? Absolutely.

**Deputy Eamon Ryan:** I wish Mr. Tuohy the best of luck and commend the Government on making a very good appointment.

**Chairman:** I remind members that we have two other sessions and urge Deputy Jack Chambers and others to keep their questions as brief as possible.

**Deputy Jack Chambers:** I am sorry for being late and thank Mr. Tuohy for his presentation.

We have had a lot of discussion about the energy requirements of data centres, how the cost of them may hamper the decarbonisation process, and that the cost could fall on the consumer. We have had investments in wind energy but data centres will still rely on the national grid that predominantly relies on fossil fuels. Has EirGrid examined the risks posed by data centres in the context of the cost, the decarbonisation process and where the cost should fall?

**Mr. Brendan Tuohy:** Yes. A lot of work has been done on this matter. The Government issued a statement last year and IDA Ireland has done a lot of work. Let me put this in context. While the energy requirements of data centres are dramatic, I note that as a country, we have a phenomenal ICT sector comprised of 130,000 people and exports worth €65 billion per year, which makes it a huge sector. What now happens when one puts data centres in, and I agree with the IDA on this, is that they bring a stickiness to the market so that the companies invest

significant amounts of money here. To date, €7 billion or €8 billion has gone into the data centres, which then spurs on other things. Many of the data centres will in time become computational centres. In other words, the running of algorithms and stuff like that will take place in the centres. Will that be more energy intensive? Yes.

There is another side to this issue. Recently a significant company did a corporate purchase power agreement, which meant it was not relying on the grid, the network or the public service obligation, PSO. In fairness, many of the data centre companies care about the environment, ask for the centres to be powered by green energy and many of the companies are prepared to put their hand in their own pocket to pay for such energy. As I said before the Deputy arrived, using our median predictions for the future we predict that about 29% of energy usage by 2028 could be due to data centres, so by far and away the single biggest user. One must then ask oneself the following. If one takes that in the broader context of not just the ICT sector but everybody moving to the cloud, we must position ourselves, as a country, in that space.

**Deputy Jack Chambers:** We know the role played by IDA Ireland. How will EirGrid plan for and manage the risk?

**Mr. Brendan Tuohy:** EirGrid is working with IDA Ireland but it is a challenge. We have a very close relationship in the sense that these people come in and talk to us. I said the following earlier but I am not sure that the Deputy was present. For some of the new ones, and we will have a different arrangement with them in that they will not be guaranteed the type of power that they are guaranteed at the moment, if they decide to expand, which we want to see, there will be a different contractual arrangement with them.

The challenge we have is that most of these centres are around the M50 in Dublin. The new Celtic interconnector is coming into Cork and will be accompanied by a fibre cable of 24 or 48 fibre pairs. From day one, Deputy Eamon Ryan was very involved in specifying that this innovation should accompany the Celtic interconnector and EirGrid wants to build on the opportunity it presents. For me, the ideal situation would be to see a greater regional distribution of data centres so one does not put all of the pressure on Dublin. I believe one will see a lot of research happening over the next number of years on how best to handle data centres. The positive side of data centres is that one has a static or flat prediction. I mean one can predict when data centres will come on and how much energy they will use. Their energy usage is not like normal daily domestic usage that fluctuates. Can we handle it? Yes. Are we looking to the future? We have been very open with what the numbers are into the future but for that, we will need to have an adequate infrastructure and generating capacity in place before that happens.

**Deputy Jack Chambers:** I will now discuss the north-south interconnector. My colleague, Deputy Cassells, has made me aware of procurement by a Turkish company despite the fact that planning permission has not been received in Northern Ireland, which I think Mr. Tuohy mentioned to Deputy Ryan. Can Mr. Tuohy give a further update on the matter? What discussions has EirGrid had on the requirement for planning permission for 35% access in three of the local authorities? Has EirGrid improved its engagement with communities? Local communities still have concerns. What has EirGrid done to address their concerns?

**Mr. Brendan Tuohy:** The Deputy has mentioned two issues. First, I spoke about the Northern element earlier.

**Deputy Jack Chambers:** Yes, I was here for that. I would like to hear further details on the procurement process because Mr. Tuohy has not given a specific answer.

**Mr. Brendan Tuohy:** The procurement process is handled by ESB Networks. As I explained earlier, ESB Networks has done a framework procurement but it has not purchased anything. The Deputy knows how long public procurement takes. So, one does a framework and then one draws down from the framework in time. ESB Networks has not purchased anything but it has done the various frameworks, which is where we are at. Nothing will happen until the relevant planning permission come through.

**Senator Tim Lombard:** I compliment Mr. Tuohy on his comprehensive responses here this afternoon. It has been a pleasure to listen to him.

I was going to ask about the interconnector but other members have already done so. The Celtic interconnector is a major part of our infrastructure and the scheme will affect Ireland. One wonders, particularly in my part of the world, where the interconnector will land but I shall not ask Mr. Tuohy about the location.

Mr. Tuohy spoke about going forward and how we will decarbonise the network from now until 2050. I ask him to elaborate on the carbon capture proposals and on whether there are live proposals. Has EirGrid a role to play, taking into consideration the Kinsale gas field? I am from Kinsale and I note that the gas field will close in the middle of next year. The platform has been taken down but the infrastructure has been kept. Perhaps carbon capture could be considered for the depleted gas field in Kinsale. Where does EirGrid fit into that model? Is carbon capture part of EirGrid's remit?

**Mr. Brendan Tuohy:** I am from Cork and my father is from Ringaskiddy. Therefore, I know exactly what the Senator is talking about. The Kinsale gas field is more a matter for Ervia because we do not get involved in that side of things.

As I said earlier, as we move to decarbonisation and if one has gas, particularly fossil fuel gas but one can also have other biofuels and so on coming in, what will happen is that another sequence of things will happen. That means it would be decarbonised. I gather that discussions are taking place, but cannot give any details. It is more about pumping the gas back out to Kinsale, where there are huge caverns and storage. That was the idea behind the carbon sequestration. The International Energy Agency is also doing some work on this and published a report over the summer on the future of hydrogen. The Japanese and others are also moving in that direction. Consequently, one is looking at other things such as electrolysis and so on. When the wind is blowing at night and there is no draw on the electricity, hydrogen is being produced, which can be stored and used for something else, such as transport. This is a huge space of which we certainly will be part. Some of the issues the Senator raised are more under Ervia's remit.

**Chairman:** I wish Mr. Tuohy well. We look forward to working with him and this has been a very positive engagement. I wish him every success. We will suspend briefly to allow our next witnesses to take their seats.

*Sitting suspended at 3.01 p.m. and resumed at 3.03 p.m.*

### **Data Collection by Digital Assistants: Discussion**

**Chairman:** From the Data Protection Commission, DPC, I welcome Mr. Dale Sunderland, deputy commissioner; Mr. Cathal Ryan, assistant commissioner; and Mr. Ultan O'Carroll, as-

sistant commissioner. From University College Dublin, I welcome Dr. Benjamin R. Cowan, assistant professor at the school of information and communication studies.

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

I advise witnesses that any submissions or opening statements they have made to the committee will be published on the committee 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 House or an official either by name or in such a way as to make him or her identifiable.

I remind members and witnesses to turn off their mobile phones or put them on silent mode.

I invite Mr. Sunderland to make his opening statement.

**Mr. Dale Sunderland:** I thank the committee for its invitation to attend to discuss the processing of personal data in the context of digital assistants. I am one of the deputy commissioners at the Data Protection Commission, with responsibility for the consultation, supervision and guidance on policy functions of the office. Also in attendance are Cathal Ryan, assistant commissioner, who has responsibility for supervision and engagement of technology multinationals, and Ultan O’Carroll, assistant commissioner, who has responsibility for technology policy.

As the committee will be aware, the Data Protection Commission, DPC, is the lead supervisory authority in the EU under the general data protection regulation, GDPR, for most of the world’s largest technology, social media and Internet platform companies operating in the European market, given that their EU headquarters are based in this State. This responsibility brings a central role for the DPC in overseeing the compliance of these companies’ services and products with EU data protection requirements. The technology products and services of a number of these companies include digital or voice assistants. Those are the terms commonly used to describe a consumer or in-home device that operates by listening for and interpreting human voice commands or instructions. The more common examples are Google’s Google Assistant, Apple’s Siri, Amazon’s Alexa and Microsoft’s Cortana. In recent months, a number of international media reports on human reviews of voice recordings collected by voice assistant products have brought into focus the question of how technology companies are using voice data gathered via voice assistant technology. As the EU lead supervisory authority for a number of these companies, namely, Google, Apple, and Microsoft, the DPC is currently engaging with those organisations to establish the manner in which they are meeting their data protection requirements in this context. The Luxembourg data protection authority acts as EU lead supervisory authority for Amazon Alexa.

Before turning to the data protection issues arising in the use of voice assistants, I will briefly describe how such devices function in practice, which is helpful for calling out the nexus

with data protection requirements. Voice assistants record user audio clips and convert those clips into a text form that acts as an input to online services such as search, weather, shopping, mapping and communications. In some cases where the devices are home-based, the instructions may also be used to control smart home devices including those for lighting, TV and media, heating and security. Devices listen continuously for instructions and may in some cases also be set up to recognise individual users' voices. They listen for keywords such as "Hey Google" or "Siri", which triggers recording of the user's voice. Voice recordings can be stored alongside their converted text forms, either on the device or in the cloud. Service providers may also record against a user's profile, preferences and choices that they derive from an analysis of the user's voice commands. They may use that to serve back the information sought by a user or to add to their profile for the purposes of advertising. Raw audio signals are converted into a recognisable human word. Often, because of the variation in human voice, accent, tone or phrase, machine learning - in other words, artificial intelligence - is used with large volumes of sample voices to create a model of human speech. Different models may be needed for different languages. These models are updated over time to refine them and improve quality. In some cases, quality control will require some human review of voice snippets, especially where words are being incorrectly recognised, where background noises are incorrectly identified as human speech or to help reduce misactivations of the device. Human review of voice data collected and processed by automated means is a common method to review, improve and train the algorithms used in voice assistant technology. While not inherently problematic or contentious from a data protection perspective, this kind of processing has many data protection elements, which must be carefully considered and assessed by the companies providing such services to ensure that the use of user data is legitimate and appropriately protected.

I will briefly mention some of the key elements arising in this context. First is ensuring an appropriate lawful basis to process personal data. Organisations need to identify a lawful basis under the general data protection regulation, GDPR, which will permit the processing of voice data in the manner proposed, such as consent or legitimate interest, which are the most commonly used legal bases. Valid consent issues arise where it is not demonstrably active, informed, specific, freely given and withdrawable. Likewise, a legitimate interests basis must clearly demonstrate that the legitimate interests of the company are not outweighed by the rights of users concerned. The second element I would like to mention is the provision of adequate transparency to users where the type of processing taking place is concerned. Information must be in an understandable format which allows individuals to make informed choices as to how their data are processed and which facilitates the exercise of their data protection rights. With the potential for voice processing to be invisible, particularly further processing for purposes not readily obvious to users, transparency measures need to be in place when devices are being installed, when they are in use and where a user wants to review what processing their device has undertaken.

The third element is implementation of effective and integrated measures and safeguards to adhere to the principles of data protection. This element of compliance requires appropriate technical and organisational measures to be put in place to confirm that only personal data which are necessary for each specific purpose of the processing are actually processed. As I mentioned earlier, the human review of voice recordings is a common practice to improve the accuracy and effectiveness of algorithms designed to transcribe and translate voice data. However user data must be adequately protected in this process, and indeed for all purposes for which voice recordings are used. Such safeguards and protections can include designing the process of evaluation of audio snippets, by either contractors or employees of the company, with data protection in mind from the start; being clear on what volume and size of audio snip-

pets are necessary for each processing purpose; identifying clear conditions where it is necessary to recognise the person whose voice is processed; clear and plain transparency and privacy notices; technical security safeguards such as pseudonymisation and anonymisation of data; organisational measures; and opt-in features. There is a long list of safeguards which any company should take into account when processing such data.

The fourth and final element of compliance I wish to mention is the implementation of measures appropriate to the nature of the data being processed and the risks to users. This is a very important element of compliance because sometimes digital assistants are activated incorrectly, with the risk that private or sensitive conversations in the home or workplace are inadvertently recorded. While providers of voice assistant services have implemented preventative measures, organisations need to do more to reduce their incidence. Implementing adequate safeguards can balance out or minimise the data protection risks arising in this way.

The DPC is continuing to examine these issues in our ongoing engagement with the companies for whom we are the EU lead supervisory authority. We acknowledge and welcome the recent changes made by several companies to enhance transparency for users concerning the practice of human review of voice data to improve voice assistant technology, as well as the implementation of greater user choice on the use of data in such contexts.

As lead supervisory authority, the DPC also continues to co-operate with our EU data protection colleagues to identify common areas of concern and to identify what further steps, including guidance, may be necessary to bring additional clarity to the application of data protection requirements in the use of voice assistant technology. I thank the committee for the opportunity to be here today. My colleagues and I will be happy to take questions.

**Dr. Benjamin Cowan:** I thank the Chairman, members of the committee, parliamentarians and all who have been involved in convening this committee. I feel honoured to be have been invited to give evidence.

I would like to give the committee an overview of the research I lead in digital assistants at UCD and at the ADAPT centre. I lead research into the user experience and user behaviour with voice-based devices and technologies. This includes looking at the barriers users see when interacting with these devices, as well as the opportunities to improve our experience with these devices. Our recent focus in both UCD and the ADAPT centre is on the growing importance of user trust with these devices as well as other artificial intelligence technologies. Colleagues such as Dr. Marguerite Barry also work specifically on the role of data ethics. I would like to specifically thank Dr. Barry and her PhD student, Mr. Gianluigi Riva, who have contributed significantly to the evidence I am about to give.

I wish to put this into context. It is hard to overestimate the prevalence and increasing reach of voice-based technologies. Smart speakers have been a catalyst for huge growth in the popularity of voice as a way of interacting with our technology. It is estimated that the number of smart speakers installed will grow to 207.9 million by the end of this year, with a lot of this growth taking place in China and the US. Data estimates suggest that this will grow to 500 million units by the end of 2023. For Ireland, just under 10% of households now own one of these devices and that figure is growing. This is a major technology that is being placed in people's homes and a major way in which people interact with devices. We also have these agents in our smartphones, so there is one in our pockets almost all the time. The reach of this technology is huge. Voice assistants are being used in cars, in healthcare contexts and in the home.

Especially in the case of smart speakers, these devices are becoming social devices by default, placed in public spaces in the home with multiple people interacting with each device. That includes friends, relatives, parents and children. The devices gather data on people who live there, as well as people who visit. They are the gateway to the Internet of things, whereby we use commands to control devices in our homes such as lights, alarms, doors and other devices. This is the context within which these technologies are being used.

I will not outline how these devices work, as we have covered that already. The data generally are used to improve the way the system operates. The more data the organisations that develop these systems have, the better the system can be at matching what a user says and how it behaves. The artificial intelligence techniques that are used, which were mentioned previously, benefit from large amounts of data. That is why these data are incredibly valuable. There is no two ways about it; these devices record our speech. Voice recordings include the information a user sends to the device but they can also include other bits of information. Paralinguistic cues such as intonation or prosody can be used to estimate age, sex and even native language. These recordings can potentially be used to build a version of a user's voice for particular commands and to impersonate the user. With the use of third-party applications, these data are also likely to be transmitted, shared or stored using other infrastructure. We must consider that infrastructure's potential security flaws. As we have mentioned previously, these devices can record users unintentionally, accidentally picking up and storing this audio. It is clear that these issues need to be addressed, and I am glad that this committee has been called to discuss them.

What do we need to think about when it comes to digital assistants? First, we need to be clear about it means to say that these devices are technically "always on". That means there is a microphone in every home and in every pocket. It might be waiting for a particular word or utterance but it is listening. At best, these can record accidentally. At worst, this information could be intercepted and used to monitor users. That may not be happening now, but it is a possibility. This seems unnecessarily intrusive to me. It may not be to others, but users have to be made aware of the fact that the microphones on these devices are always on.

We must also be clear on why data are being stored, who accesses them and with what they are being combined. Currently the reasons data are kept are opaque to the user. The purpose is summarised as making improvements to the system. Data gatherers must be more explicit about how these data are used in terms of tracking, profiling and sharing across an organisation, as well as what is being shared with third-party organisations. This needs to be outlined explicitly to the user, along with how the data are paired with other streams to influence the experience.

Moreover, users currently have no control over what companies can access or use these data. This means there is no opportunity for users to have an active ongoing voice in how the data are used. It also bakes in the competitive advantage of big data players, who can use this ocean of speech-based data to improve their systems while competition is left with little data to play with. This makes it hard for smaller startups, of which there is a thriving community in Dublin, who may change the way these systems operate to compete. For example, startups could change the way the systems work from a privacy perspective if they had the chance to build them more effectively. Giving users control of their data could also allow them to choose where their data recordings reside. It could lead to a boom in research in the area, as users could potentially donate data to non-profit organisations or research if they so desire.

We must also consider consent mechanisms for users. Currently these systems are used in public spaces by multiple users. A smart speaker in a kitchen or a living room captures audio

recordings of several users, including neighbours, visiting relatives and children. None of these have consented to their data being recorded and stored but all are potentially being recorded. We need to discuss what that means and consider new mechanisms by which consent can be given for these data to be used.

We must also discuss the principle of privacy by design. We must consider how we can include privacy as a standard feature of the design of these devices. Some smart speakers include the option to turn off the microphone so it is not always on. “Push to interact” mechanisms would also reduce the likelihood of the accidental recording of data. We must also be aware of what these decisions mean for the user. This type of design decision has a trade-off for users as far as convenience is concerned, whereby they might want to use the voice to initiate the agent in hands-busy, eyes-busy situations in which these technologies are really useful. We need to have a conversation about how we can bake in privacy by design.

Our work shows that privacy is a concern for users. Although it might not seem that it is influencing their behaviours yet, it is in the companies’ and governments’ interests to address this head-on. The data we are talking about are not a set of clicks, a search history or a set of cookies but rather our voices. Users perceive the latter data as far more personal. A hack or misuse of these data would be significant, and such a threat is potentially real. As users, therefore, we should have our eyes open as to what it means when we invite digital assistants into our homes.

**Chairman:** I will start with a question for the Data Protection Commission and perhaps Dr. Cowan. This issue of people’s data came up when we held the International Grand Committee on Disinformation and ‘Fake News’ here in the Houses of the Oireachtas. As Dr. Cowan said, children and visitors in a home could be profiled - are being profiled - and tracked and those data shared. What are the witnesses’ views on citizens or users having power over their own data? I refer to the issue of consent and knowing how one has been profiled by these companies, whether Google, Facebook or any other company, and having access to that information such that there is transparency as to whom it is being shared with. As Dr. Cowan said, this concerns whoever comes into the home. They could be children or vulnerable people. We are all vulnerable if we do not know what is happening with our data. It is a matter of that access and transparency as to what data these companies have on us and having access to those data. Does that need legislation? What is the view at European level? Does Mr. Sunderland wish to start with that?

**Mr. Dale Sunderland:** Yes, I will take that. It is a very pertinent point. In our view, the GDPR provides the tools and levers, and will increasingly do so, to enable us to ensure there is proper, safe and trustworthy use of data. That is taking place now at a time when there is significant debate across not just industry but broader society, and among people who use these data and examine how they are used, about what constitutes ethical use of data in these contexts. One point to make is that this is not the sole way in which large platforms that have such devices collect data. I think this is the point the Chairman was bringing out, that is, that a profile is built from multiple data sources. The GDPR requires that there be transparency, and we have seen significant improvements in the detail of information provided, but the question is still open as to whether that information is being provided to users in a meaningful, easily accessible way that does not lead to user fatigue. These are key matters that the Office of the Data Protection Commissioner is examining and they form the context of some of these big inquiries.

We have seen since the introduction of the GDPR platforms beginning to introduce more granular controls for users as to how they can access the data that are being collected and delete them. There are positives in that respect but there is still a way to go. For the commission’s

part, we will start to drive the standards we think the GDPR requires through our regulatory work, whether through investigations or our ongoing weekly and daily engagement with these companies. However, if we are seeking to build a digitally based society and economy, user trust is essential, and transparency for users, user control and just the proper safeguarding and protected use of data are absolutely essential for companies. I think the big tech firms are getting that message and we see some change happening, but there is still a question to be answered. To be clear, there is probably more that needs to be done to ensure that the right levels of transparency are provided to users, that they have effective control and that everything they do online is not continuously tracked and added to a profile of them. As I said, some companies are now starting to introduce ways for individuals to delete their profiles, so we are seeing some positives coming into reality.

**Chairman:** Mr. Sunderland is saying the legislation is there. Am I correct?

**Mr. Dale Sunderland:** The GDPR-----

**Chairman:** He is saying the GDPR covers this and that I could ask any company about the profile it has on me and ask that company to give me all that information so I might know, be it true or false, whatever I am googling or however I am interacting online, that the company is creating a profile and I have access to it.

**Mr. Dale Sunderland:** There is a very important right of access under Article 15 of the GDPR. People have the right to access information that any organisation holds about them. There are some exceptions to this right - there are always some grey areas - but a number of the larger platforms are now starting to provide better user interfaces to allow users to examine these matters, to make their choice in the first place as to what data they want collected in respect of their activity on these platforms, and to make decisions as to whether they want advertising targeted at them.

**Chairman:** It is not very clear, though, is it?

**Mr. Dale Sunderland:** Yes. That is the point in that-----

**Chairman:** There is an obligation on such platforms to make this clear and user-friendly, as Mr. Sunderland said, rather than us all just clicking "OK" several times to get to see the website.

**Mr. Dale Sunderland:** One of our concerns at the moment is that, given that more information is being provided to users and there are now more user settings, it becomes increasingly difficult for users to manage their settings and find the information they need. This is a body of work that the tech platforms will need to continue to work out. We will drive it through our regulatory work. It is a matter of providing much more effective user interfaces for individuals in order that they know what data are being collected and how they can manage their controls and settings, and that this is done in a simple and straightforward way and, as I said, does not just lead to user fatigue or users being turned off the idea that they have increasingly been given more rights and a greater ability to control their data.

**Chairman:** Finally, I mean this in the positive, but it sounds like we must wait for the regulation for the commission to put pressure on these companies to do this. This is the delay. They could do this much more quickly if they so wished, but we must enforce them and request them to do this under the GDPR powers.

**Mr. Dale Sunderland:** It is a mixture of both. The GDPR has led to a changed environment

in that companies are now much more sensitive to and aware of the outcome or the potential implications of getting it wrong and have driven to make a number of changes to their platforms. Some things some of the big tech platforms have recently introduced allow for more granular choice as to what they collect when it comes to users' online activity and when they want that saved, deleted straight away or deleted after a month, for example. The platforms themselves are trying to look at what more they can do. I think it will be a mixture of both. Companies will realise their responsibilities, drive to higher standards and realise and really acknowledge and accept, which I think many are increasingly doing, that they have an obligation to the users to protect their data and use them in safe ways. The commission will fulfil its role through our regulatory work.

**Dr. Benjamin Cowan:** I echo the point that this is to do with regulation but also design. There is a sense that the interaction needs to be designed around the privacy-as-standard view. The interesting thing I find, especially from our research whenever we look at voice technology, is that these technologies are seen as conversational and as using conversation or speech as a kind of metaphor for interaction. That could be used as a way of informing people about what these systems can and cannot do and what they have when it comes to privacy or consent. However, the tech companies need to do this through design. That does not seem to be coming through the design of the systems at the moment. It is therefore not just a matter of legislation. It is about not only researching what the design issues are for the users but also how we can make interaction convenient for them with privacy baked in, and what they can do with the way in which these systems operate in the first place. There are some really easy wins. A conversational system could be used to ask whether it is appropriate that the platform is gathering certain data in certain contexts. That is a design choice, however, and a design decision to make, so there needs to be collaboration between design teams and people involved in data ethics as well as legislators whenever doing this. That is the only way in which a sustainable, user-centred solution will come.

**Deputy Timmy Dooley:** I thank both the witnesses for their presentations. I think I was among a number of people who raised this issue back when Apple made an announcement - it was probably reported in *The Guardian* or one of those publications - that a number of people had been let go because of the issue of human review of sensitive private conversations. We were probably all a little concerned that more information than was necessary was being captured. I think part of Apple's defence at the time was, as Mr. Sutherland identified, that human review is necessary to improve the algorithms and assist in machine learning, and to an extent we get all that. However, unless there is an appropriate regulatory regime for the big tech companies, then, as night follows day, liberties will be taken at some point in the future. The most important aspect of it is that individuals have a clear knowledge from the start that the interceptor, as it were, is always on and that it is not minded to always understand the call, whether it is Alexa, Siri or whatever. It is a bit like information on cigarette packets about the harmful nature of smoking; it requires authorities to flag the potential pitfalls of an activation that was not intentional. Many people would not have known prior to this story breaking that there was the potential for such a level of inadvertent activation. People do not know about it. I know many people who would not be anxious to have it on all the time if they knew the potential for other conversations to be recorded. There is an issue around protecting citizens from the perspective of civil liberties, which perhaps falls to the regulator. It needs greater support from the State through laws that would require a much greater volume of information upfront and a very clear opt in, because I agree with the Chair that one is linked to so many different platforms that one just clicks through. Of course things are buried and if someone goes to the bother of checking what information is held on him or hers, he or she agrees to it. Even when it comes

to just going through the standard approval to see what we have given different permissions for, many people just leave it and move on. That is the beginning of a slippery slope to giving much greater control to the big tech companies. We have to be clear that people must opt in in a very clear and concise way. It is not about opting in to give them something that they want at a particular moment. They must opt in very clearly and be shown the consequences of doing so. Those consequences must be writ large, not just in small print. I do not know if that comes from the regulator. I doubt if the regulator having those powers is contained in the GDPR but perhaps it is. Perhaps the rules of engagement need to have some other type of legislative basis, rather than data just being captured, so that people are clear from the start. It is important that we get that right.

When there is an inadvertent capture of information, sensitive or otherwise, a log is prepared. It is used at a later stage in the human review to prepare better machine learning and artificial intelligence. In any of those inadvertent captures, are logs provided to the regulator? For every inadvertent activation, is a log prepared and forwarded to Mr. Sunderland as regulator?

**Mr. Dale Sunderland:** Our role as regulator is to ensure that the entire process is compliant. At this stage, we are more concerned about the systemic issue and nature of the processing from the start of the installation of the product through to the use of the data at the other end. There may be multiple uses for that data. We do not receive, nor do we ask for logs. We are trying to stand back and look. In the case of misactivations, we want to know what the company has done to minimise the incidence of misactivations. They should be baked into privacy design, and, equally, dealing with misactivations, the way that is dealt with in privacy design and how it is implemented into processes. Companies have introduced features such as on device screening to understand if a person is actually engaging with the device before it starts to record. There are also further screening processes on the server side.

Misactivations still happen. As I noted in my opening remarks, this is a concern for us and we think more needs to be done. The Deputy is quite right that we are talking about private conversations in the home and in the workplace and many users were not, and still are not, aware that such misactivations can take place. An interesting aspect that arose in the human review of voice recording was that there was no awareness whatever that humans would take a voice recording and examine it to see if the algorithm was working correctly. The companies we have engaged with as lead supervisory authority have all enhanced their transparency requirements to say that this processing takes place.

On whether something more needs to be done, GDPR holds the tools because the processing of data, from the point it is collected, must be legitimate, fair, lawful and transparent. It is about the application of those important data protection principles at each step of the processing of personal data. From the moment someone says something, there should be safeguards and protections built in to ensure voice recordings are only taken when someone intends to engage with the device. As Dr. Cowan said, data protection by design or default are fundamental principles of data protection law. My colleague, Mr. Ultan O'Carroll, has recently completed work as a co-rapporteur on the European Data Protection Board's guidelines on data protection by design and default. They are now out for consultation. It is something we want to see more of from the companies concerned. Before one ever starts to collect data - before the new ways of processing personal data to provide services is even designed - data protection concerns should be built in. Along the chain, one should look at what safeguards can be built in. It may be minimisation of clips or anonymisation of voice recordings. There is a legitimate purpose for this review but it is about what the company needs to do to ensure the risk is minimised.

**Deputy Timmy Dooley:** I am trying to get to the point where the purchaser or user is informed upfront that there is a potential for this hazard so that before someone begins the process and there is the potential for any processing of data, he or she is clear that there are potential pitfalls. We all like to think that technology is now so advanced that there is no potential for mistakes to be made, but, of course, there is. It is on a development curve. The companies rarely provide those potential hazards upfront and they do not follow that path for a good reason, because far fewer people would avail of the technology and the service if they thought there was potential for these types of issue to arise. It is less about the processing of the data in the first instance than telling them about the potential pitfalls. I doubt that is contained in the GDPR; it is more about a clear description of what the technology is and is not. Anyone who purchases a pharmaceutical product today will find a list of reactions that might suffer. Such a warning is contained in the GDPR.

**Mr. Dale Sunderland:** A significant number of those issues are covered by the transparency requirements under the GDPR. More could be done on user notices; that is a very good point. As well as the transparency elements, we have tried to focus on ensuring the risk to this is minimised to the greatest extent it can be so that it is not just a case of continuing where there is a significant risk of misactivations and it is a case of users beware. This is so that users are protected from misactivations in the first place and that the data reviewed by humans are properly anonymised or pseudonymised and that they would take away personal identifiers so that when a human goes to review it that the privacy or data protection risk has been minimised to the greatest extent possible. That is what we mean by data protection by design and that is how we can do it. More could be done with user interfaces and the setup of these technologies to inform users. There is a long way to go but we have seen some positive moves in recent months by the service providers and manufacturers of the devices.

**Chairman:** Dr. Cowan wished to come in on this.

**Dr. Benjamin Cowan:** What is being discussed is how consent is gathered, and where it is informed consent that people are given all the risks before they purchase the devices, make the decision and then live by that. However, there may also be an issue of ongoing consent so that when something is inadvertently gathered, the system could alert that to the customer to that effect. That is a decision the design teams could make at these companies on the basis that that is what they want in their interaction. One could have agents that diversify from the standards in the market by doing that. I do not want to speculate about why they are potentially not doing that, but there is a sense that we need to think a bit more like behavioural scientists when it comes to that issue. We are trying to get consent, not just at the start, so that people know what the systems do and how they are going to gather data. That is important, but also that it goes through the interaction, because these are in people's houses for not just a day or a week but potentially for years and years. The way that the data are being used may change. We need to have that element of dynamic consent as we go through, but that is a design choice as well as a legislation choice. Whether there needs to be legislation that says these companies must make users aware throughout the interaction, however which way they do that, that has to happen. That could be a way of doing it but then the companies then decide how that is done. It is not good to do it through a written description that someone has to look through, because people want to get that system set up so they just want to click on through.

**Chairman:** Just to clarify what Dr. Cowan is saying, do we need to legislate for data protection by design? He hopes the companies are making ethical design decisions but how do we make them do that? Is legislation required? Who would like to respond to that?

**Dr. Benjamin Cowan:** My colleague, Mr. O’Carroll, would like to comment.

**Mr. Ultan O’Carroll:** Part of what we were doing in Europe was an opinion on data protection by design. The key takeaway from that is that Article 25 of the GDPR imposes a legal obligation on data controllers, the organisations that create these devices and do the processing, to account for data protection by design in everything they do. It is not just about things like data minimisation or security. It is to do with transparency and the legal basis for how gather consent, the way they process data, the way they design their processing chain from start to finish and how they dispose of information. It has to be effective. It has to be measurable in some respects to ensure that it is effective and that it can be demonstrated to be effective. That is a key part of what they have to do as an obligation.

Article 25 is fairly simple. It is not extensive within the GDPR but it applies horizontally across all activities that data controllers have to do and to account for. Now, as this public consultation period and that opinion comes to a start, and as we get to the point where we can revise it based on public consultation, there are opportunities to emphasise those issues in much clearer ways. GDPR allows us to do that in a number of cases with other accountability tools, such as codes of conduct and certification. One might for instance see a code or certification like with signage for CCTV, which might say:

This is a voice processing device. It does these things. It may use human review in certain cases. Your choices are explained here. You can withdraw consent here and here.

Those are the kinds of possibilities that are available for transparency measures but it is very much to do with that difference in modality between what we are used to dealing with keyboards and computers to in-home devices where our voices are being processed, where the processing is sometimes invisible or it could be said to be that because it is going on in the background. It is ambient. That changes the way we interact with these things and it changes our expectations as well.

**Chairman:** Is it the case that it is too complex to regulate or control? The companies are obviously not doing this then if we have had these glitches. From our point of view, I am just wondering how we deal with it. Mr. O’Carroll said Article 25 of the GDPR provides the legal framework. Is the issue enforcement? These companies are not adhering to the GDPR standards as specified in the legislation.

**Mr. Ultan O’Carroll:** That is to be determined. The work we are doing at the moment is to head towards that conclusion, because the systems are complicated. There are many different moving parts and different things to consider. Different kinds of data are being processed. In some cases, it might be biometric and in others, it might not be. When organisations do a quality control process, it could be based on a different kind of legal framework than the gathering of the data in the first place. There are lots of different things to do. We are going to work towards that and determine what extra work or gaps there are that need to be addressed.

**Deputy Eamon Ryan:** We had some good discussions at the recent international grand committee and at the think tank we had in the Westin Hotel. I recall at that event that experts from the Carnegie UK Trust explained the duty of care process, which was all about process design and the ability of states or regulators to set out in clear terms the design processes. It was not the case that we would just rely on Article 25 but that we would be specific. I do not mean down to the individual content moderation but in the design process. My understanding is that informed its paper on harmful content but it could inform this area here as well. Is the European system looking at that duty of care process as a European-wide standard rather than just relying

on the broad articles of the GDPR to protect us? Would that be a good idea?

**Mr. Dale Sunderland:** Mr. O’Carroll referred to the GDPR codes of conduct and certification. The GDPR says that they are mainly industry-led but data protection authorities have a role to encourage the development of codes and certification. A code of conduct is not what we might traditionally know as a code in the sense that everyone signs up to behave themselves, but in a GDPR context, it is about taking a principle of transparency, for example, and saying at a more granular level, for voice assistant technology, what is the industry going to sign up to say how it delivers transparency for this type of technology. The GDPR then requires that there be an independent monitoring body and that the code of conduct be signed off by the relevant data protection authority or if it is a pan-European, cross-border code covering a number of jurisdictions, signed off by the European Data Protection Board. We are starting to gear up for the DPC and other data protection authorities to encourage the development of codes. An example is that the industry could come together to develop a code for voice assistant technology misactivations. It would go through a regulatory scrutiny process and be signed off in the context of voice assistance, because it would be a cross-border processing code, ultimately by the European Data Protection Board. We have been very proactive in that space in providing guidance. Mr. Cathal Ryan was the lead rapporteur on the codes of conduct paper that the European Data Protection Board published last year. That is an area we will progress in 2020. We have said in another context that we would focus on children and children’s rights in the first instance. We will work with the tech companies and try bring them to the table to agree a code of conduct. There is lots more scope for that concept.

**Deputy Eamon Ryan:** At the international grand committee, the Data Protection Commissioner, Ms Helen Dixon, said that this process of starting the GDPR has been in existence for 18 months. Has the European regulator seen cases coming through using Article 25 and asking questions about that consent process and what consent is? Will that legal process drive this as well or is it just coming from the data protection commissioners themselves? Are there cases before the DPC at present?

**Mr. Dale Sunderland:** Yes, we have 21 open inquiries into the large tech companies at the moment. A number of those investigations cover the principles of data protection, issues around the standard of consent and what transparency means. As the commissioner mentioned at the hearing to which the Deputy referred, we have significant investigations into Adtech. Through those investigations, we will look in detail at how companies say they are complying with the law and aligning what they identify as their compliance features with what we say is the correct interpretation of the GDPR. They will culminate in formal decisions of the DPC having gone through the measures of co-operation with all the other data protection authorities.

**Deputy Eamon Ryan:** The DPC has an extensive workload, and a significant responsibility because, as Mr. Tuohy said earlier, 100,000 people are working in this sector and we want to have a good reputation. Does the DPC have all the necessary resources or does it need additional staffing resources from the State to manage the workload?

**Mr. Dale Sunderland:** The commissioner spoke on this recently as well. On a positive note, we have been on a significant upwards trajectory in recent years. We have reached almost 140 staff. The funding we will receive from the Exchequer for next year will allow us to increase to in the region of 170 staff. At the time we expressed our disappointment that we did not get everything we asked for, but we will make do but what we have. The story of resourcing the DPC must continue in the future. We are in the upper tier of best resourced data protection authorities but we are not at the very top, yet we carry the disproportionate burden of being

the first line of defence for regulating the technology companies in Europe. That story has not ended. The resourcing of the DPC must continue to be a focus in the years ahead.

**Deputy Eamon Ryan:** A clear message from all this work, particularly that of the international grand committee, is that the DPC has a critical role. It was reckless and wrong of the Department of Public Expenditure and Reform to turn down the application for additional resources and that decision should be reversed.

On voice listening devices, Dr. Cowan stated that we must take into consideration that if we own a smartphone, we have one of these agents in our pockets at all times. He is indicating that if members have their phones on the table during a private session of the committee, the microphones and recording devices of the phones may pick up the conversation if someone has access to them.

**Dr. Benjamin Cowan:** That is potentially the case. The literature on computer security indicates that there are sensors on the devices and if one can access the sensors, one can use them maliciously. It is a possibility.

**Deputy Eamon Ryan:** An increasing number of tech companies and governments insist that attendees do not bring their phones into private meetings. Does Dr. Cowan recommend that members of an Oireachtas committee should leave their phones outside the room while the committee is in private session?

**Dr. Benjamin Cowan:** That is not for me to decide. It may be an issue of importance. To some extent, the matter needs to be put into context. It depends on the security of the devices as well as the security these agents may have. Tech companies are best placed to discuss the security arrangements for devices. That may be worth considering.

**Deputy Eamon Ryan:** I refer to public concern about this issue. Mr. Sunderland stated: “Voice assistants record user audio clips and convert those clips into a text form that acts as an input to online services such as search, weather, shopping” and so on. Many people have contacted members regarding verbal content recorded on their home voice device being converted into data that influences their search or advertising. That is the reality people are experiencing.

**Mr. Dale Sunderland:** That may be correct. Every platform has different ways of using data. There is no ubiquity in that regard. Generally, the transcript of what one says is used to provide what one asked for. For example, if one asks Siri what the weather is in Dublin, that voice recording is transcribed into text, which is put through the company’s systems to provide the information sought. The company may then deduce that the user is interested in weather or, if the user asks about a holiday, that he or she is interested in a certain type of holiday. An inference could be drawn that the user is interested in a particular matter. If one’s settings allow targeted advertising, the information recorded would be used to inform the selection of advertisements one may see on one’s smart device. One could be using a home assistant and receive targeted advertisements on another device because it is joined up in the background of the platforms. We want to see more user choice regarding and control over those settings. Some platforms now allow users to turn off the collection or recording of web and app activity such that the information is not used to build a profile. Some companies are introducing deletion controls to allow users to delete audio data. Previously drawn inferences are cleared and the slate is wiped clean.

The challenge for us in terms of our educational work as a regulator is how to educate users

better on the choices that exist as well as driving higher levels of user choice and transparency. We need to ensure users engage with the settings in a time and space that suits them. Making decisions on all of the settings while signing up to something does not always work because the user wishes to get to the end service.

**Deputy Eamon Ryan:** I have discussed this matter with my teenage children, who have given up and trade access for everything. Dr. Cowan may be examining the issue of whether there is an underlying flaw in the basic business model whereby we have given up our personal data in return for free access and, in turn, the companies have this incredible surveillance capability and advertising power. Is Dr. Cowan beginning to examine this area? He referred to many small start-ups that are looking for opportunities. Is there a big problem in terms of a monopoly on access to the data?

**Chairman:** Dr. Cowan wished to come in on another issue. I ask him to address it now as I am going to try to wrap up shortly.

**Dr. Benjamin Cowan:** I will address both issues. There is definitely a monopoly in respect of the data gathered by several major tech companies. We should try to ensure there is a level playing field in that regard for start-up companies and other organisations. There may be an issue of inequality because data are such an important part of these companies' business models. The data are used to build better tech as well as gain insight on users. It is critical to realise that it is not just about using the data to build user profiles. Those user profiles or information are used to make better technology, particularly in the case of voice assistants. We should reflect on what we are doing in that situation. I kind of agree with the Deputy on that issue.

On resources, much research is being carried out on trust in the context of artificial intelligence systems. That is being pursued through the ADAPT centre funded by Science Foundation Ireland as well as through some of the work we do in UCD. If we wish to signal to the tech companies how to do this better in terms of informed consent, dynamic consent or how to better design systems with that in mind, we need better funding of research.

**Deputy Eamon Ryan:** Money is required for UCD as well.

**Dr. Benjamin Cowan:** We need to consider which aspects need to be focused on and considered. We do some great research in this area in Ireland. If the research was better funded, we would be able to do more.

**Deputy Eamon Ryan:** I do not disagree.

**Deputy Jack Chambers:** I thank the witnesses for appearing. I dealt with representatives of the DPC at the Joint Committee on Justice and Equality when we were processing the Data Protection Act 2018. I am alarmed by the soft wording in the statement provided by the DPC. There is reference to ongoing engagement with the companies. That is too soft and weak. The DPC has strong legislative back-up under GDPR and there should be enforcement consequences. Engagement is not good enough when damage is being done by companies that are based here. People's private conversations and lives are being invaded and the GDPR is being breached. It is not good enough to state that the DPC has yet to reach a conclusion. It has a remit to inform the public about the breach of the GDPR by these companies and the fact that information on people's private conversations and lives is being collected. We know from evidence presented in *The Guardian* and by whistleblowers that that has happened, and is happening. However, the DPC is merely engaging with the companies. It should be concentrated

on enforcement.

Have the companies become too big to regulate? Is the DPC too small to regulate them? There is a trend across several areas whereby damage is continuously being done. A leak of sensitive information could impact on people's private lives. I do not criticise Mr. Sunderland. There are funding issues. I acknowledge the DPC is attempting to increase its ability to deal with the concentration of data that rests in this country.

The committee spent months discussing the digital age of consent. That is not being adhered to here. There is no lawful basis for what they are doing. It is not transparent because nobody knows it is happening apart from people who happen to read *The Guardian* and other newspapers. People with Apple watches or who subscribe to Amazon do not know that it is happening. What is the commission doing to drive awareness of this? Is there evidence of the sharing or sale of this data? How many companies are processing data of this nature? Is there a mechanism through which the practice can be actively monitored? I would like to hear more from the commission about enforcement. Can the officials provide detail about what that might mean for companies? Is the enforcement consequence sufficient to remove the clear breach? These companies have decided to breach the regulatory framework and GDPR and have knowingly breached them.

**Chairman:** The Deputy's points are well made.

**Deputy Jack Chambers:** It is contempt for the legislative position within an Irish and European context. It is worrying that we are just allowing this to continue.

**Mr. Dale Sunderland:** We are engaging with other regulatory authorities across Europe on this matter on a regular basis. We discuss it with each other. There is no consensus about what compliance is with regard to some of these issues so it cannot be taken de facto that there has been a breach because every element of compliance must be looked at. We have achieved some change outside of statutory investigations over the past few months. If it transpires that we need to look at this in a different context, the commission will do so but the companies with which we have been dealing have now enhanced transparency. They are bringing their users through new engagement flows to bring customers' attention to this existence of this sort of processing. They are introducing new technology around misactivation. This is at one end, which is the area for which I am responsible in terms of the supervision element of the commission's work. We drive change, including behavioural change, outside investigations.

The commission has opened 21 statutory investigations into the big technology companies. The first decisions in respect of those investigations will start to conclude in early 2020. That is the spectrum of regulatory activity we must acknowledge. It involves investigations where there will be findings and where appropriate and necessary, sanctions, including administrative fines. At the other end, we interact effectively and robustly with the companies to drive them to make changes outside of investigations. If there is a need for the commission to go into a formal investigation mode, it will consider that fully and take that action.

**Deputy Jack Chambers:** If the commission is driving changes, it must ask what was wrong. If it has to improve transparency, clearly there was an issue with what it was doing prior to this. Mr. Sutherland did not mention any investigations in his opening statement.

**Chairman:** The witnesses did so earlier with regard to the 21 cases.

**Mr. Dale Sunderland:** I doubt whether any commercial entity or private, public or vol-

untary sector company is always in full compliance with data protection law. I know there is context, risk and large-scale data processing. We are looking through all these issues and are achieving change as we engage with the companies. If based on everything we have gathered, we make an assessment that there is a need to look at this on a statutory footing through an inquiry under the Data Protection Act, the commission will make that decision. We are doing this in co-operation with our European data protection colleagues. The European Data Protection Board is looking at whether there is a need for further guidance in this field. It is the view of all of the colleagues with which we engage at a European level that there are issues that need to ironed out but there might be a need for further guidance from the European data protection community on this issue.

**Deputy Jack Chambers:** This is not a personal criticism. It is in a European context as well. Is big business in Europe able to manage the public affairs element of this with the economic side of the commission, for example? Are data issues and privacy concerns subservient to the profits of these corporations and their capacity to lobby? There will be serious consequences because we have not collectively enforced the GDPR. People will face the consequences. We have had other cases of breaches of data where lives have been lost. If someone's personal life is revealed because of a data breach, which is probable based on the scale of this, there will be a significant reaction and enforcement so we must be ahead of the curve.

**Mr. Dale Sunderland:** The DPC and data protection authorities in all other member states are entirely independent from their national governments and the European Commission. It is our job to take the legal framework we have been given and dispassionately regulate against that framework without fear or favour and this is what we are doing. We are coming to the conclusion of our major investigations so the results of those will start to appear in early 2020. That pipeline is filling up. As I mentioned earlier, some of the key principles of data protection that have been in place here for 30 years feature in those investigations. We make determinations on them and impose sanctions and other corrective measures where appropriate and necessary. We have the means to regulate this sector and are doing so in co-operation with other European data protection authorities.

**Chairman:** I am conscious of time because we have two more sessions.

**Senator Tim Lombard:** I thank the contributors to the debate, which has been very informative. Does Mr. Sutherland think there is an information deficit among the public regarding this issue? Does he think the normal mother, father or other adult is aware of the capabilities of whatever device is in front of them? Does he believe there is a deficit of this information? Do the public realise that the phones in front of us have the capability to monitor what we are saying, harvest that information and allow us to become the new currency? Regarding this deficit of information, how can the commission step in to inform the public about what these machines do so that they have a genuine understanding? As a public representative, until I sat in front of the witnesses today, I did not realise half of what was happening. What needs to be done so that people can be informed about what a mobile phone can do?

**Mr. Dale Sunderland:** There is a two-pronged approach. First, the companies have an obligation to drive awareness of their products and services. Deputy Dooley raised this issue. More could be done at that point. It is in the context of a broad number of services and what is nearly information overload in some respects, for example, when someone hits a webpage and is asked to consent to cookies, etc. There is an element of user fatigue in all of that. One of the answers is better user interfaces, which we touched on earlier, and better ways to bring information, including surface information, to individuals. Let us not forget that these companies

have some of the smartest and most capable and talented designers in the world working for them so it is not just about designing a good user experience. There must also be better ways to bring this type of information to the surface for users. That is something of which we are very mindful.

We also have an obligation through our guidance functions. The paradox is that guidance we have published where, for example, we spoke about how people might be nudged towards choices online, etc., has not been picked up so there is a challenge there for us. We are trying to consider how we can best tackle the important issue of user awareness. It is in a context where we increasingly function in an online connected world. There are significant risks if companies do not implement their data processing practices correctly and if users are unable to inform themselves or are unaware of the risks but also the choices they have to control their data.

**Chairman:** Does Dr. Cowan wish to come in?

**Dr. Benjamin Cowan:** The users with which we do research are quite aware of this. It is a significant issue about which they are concerned. Whether it acts a barrier to them using or stopping to use the technology is an open question. There is a sense of there being an awareness of being monitored based on the clicks they make and the voice aspects of technology in respect of interactions so there is awareness on the part of some users but it is not universal. There definitely does need to be more information about that and it needs to be much more upfront. Removing my voice assistant researcher hat and putting on my behaviour change researcher hat, it is not just about information, it is about when the information is delivered. The action is to be made when someone is to interact or someone is to decide that they are going to let this system gather a piece of data they may not want it to gather. We need to figure that out and identify what mechanism we need to have a person make an informed decision based on that, at the point the decision is being made. That is a design problem as well as a problem of understanding what the interaction is. It is about how we design that more effectively, thinking about nudge and behaviour change-based technologies. That is what many of the tech companies are using to gather this data and to get us to purchase new things and more stuff. They are using nudge-based techniques so potentially we should be using nudge-based techniques for privacy as well.

**Chairman:** We were talking about digital literacy. Would it come under that?

**Dr. Benjamin Cowan:** There is a bit of digital literacy as well. People need to know that information. The literature is very clear in terms of behaviour change. Information alone is not the answer to changing behaviour.

**Senator Tim Lombard:** The other issue is the size of the operation. We are in an usual space in Ireland. We have a major conglomeration of tech companies that are a major force. The Data Protection Commission is going up to 170 staff this year alone. We are talking about multinationals that have very deep pockets. Is it big industry against small government? The commission has an independent remit but it is tied in budgetary terms as regards staffing. Even though it is independent, when it comes to budget issues it is tied in to the Government. What is the scale of the deficit at the moment and where do we need to go regarding the scale of funding that is required? Are we looking at some kind of tax on the multinationals so they can be part of the commission's programme and so it can fund itself? Where do the witnesses see the funding stream coming from? Is it strictly coming from central Government? Is there a European element to it? Should there be an industry element as well?

**Chairman:** Mr. Sunderland also wanted to come in on a previous point. He can do that now if he wishes.

**Mr. Dale Sunderland:** In terms of funding, we sought €21 million for next year and I think we received just short of €16 million. I want to emphasise that the figure was up from approximately €1.5 million six years ago. It has been a steep trajectory, but necessary given the context in which we operate. We receive our funding from the central Exchequer. We are trained to become a separate Vote for next year. As I said earlier, I think our funding needs to increase to allow us to be more effective. We are committed to getting this job of work done and are working very diligently at it. The first results of those inquiries and the draft decisions will come early next year. However, it is not just about big tech. We have received 11,000 complaints since the GDPR came into effect of which 9,000 came this year. That is up from 2,500 the year before the GDPR. That is a huge increase. They are the ordinary, everyday complaints about access requests from someone seeking their information from a doctor or hospital, for example. All of those complaints must be addressed as well. It is not solely about the big tech companies.

I think it is likely that our funding will continue to be provided from the central Exchequer. That is quite normal for data protection authorities across the European Union. We will continue to make the case as to why we need that funding. On staffing, compared to some of our peer data protection authorities and the larger authorities in the European Union, for example the French data protection authority has over 200 staff. The Italian authority has around 200 staff and the Dutch authority is growing towards 200. The UK Information Commissioner's Office has about 700 staff so they are somewhat of an outlier. When we are the lead authority for these tech companies and their single interlocutor, it means they get to deal directly with us and we take on the responsibility of engaging with all of the other data protection authorities. There is significant overhead in that simply on the administrative side, let alone engaging in regulatory matters. There are tools in the GDPR that we want to maximise such as joint operations. We are actively trying to promote the concept among our peer authorities that we would bring members from other authorities on board in helping us run our investigations. We are hopeful that there will be some progress on that in the near future. I hope I have answered all the Senator's questions.

**Chairman:** Mr. Sunderland answered very comprehensively. I thank all the witnesses for an invaluable session and for being so frank and giving such comprehensive answers. We will now suspend to allow the next group of witnesses to take their seats.

*Sitting suspended at 4.15 p.m. and resumed at 4.20 p.m.*

### **Just Transition (Worker and Community Environmental Rights) Bill 2018: Discussion**

**Chairman:** We will undertake detailed scrutiny of the Just Transition (Worker and Community Environmental Rights) Bill 2018. I welcome to the meeting from the Department of Communications, Climate Action and Environment Mr. Brian Carroll, assistant secretary, Mr. Michael Goodwin, principal officer, Mr. Jerry Higgins and Mr. Frank Maughan. From the Irish Congress of Trade Unions we have Mr. David Joyce and Mr. Macdara Doyle. From the Nevin Economic Research Institute we have Mr. Paul Goldrick-Kelly and from SIPTU we have Ms Yvonne O'Callaghan.

Before we continue I wish to draw your attention to the fact that by virtue of section 17(2)

(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if you are directed by the Chairman to cease giving evidence on a particular matter and you continue to do so, you are entitled thereafter only to a qualified privilege in respect of your evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, you should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. I also wish to advise you that any submissions or opening statements made to the committee will be published on the committee website after this 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 House or an official either by name or in such a way as to make him or her identifiable.

I will start by asking Mr. Brian Carroll from the Department of Communications, Climate Action and Environment to make an opening statement.

**Mr. Brian Carroll:** I thank the committee for the opportunity to engage with it today as part of its scrutiny of the Just Transition (Worker and Community Environmental Rights) Bill 2018. The Government climate action plan, published in June of this year, identifies the need to plan appropriately to ensure that those most affected by our transition to a low-carbon climate-resilient society are supported and equipped to contribute to this transition. The climate action plan recognises that the level of change required to decarbonise Ireland's economy cannot be avoided and that the taxpayer cannot compensate for all the many actions which will have to be taken. However, it is essential that the burdens borne are seen to be fair and that every group is seen to be making an appropriate and fair level of effort. This will be essential to maintaining the high level of political and civic consensus which has been built through the work of the Citizens' Assembly and in the Oireachtas Committee on Climate Action.

In its report, published in March of this year, this committee identified as a central concern the need to ensure that climate action is fair and that vulnerable citizens, workers and communities are protected. The committee also highlighted the importance of exploring opportunities to green existing jobs and create new jobs in areas such as energy retrofitting for buildings, sustainable forestry and peat land restoration. These are also core objectives of the climate action plan.

Since the Second Stage debate took place on 19 September there have been several important developments which are directly relevant to the committee's consideration of this legislation. The Government has made a commitment to an early and complete phase-out of peat and coal for electricity generation. The Government recognises that this will have a significant impact on the workers in these carbon-intensive sectors, their families and the midlands as a whole. The Government has, therefore, committed to delivering a whole-of-government approach to addressing this challenge and to working with local stakeholders to ensure the people impacted can be best supported. In this context, the Government has prioritised several initiatives in budget 2020, including the provisions of €6 million for a just transition fund targeted at the midlands to support the retraining and reskilling of workers and to assist communities and businesses in the region to adjust to the low-carbon transition. In recognition of its long-standing relationship with communities in the midlands, the ESB has agreed to contribute an additional €5 million to this fund, bringing its total value to €11 million. While details around the allocation of this fund are still to be finalised, it is expected that it will support retraining and reskilling workers and assist local communities and businesses in the midlands to adjust to

the low-carbon transition. There will be further consultation with the structures in place in the midlands, including the midlands transition team, on the application of the funding.

A sum of €5 million has been allocated for the National Parks and Wildlife Service bog restoration and rehabilitation programme to restore 1,800 ha of bog to their natural habitat, ensuring the return of these bogs to carbon sinks once again and creating 70 to 100 jobs. A further €20 million is to be targeted at the midlands to deliver a new model to group housing upgrades, as set out in the climate action plan. This will support an estimated 400 direct and indirect jobs as well as a significant upgrading of the social housing stock in the region.

To ensure that the theme of just transition is sustained on a consistent basis the climate action plan provides for the establishment of a just transition review group within the National Economic and Social Council. The objective of this group will be to review the ongoing transition and identify specific transition needs among cohorts of workers, enterprises, communities and specific groups of people.

The Department has also been engaging with the European Commission to explore the potential for a support scheme, funded through a public service obligation, for the enhanced rehabilitation of the Bord na Móna bogs over and above what Bord na Móna is obliged to do under its Environmental Protection Agency licences. The proposal is to fund a scheme for the enhanced rehabilitation and restoration by Bord na Móna of its peatlands that have been used for harvesting peat for electricity generation. On 8 November the Government announced the appointment of Mr. Kieran Mulvey as just transition commissioner. The purpose of the commissioner is to provide a co-ordinated and effective approach to just transition for communities and workers affected by the ending of peat harvesting for power generation in the midlands. The terms of reference for the office of the just transition commissioner have been published by the Minister and the details on the appointment are currently being finalised.

It is important for the committee to consider whether the Bill, as drafted, will achieve the outcomes on the substantive issues that it seeks to address. In this context a number of high level issues arise in considering the provisions. The Government has committed to leading on providing a just transition response as part of its overall policy approach to climate action. It is not clear that the response to the challenges of a just transition should be devolved to an independent commission, which may not have sufficient accountability to Minister, the Government or the Oireachtas. The functions of the proposed national just transition commission, as described in section 5, are wide-ranging in scope for a single body to have responsibility for. The functions include, but are not limited to the designation of any body as a prescribed body where the commission considers it necessary; the approval, amendment or revision of just transition plans to be prepared by a prescribed body; mediating, where necessary, in the preparation of individual just transition plans; providing independent information and guidance to individual undertakings, to the general public and to any other category of body that may require it, including the promotion of education and public awareness specific to the proposed legislation and to the commission itself; providing specialist guidance and technical advisory services on just transition; making recommendations to Government with regard to the need for a just transition; and supervising compliance with duties imposed by the proposed legislation.

In empowering the commission to approve, amend or review just transition plans and by giving the commission powers of mediation, the Bill effectively gives the commission significant decision-making functions relating to matters concerning economic and industrial policy at national, regional and local level throughout Ireland's economy. The operation of the proposed commission, in respect of its proposed mediation and adjudication functions, may also

cut across the operation of the existing industrial relations machinery of the State, including for example the roles, as set out under statute, of the Workplace Relations Commission, WRC, and the Labour Court. The proposals set out in this Bill will involve a direct and ongoing cost to the Exchequer in relation to the establishment and operation of the national just transition commission. Estimates of these costs would need to be made, as well as an assessment of the potential impacts of the proposed legislation by way of a regulatory impact assessment or otherwise.

This is a short summary of some of the key issues to which the Bill gives rise. The Department is at the committee's disposal to further engage on the detailed provisions of the Bill as it sees fit.

**Chairman:** I thank Mr. Carroll. I now call Mr. Macdara Doyle from ICTU to make his opening statement

**Mr. Macdara Doyle:** We thank the committee for giving us the opportunity to engage on the broad issue of just transition and, more specifically, on the Just Transition (Worker and Community Environmental Rights) Bill 2018. In doing so, we note the proposals contained in the climate action plan to help deliver greater policy coherence and action on this critical issue, including the introduction of legally binding five-year carbon budgets; the establishment of a climate action delivery board chaired by the Department of the Taoiseach; the establishment of a more robust climate action council to advise and monitor Government progress in emissions reduction; the establishment of a standing committee on climate action to ensure accountability across all branches of Government; and ensuring that major State investment decisions will be subject to a carbon impact and mitigation evaluation. However, from our perspective there is one key element missing from this list, namely, the establishment of an appropriate overarching structure to help ensure delivery of a just transition in workplaces and communities across the country. For this reason, we welcome the introduction of this Bill by the Green Party and acknowledge its engagement with the trade union movement on its contents.

The Bill proposes to establish a commission that would bring specialist expertise to bear in respect of transition issues. In last week's hearing before the larger, all party committee, we highlighted some of the difficulties currently being experienced in the midlands. It is our view that some of those difficulties would almost certainly have been averted and avoided if such legislation had been enacted and the proposed structure was up and running. As was mentioned at last week's hearing, all successful examples of just transition to date demonstrate the necessity for proactive policy action. Indeed, they hinge on State-led advance planning, proactive engagement with all stakeholders and the allocation of appropriate resources. Unfortunately, in the absence of any such process or overarching plan, the workers in Bord na Móna in particular and the communities of the midlands have been left without the support or the systems necessary to drive this critical transition process. As matters stand, they have been asked to sacrifice their livelihoods for the good of future generations and have seen little that is concrete or certain in return.

Change of this magnitude requires all-of-Government action and a strategic, overarching vision. It cannot be left to chance or to the market. It is not good enough to simply borrow the language of just transition; Government and policy makers need to engage on the substance of that concept. As we understand it, the proposed Bill would see Oireachtas involvement in appointing members of the board of the just transition commission. The board would then have the power to require companies such as Bord na Móna to develop a just transition plan for their specific enterprise that would encompass key issues such as retraining, re-skilling and redeployment. We note that the Bill foresees the input of all stakeholders into such plans,

a procedure to monitor implementation and a mediation system to address possible disputes. These are welcome measures and the overall architecture as outlined in the Bill has the potential to overcome difficulties such as those that have been highlighted in respect of a company that refuses to engage in the WRC-facilitated forum that worker representatives have repeatedly called for. In the same vein, it appears somewhat odd that the Government should appoint a just transition commissioner and then explicitly rule out that office having any role in industrial relations matters and the difficulties faced by workers, as part of that process.

While ICTU supports the content and aims of this Bill, the urgency of the situation in the midlands dictates that we cannot afford to wait while it continues its progress through the Oireachtas. Therefore, the proposed WRC forum should be established now and utilised to address the issues that have arisen in Bord na Móna in the absence of any other legislative or institutional vehicle. Indeed, the WRC may well have a useful role to play in the structures proposed under this Bill. Earlier this year ICTU, in alliance with a range of environmental NGOs, called for the establishment of a properly resourced national just transition task force to oversee and drive the transition here over the coming years. Our call echoed the recommendation of the Oireachtas joint committee contained in the report it published in March of this year. Whatever model is adopted, the crucial point is that we urgently require an overarching, strategic vision as to where this process leads, a clear roadmap of how we get there and a legislative framework that is equal to the enormous and very pressing challenge that we face. This should encompass social dialogue that includes all stakeholders; access to retraining and education; and respect for democratic rights to trade union and community representation. The workers and communities at the heart of this transition process deserve nothing less.

**Chairman:** I thank Mr. Doyle and call Deputy Ryan who has sponsored this Bill.

**Deputy Eamon Ryan:** I thank our witnesses. I particularly appreciate the supportive comments from ICTU and others on this Bill. I think they get it in the sense that the scale of the challenge in meeting our climate change targets means that we are changing everything. It is system change at scale. We are changing our energy, transport, food and industrial systems for the better of the Irish public, the Irish workforce and the environment. As has been said, we must do this in a systematic, organised way. We had discussions at committee last week with Ms Patricia King from ICTU and I agree with her view that in the absence of this legislation, the WRC would be a useful vehicle to engage as wide a variety of stakeholders as possible. I still believe that this piece of architecture forms part of our partnership approach which is something that we do well in this country. Historically we have done well in working collectively across different sectors of society. This piece of architecture, which is very specific, is needed.

Mr. Carroll from the Department cited a lot of very welcome developments since we discussed this Bill on Second Stage. He referred to funding for various initiatives, although I think most people will agree that the way it has been done in the midlands has not been right. There was no advance planning and the unions and workers there have not been properly engaged. Various stakeholders have not been engaged but having said that, some of the funding commitments are welcome. In terms of the Government's approach, it committed to the completion of the just transition review by the National Economic and Social Council, NESC, by the end of this year. It is unfortunate that representatives of NESC are not here today. They said that they did not think the timing of this meeting was right so we are going to have to come back in the new year to-----

**Chairman:** Yes, we will have further meetings and will also have other stakeholders present.

**Deputy Eamon Ryan:** I ask the Department to indicate the status of that body of work. Why has the Government side tracked the NESC review and proceeded with the appointment of a commissioner without knowing the contents of that review?

**Mr. Brian Carroll:** I do not think it has side tracked the NESC work. The NESC work is happening in parallel and is due to be completed this year. In terms of the situation that arose immediately in the midlands, the Government needed to respond to that. In my opening statement I went through a lot of the decisions Government has taken in terms of the funds and so on. Part of that response was the establishment of a just transition commissioner. The NESC piece, while it is focusing on the just transition and clearly what is happening in the midlands is the first serious manifestation, it is also aiming to take a much longer term and broader perspective. It will be looking out over the coming decades and seeking to anticipate where the next instances will arise and to plan for that. I do not see the two as being inconsistent. There was something that needed to be dealt with in the midlands with quite a degree of urgency.

**Deputy Eamon Ryan:** Mr. Carroll said earlier that the details of Mr. Mulvey's appointment have yet to be finalised. When does he expect the commission to be established?

**Mr. Brian Carroll:** I would say very shortly. It was just announced. Mr. Mulvey will be meeting representatives of the Department and it is hoped that those details will be settled in the coming weeks.

**Deputy Eamon Ryan:** The Government's original plan set out that the just transition commission would report to the Taoiseach's Department. Historically, that Department has been at the centre of the partnership approach. That has been changed, with the commissioner reporting to the Department. Does that signify a certain downgrading of the authority or influence of the commission?

**Mr. Brian Carroll:** No, it does not. The Deputy will be aware that an interdepartmental group was set up and led by the Department of the Taoiseach. It cuts across a number of Departments, including the Departments of Communications, Climate Action and Environment, Public Expenditure and Reform, Housing, Planning and Local Government, Business, Enterprise and Innovation, Culture, Heritage and the Gaeltacht, Education and Skills, Employment Affairs and Social Protection, Transport, Tourism and Sport, Agriculture, Food and the Marine, and Rural and Community Development. The group will be meeting on an ongoing basis, as required. The central co-ordination function rests with the Taoiseach's Department. The just transition commissioner will be supported by a secretariat in our Department and in the midlands and will report to our Minister and, through our Minister, to the Department of the Taoiseach. The role of the Department of the Taoiseach is still central in co-ordinating the whole-of-Government effort.

**Deputy Eamon Ryan:** It seems from Mr. Carroll's comments that his main criticism of the Bill is that too much power and accountability are being devolved to bodies outside the Department or Government structures. I am interested in the unions' perspective on this. As skilled as Mr. Mulvey is, in the absence of some of the structures we are suggesting in our Bill, in the absence of the necessary resources and the ability to pull in expertise, set up mediation structures, designate companies to produce a plan, and review, monitor and scrutinise, and in the absence of all the legislative structures we have included after a great deal of deliberation to make sure we do this job well, there is a genuine fear that a single-person commission without legislative and other resources and without independence will not be able to do the job given the scale of that job in a variety of areas where we will have to apply this.

It is a matter of avoiding the mistakes made with Bord na Móna whereby we are not being proactive in addressing issues before they arise and are always sticking on Band-Aids. This Bill overcomes that failing. We have seen a specific example in how Bord na Móna workers have been treated. Mr. Carroll's concerns are over the devolution of too much power, independence, authority and capability and too many resources but the opposite is that the current system and commissioner, without any clear resources or structures within which to do the myriad jobs that are likely to arise, would not function as envisaged. Mr. Carroll criticises the measures as too much; I would criticise the Government's approach as being too little.

**Mr. Brian Carroll:** The comments were more observations than criticisms. Among everybody who is part of this effort, there is consensus on the outcomes we are trying to achieve to protect the most vulnerable workers and areas of society as part of this transition. It is a question of determining what the most suitable and effective model is. We are looking for effective structures, be they grounded in legislation or otherwise.

With regard to developments to date, the decisions taken by the Government on the budget were only taken in October. The just transition commissioner was appointed only earlier this month. The terms of reference are very clear: to help ensure a co-ordinated and effective approach to the just transition, with a focus initially on communities and workers in the midlands affected by the ending of peat harvesting for power generation. The commissioner will be able to engage with all relevant stakeholders, including Bord na Móna, the ESB, relevant trade unions, worker organisations, local community organisations and the structures already established, particularly the regional transition team, the regional enterprise plan steering committee, the regional skills forum, local authorities and public representatives. The list goes on.

**Deputy Eamon Ryan:** What resources will Mr. Mulvey have?

**Mr. Brian Carroll:** We are finalising the operationalisation of the terms of reference. We have got to the point where we can say he will be supported by a secretariat in our Department. There will be a secretariat available to him in the midlands. With regard to the relevant expertise, he is charged with reviewing experience and good practice, not just domestically but also internationally. There is scope within the terms of reference to consult the types of experts the Deputy referred to. The commissioner is also charged with taking account of existing plans and programmes. He will be reporting quarterly to the Government.

In response, the role of the just transition commissioner has only just been established and he has yet to start working through this programme. The aim is that this will effectively deal with the types of issues we are all trying to solve.

**Deputy Eamon Ryan:** I have the highest regard for Mr. Carroll's Department but I always had the sense - I have said it to the Minister and will reiterate it to him later when he comes in - that since it covers communications, digital policy, natural resources, the environment and climate action with 250 civil servants, it is stretched beyond its capability if it is to take on additional functions. What I propose would assist the Department in having an independent State-supported, State-regulated, Department-guided agency to make sure we are ahead of the game rather than chasing it. I firmly believe the cost of setting up such a mediation service would be very quickly returned.

The Department sees nothing in the drafting of this Bill that presents any legal or other difficulties. It is more to do with the policy approach. I compliment and thank the legal advisory service. We had counsel advising us on every stage on this. It took a long time. I thank Ms

Sinead Mercer, in particular. She was our researcher who worked on it. This went through the legal wringer from our side. Does the Department see any difficulty in the drafting of the Bill?

**Mr. Brian Carroll:** We have not as yet expressed a legal view on it. I am not in a position to do so today.

**Deputy Eamon Ryan:** I have a question for the trade union officials, which any of them may answer. My central point is that this is partnership architecture that allows for a wider range of stakeholders to be deployed in a variety of circumstances. I would be interested in hearing their view on the prospect. At the committee meeting the other day, a question was asked about having a slightly slimmed down just transition commissioner, as in Mr. Mulvey and his terms of reference. Do the delegates believe the approach the Government is taking allows for the proper partnership approach? Is it slightly too narrow?

**Mr. Macdara Doyle:** As we said in our opening statement, what is envisaged in the Bill tallies with what we have called for already, which is the establishment of a national just transition task force. If the name is changed, it is effectively the same body. It is a structure that would probably be commensurate with the scale of the challenge facing us. If set up as proposed, it would allow for the process of engagement. That is simply not taking place now or it is not possible now because we do not have structures or appropriate forum. The fear is that what is currently under development might not be sufficient to meet the scale of the challenge.

**Deputy David Cullinane:** I will ask my questions very succinctly. If the answers could be given in the same fashion, that would help. I want to get through as much as I can.

I will support the Bill. I supported it on Second Stage and I welcome this scrutiny.

When did the Department first become aware that there would need to be a just transition policy and framework put in place? At what point did it dawn on the Department that, as part of meeting our climate action targets, we would have to consider a just transition? When did the Department first start working on a just transition?

**Mr. Brian Carroll:** Specifying the exact time is difficult. Since I took over the portfolio in 2016, I was aware that just transition was on the policy agenda-----

**Deputy David Cullinane:** Was that in 2016?

**Mr. Brian Carroll:** -----when it came to climate action.

**Deputy David Cullinane:** How long has the Department known that power plants in the midlands would have to be closed?

**Mr. Brian Carroll:** I might bring Mr. Goodwin in to assist me with this answer but policy objectives about exiting peat and coal-fired power generation were clearly set in the national development plan when it was published. That has been accelerated recently due to some regulatory and planning decisions.

**Mr. Michael Goodwin:** It is envisaged that peat would cease to be used in the midlands power stations by 2030 at the latest. That was brought forward by decisions made subsequent to that. The expectation was that there would be a transition out of peat and that biomass might be used in the plants through that period but the decision made by the-----

**Deputy David Cullinane:** I thank Mr. Goodwin for that. Why is it only now that the

Government is looking to put in place a process? According to Mr. Carroll - we spoke at the Committee of Public Accounts on this issue quite extensively as well - the just transition commissioner is only in post for a couple of weeks. The funding was only put in place in the budget of this year. We had a decision made prematurely to close two power plants. The head of the Irish Congress of Trade Unions said Bord na Móna would not engage with the trade unions and it was playing for time. She said there was a strategy to de-unionise the organisation. There was sharp criticism that far from engagement, it was quite the opposite. Does Mr. Doyle think that is a fair reflection of what she said?

**Mr. Macdara Doyle:** It absolutely would. There is a fear that there is a strategy at play.

**Deputy David Cullinane:** There is a fear of a strategy but it is clear that engagement has been woeful, from the trade unions' perspective.

**Mr. Macdara Doyle:** Not at the level required.

**Deputy David Cullinane:** Can Mr. Carroll tell the committee how that is possible, given that the Department has known for some time that there would need to be a just transition and given that it should have been planning this for years? We are sitting here today with the trade unions, and recently with the Irish Congress of Trade Unions, saying that the engagement is appalling and not at the level that it should be, and is not even at the races in terms of what is needed. How is that the case and how was that allowed to happen?

**Mr. Brian Carroll:** When I answered earlier, I referred to the original policy decisions and the timelines and how events in the past year have caused an accelerated exit from peat, in particular. In the climate action plan, the Government made just transition one of the central themes and a core piece. In responding to what is happening in the midlands, I went through the long list of initiatives. In the first budget since some of these developments, some funds have clearly been set aside and a just transition commissioner has been announced.

**Deputy David Cullinane:** None of those initiatives is in place and working at this point in time. The detail has to be worked out on some of those solutions. We talked about the retrofitting programme and the funding that was made available for that. It is still is not up and running or worked out.

The just transition commissioner will have no role whatsoever in industrial relations matters. We have heard that again here from the trade unions. Why was that decision taken? Mr. Carroll has listed a range of initiatives that may be being worked on but, at this point in time, they are not in place and not working. He told us that the just transition commissioner will have an overarching role to put it all together. One of the key ingredients, however, is supporting the workers, engaging with the trade unions, and having a role in industrial relations, which will not be one of his competencies or responsibilities. Why was the decision taken that the commissioner would not have any role whatsoever in industrial relations matters?

**Mr. Brian Carroll:** I alluded to that in my opening statement. In industrial relations matters, Bord na Móna will continue to work with the joint industrial relations council established under the WRC and will work through the industrial relations structures that are currently in place.

**Deputy David Cullinane:** Perhaps Mr. Doyle can take this question. Is Bord na Móna engaging with the trade unions?

**Mr. Macdara Doyle:** They are engaging, as we understand it, in the joint industrial council internal process but the head representative of the Bord na Móna group of unions, Willie Noone, said here last week that that mechanism is not sufficient to meet the challenge required. The unions have repeatedly called for a forum, facilitated by the WRC, to be initiated and to be up and running. That is the proper place to deal with those issues.

**Deputy David Cullinane:** What is the Department's response to that?

**Mr. Brian Carroll:** I was before a committee last week as well where Bord na Móna gave evidence but it is not my place to comment on the internal industrial relations issues.

**Deputy David Cullinane:** What is the point about the just transition policy if everyone passes the buck? Mr. Carroll's Department is the line Department responsible for making sure that we have a just transition. We all knew that this was coming down the tracks for years, yet what do we see when two plants were closed prematurely but Ministers scrambling down to the midlands, money being made available in the budget, no clear plans, strategy or engagement, and no clear framework?

I welcome this Bill, which will hopefully provide some coherence if it is enacted. I am not hearing any urgency from the Department other than telling me what was in the budget and what might be put in place and what may happen. There is no sense of any urgency or of any clear strategy from the Department.

**Mr. Brian Carroll:** A very clear strategy is articulated in the climate action plan. On developments this year, there is a very real urgency in the pace at which Government made decisions and put these new funds in place, with the supports package and the announcement of the agreed terms of reference of the just transition commissioner. It is quite a coherent whole-of-Government response to the issues that have arisen in the midlands.

**Deputy David Cullinane:** I imagine Mr. Carroll appreciates the difference between consultation and being involved in decision-making. What the Government is doing here with the just transition forum, with which there are difficulties as well - is that it is all about consultation. What we need, and what Deputy Eamon Ryan's Bill is trying to achieve, and what the trade unions are saying, is that the stakeholders need to be involved in decision-making as opposed to not being consulted at all. Does Mr. Carroll accept that there is a frustration on the part of the representatives of the workforce of Bord na Móna, the ESB, and others, who need to be protected? Those trade unions are telling us that the architecture is not what it should be. Mr. Carroll, however, is telling me is that it is. Can he accept the frustration of the trade unions in this regard? What has he learned from what he heard from Ms King last week and from the trade union leaders here today that can result in changes, which will ensure that we get better at just transition?

**Mr. Brian Carroll:** I certainly hear the views that are being expressed by the unions here today and last week. The funds and the just transition commissioner have just been put in place and the terms of reference have just been agreed. The commissioner has clear and comprehensive terms of reference. He has not yet had a chance to go about doing his job. He will report quarterly to Government and the arrangement is to be reviewed after two years. It is hard to see how one can make an argument that a structure does not work when the structure has just been established and has not had a chance to operate as described in the terms of reference.

**Deputy David Cullinane:** Mr. Carroll has made my point for me. It should have been

established a long time ago. We are now asking these hard questions. It is our job to put those questions to officials and to deal with this because the preparations were not made and the strategies were not put in place earlier. It is not good enough to put it back on us and say that we cannot judge the Department on what is not in place. The Department did not put it in place. Everybody around this table knew that there would have to be a just transition element in what was needed to reduce our dependence on carbon. Everybody knew that for years so it is not good enough simply to say that it is not up and running. That is the point; it is not up and running. That is on the Department.

**Mr. Brian Carroll:** It will be running very shortly. There were particular events this year that accelerated the need to act, and I believe the Government has acted very quickly in response to those events.

**Chairman:** I have to move on to Deputy Chambers.

**Deputy Jack Chambers:** I thank all the witnesses for appearing before the committee. To follow up on Deputy Cullinane's point on the just transition task force, when did the Department decide to ignore the recommendations of the Oireachtas Joint Committee on Climate Action about establishing a task force and not a review group? Can the witnesses provide some detail on the decision to drop one of the key recommendations of the committee?

**Mr. Brian Carroll:** The climate action plan, by and large, takes on virtually all the recommendations of the Oireachtas joint committee. On the particular one the Deputy mentioned, in terms of what the Government is keen to do, it is something I said at the outset, there are always different proposals about how to solve a problem. Whether it is a task force or legislation, there is a shared view as to the outcome everyone wants to achieve. In terms of the Government exercising its function, it has made decisions regarding funding and structures it believes to be appropriate to meeting these challenges. If there is any departure from recommendations by the joint committee, that would not be unusual in terms of the Government listening to recommendations and then making policy decisions. Everyone shares an ambition to achieve an outcome that protects vulnerable workers and ensures there is fairness as we transition to a low-carbon economy.

**Deputy Jack Chambers:** Does Mr. Carroll believe the response from his Department has been adequate to protect those vulnerable workers? We have heard from the union representatives about how the livelihood of workers are at stake, that the data have not been collected on the actual impact of this and how we had public relations, PR, stunts last week pretending to engage with communities when it is clear the Government is behind the curve on this issue. Does Mr. Carroll believe the response has been adequate and is he certain that workers will be protected and there will be a just transition?

**Mr. Brian Carroll:** I believe the Government has put in place a comprehensive set of measures to ensure a just transition and to protect workers. I will not go through the funds announced because I listed them in my opening statement but I refer to the appointment of the just transition commissioner, a comprehensive terms of reference and the fact that the commissioner is about to embark on this work now. There were developments this year which brought forward these challenges and they came upon us more quickly than anyone would have envisaged.

**Deputy Jack Chambers:** I do not agree. This has been in the pipeline for some time. The fact that Mr. Carroll could not clarify when the Department was commencing work on this is another concern.

Mr. Carroll mentioned the just transition commissioner. One of the union representatives who came before the committee last week said that he spoke to Mr. Kieran Mulvey on his initial appointment and he has not heard from him since because of issues with the terms of reference. Why did the Department restrict the scale of engagement, in partnership with the commissioner, around this sensitive and just transition that needs to occur? What is the reasoning behind restricting Mr. Mulvey's partnership with the union representatives? When did the Department make that decision?

**Mr. Brian Carroll:** There are two parts to the answer to that question. First, there is no attempt to stop Mr. Mulvey engaging with the unions. The terms of reference explicitly require him to consult with all key stakeholders, including the relevant companies and the trade unions and workers' representatives. That is clearly in the terms of reference. There is no attempt to restrict Mr. Mulvey talking to the unions in those ways.

Second, in terms of the industrial relations, IR, piece, the view was that we have existing industrial relations structures and that they continue to operate.

**Deputy Jack Chambers:** It is clear there is a difficulty for the union representatives in that they do not have a proper engagement channel with the new just transition commissioner. The terms of reference have not reflected that in respect of mediation or partnering with the just transition commissioner. How does Mr. Carroll respond to that?

**Mr. Brian Carroll:** The terms of reference, which I have in front of me, say, among other things, that the commissioner will engage with all relevant stakeholders including, and I will not go through the list, the relevant trade unions and workers' representatives. It is explicitly stated in the terms of reference that the commissioner is to engage with relevant trade unions and worker representatives. The terms of reference also state that the just transition commissioner will not have a direct role in regard to industrial relations matters in Bord na Móna and that they will continue to work with the joint industrial relations council established under the Workplace Relations Commission.

**Deputy Jack Chambers:** Last week, Bord na Móna rejected mediation through the Workplace Relations Commission. There is no mediation with the just transition commissioner. What is there for workers in Bord na Móna?

**Mr. Brian Carroll:** I am not in a position to comment on the industrial relations issues-----

**Deputy Jack Chambers:** I know, but Mr. Carroll has outlined the available options. We know from the workers' representatives and from the terms of reference that there seems to be a vacuum in terms of engagement for the workers in Bord na Móna.

**Mr. Brian Carroll:** What I said was that within the terms of reference, the commissioner is to consult with relevant stakeholders-----

**Deputy Jack Chambers:** I know, but what does Mr. Carroll say to a worker who has no access to the WRC because that is being prevented by Bord na Móna? As the workers have no access to the just transition commissioner because of the terms of reference, where do the workers go? Where is their just transition?

**Mr. Brian Carroll:** Again, I do not want to comment on internal Bord na Móna IR issues but my understanding-----

**Deputy Jack Chambers:** With respect, the Department is responsible for the just transition.

**Chairman:** Allow Mr. Carroll to finish.

**Deputy Jack Chambers:** There is a departmental responsibility-----

**Chairman:** He is answering that particular question. I will let the Deputy back in again.

**Mr. Brian Carroll:** I understand that there is an agreement within Bord na Móna and a certain structure in terms of how matters escalate to the Workplace Relations Commission and then on to the Labour Court. There is a structure in there which is internal discussions, the joint industrial relations council, the Workplace Relations Commission and then the Labour Court. My understanding is that is the structure but I cannot get into commenting on internal IR matters in Bord na Móna.

**Deputy Jack Chambers:** Are the ICTU witnesses satisfied with that response?

**Mr. Macdara Doyle:** To our knowledge, all parties, except Bord na Móna, are willing to attend the WRC forum, and that includes the WRC. That is from direct contact we have had with them. Our fear would be, in this context, that we will get one shot at this and if transition becomes synonymous with job loss, economic decline, uncertainty and fear, rational people will back away from it and will have nothing to do with it. Rebuilding that trust will be a very difficult job.

**Deputy Jack Chambers:** Is Mr. Doyle satisfied with the Department's response regarding the terms of reference?

**Mr. Macdara Doyle:** It was stated here last week by the general secretary, Patricia King, that we are happy to meet and engage with the commissioner. However, it could be a very short meeting because as soon as we raise the elephant in the room and say, "That's great. Will you go down and fix the situation in Bord na Móna?", under the terms of reference we have seen, he will say that he cannot.

**Deputy Jack Chambers:** Before I conclude, on the issue of the Bill from Deputy Eamon Ryan, unfortunately, we are heading back to the Bermuda Triangle of Bills with this proposal, despite the-----

**Deputy David Cullinane:** There is a money message-----

**Deputy Jack Chambers:** Absolutely. Has there been any assessment of this Bill or a Government decision made on the outcome of this pre-legislative scrutiny process? Have discussions been held on where the Department believes this Bill will go? I might ask Deputy Eamon Ryan if he has had discussions with the Government on where this Bill will end up-----

**Chairman:** I might bring Deputy Ryan in at the end. Deputy Smith has indicated.

**Deputy Jack Chambers:** -----or will it rest with the many other Bills that have been introduced?

**Chairman:** I am sorry. To whom is that question directed?

**Deputy Jack Chambers:** The Department. Have discussions been held on whether the Government will accept or reject the Bill? Deputy Ryan can then enlighten us further.

**Mr. Brian Carroll:** The Government has not made any decision on that as yet.

**Deputy Jack Chambers:** Does Deputy Ryan want to respond?

**Chairman:** I will call Deputy Ryan at the end, if that is okay with Deputy Chambers.

**Deputy Jack Chambers:** Yes.

**Deputy Bríd Smith:** I thank Deputy Eamon Ryan and Sinéad Mercier, the researcher, for producing this Bill, which we fully support. Does the Department regard workers as stakeholders in the just transition process?

**Mr. Brian Carroll:** Yes, workers are stakeholders in just transition.

**Deputy Bríd Smith:** Mr. Carroll said, in answer to a question that Deputy Jack Chambers asked about the terms of reference, that the IR structures within Bord na Móna should continue to operate as they are. From whom did he get that view? Did that come from the workers, Bord na Móna, Mr. Donnellan, the chief executive officer, or was it something that Mr. Carroll made up in his imagination?

**Mr. Brian Carroll:** The approach being taken is to use structures to address the problem that is in place. I have gone through the terms of reference of the just transition commissioner a number of times and there are structures in place with the joint industrial relations council and the Workplace Relations Commission to deal with IR issues in Bord na Móna. I have highlighted the separate and distinct role that the just transition commissioner will take. He will engage with relevant trade union and worker representatives, among other stakeholders. That is to put him in a position to recommend to the Government, when that work is done, the essential elements of a just transition for workers and communities most affected. That includes any additional actions or measures deemed appropriate and optimal structures or processes to support co-ordinated delivery of the just transition in the midlands. It will be the role of the commissioner to develop liaison channels between institutions in the regions and central Government. There is quite a lot in the terms of reference that apply to what the commissioner is to do.

**Deputy Bríd Smith:** The Department takes the view that existing IR structures can continue to operate and deal with issues about redundancy, pensions, seasonal workers and the terms and hours of their work. Those are all IR issues but are they distinctively different to IR issues that arise as a result of the closure of peat production and, therefore, are they distinctly different IR issues to those that would come under the just transition that a commissioner is being appointed to look after?

**Mr. Brian Carroll:** I can say no more than I have said already. It is envisaged that the just transition commissioner will not have a direct role in industrial relations matters at Bord na Móna. Any such issues will be dealt with through the existing IR structures.

**Deputy Bríd Smith:** In other words, the role of the just transition commissioner is strictly limited in respect of the just transition that is delivered to workers, even though Mr. Carroll described workers as stakeholders.

**Mr. Brian Carroll:** We are talking about a distinct piece of industrial relations and industrial relation structures. The terms of reference for the commissioner are quite broad when it comes to delivering the wider or essential elements of the just transition in respect of having a coherent response, ensuring that other employment becomes available and that workers end up

being retrained as appropriate. Funds have been put in place for that through the budget. The just transition fund is in place and there is also money for a programme of retrofitting in the midlands. Everyone wants to see the same sorts of outcomes in the midlands.

There is also extra money being provided for peat rehabilitation. We are really talking about the structures to deliver the outcome that we all agree should happen. I am trying to outline the structures that the Government has put in place as a matter of urgency in response to developments this year.

**Deputy Bríd Smith:** I will try and come at the issue from a different angle. It is an IR issue when workers find themselves redundant, out of work, without seasonal work, proper redundancy or proper access to pension schemes as a consequence of the closure of peat production. A just transition, however, involves finding places for those workers in which they can retrain or maybe find another job. Do we forget about all the other things that put those workers in the position where they are out of work or need to be upskilled and say that has nothing to do with just transition? The transition happens, perhaps very unjustly, but the role of the just transition commissioner is to pick up the pieces by retraining them. Does that really cover the definition of a just transition commissioner?

**Mr. Brian Carroll:** I have gone through some of the supports that the Government is offering. I also listed the Departments that form part of the grouping chaired by the Department of the Taoiseach and that includes the Department of Employment Affairs and Social Protection. We have also mentioned the work of the NESC, which is looking to the future and talking about proactive planning for what will arise going forward.

As I said, there were certain things this year that escalated the exiting from peat and the Government has responded very quickly. I know that the Department of Employment Affairs and Social Protection and Government agencies are engaging closely with workers affected to make them aware of available retraining, education and employment opportunities and exploring opportunities for affected workers through schemes such as community employment and the rural social scheme.

I also know that the Department of Business, Enterprise and Innovation has a competitive regional development fund in the amount of €60 million administered by Enterprise Ireland and has allocated €3 million-----

**Deputy Bríd Smith:** Does Mr. Carroll mind if I interrupt because I only have ten minutes in which to ask questions?

**Mr. Brian Carroll:** What I am saying is-----

**Deputy Bríd Smith:** Mr. Carroll is using up those ten minutes and he is not answering my question. I want Mr. Carroll to say “Yes” or “No” and perhaps expand on that somewhat but I want him to answer the question. Does Mr. Carroll see the issues such as the loss of work, questions of pensions, redundancy and how temporary workers are treated as entirely disconnected from the next piece, which is what happens to those workers thereafter and whether they get retrained? Are those things disconnected or interrelated?

**Mr. Brian Carroll:** I see all the consequences of job losses that arise from transitioning out of fossil fuels and decarbonising being dealt with as part of the just transition.

**Deputy Bríd Smith:** If workers lose their pensions or do not get access to the voluntary

redundancy scheme or temporary workers are not treated properly, are those things not part of the brief of the just transition commissioner? The commissioner must be able to say that how such workers are being dealt with is unjust.

**Mr. Brian Carroll:** We have IR structures to deal with some of those consequences.

**Deputy Bríd Smith:** Mr. Carroll sees those as separate issues.

**Chairman:** Let Mr. Carroll finish.

**Mr. Brian Carroll:** We also have just transition structures to deal with other consequences.

**Deputy Bríd Smith:** Does Mr. Carroll see them as separate? He obviously does.

**Mr. Brian Carroll:** They are all parts of issues that must be dealt with and we have different structures for dealing with them.

**Deputy Bríd Smith:** Is it the case that the IR issues that I have spelt out have nothing to do with just transition, will be dealt with by IR and just transition is a separate piece?

**Mr. Brian Carroll:** Those issues will be dealt with through the IR structures.

**Deputy Bríd Smith:** Mr. Carroll, therefore, sees them as separate issues.

If Deputy Ryan's Bill was passed in the morning, would Mr. Joyce and ICTU be happy that it would deal with Bord na Móna workers, as well as other workers who may face loss of job because of decarbonising our work places down the road, in a just and fair way ?

**Mr. David Joyce:** We outlined in our opening statement that we think that if structures such as those envisaged in the Bill were in place, perhaps we would not be in the mess that we are facing in Bord na Móna in the midlands. Generally speaking, we are talking here about an architecture for delivering a just transition which we all agree is something we want to achieve. There is frustration on our side that, while the words "just transition" are bandied around quite a lot, nobody in government has come to ICTU, where the concept originated, and asked how we think it should be delivered. The Government should not only be talking to us, it should equally be talking to employers and communities but we are lacking a national dialogue as to how this is delivered. In the absence of that, the Bill is an impetus to that discussion and that is why we welcome it very much. It has the potential to address many of the issues that we have been discussing today and discussed last week. One of the key elements of a just transition is social dialogue and we, as representatives of hundreds of thousands of workers on the island, should be part of the dialogue in coming up with how we do just transition. We should not be just recipients of it but active participants in designing it and ensuring that it is delivered.

**Deputy Bríd Smith:** Just to be clear, Mr. Joyce, ICTU was never consulted on the terms of reference of the just transition commissioner.

**Mr. David Joyce:** Yes, that is true as far as I am aware.

**Deputy Bríd Smith:** Thank you. ICTU represents hundreds of thousands of workers.

**Mr. David Joyce:** We do.

**Chairman:** I call Senator Joe O'Reilly.

**Senator Joe O'Reilly:** I thank the Chair and welcome all our guests. Obviously, there is no conflict around the fact that we need this just transition. No reasonable person will challenge the proposition that we have to cushion, protect, retrain and give jobs to people, particularly in the case of the loss of the bogs in the midlands and then generally as we transition from fuels. That is not at issue. I would like to put the following proposition just to have it confirmed. Am I correct in saying there is a commitment of 100 direct and indirect jobs being created to retrofit homes in the midlands, 100 jobs through the National Parks and Wildlife Service, 100 new direct jobs and more than 150 indirect jobs in the development of renewable energy assets, 100 new jobs in recycling and potentially 150 jobs in the new green business projects and jobs in the restoration of the bogs? We would much prefer a situation where people got trained for work. Will all the machinery of the State be available for retraining? It is the last chance to saloon as we do not want anybody going on welfare, or being unemployed. In the very bleak scenario where that arises, people will be cushioned but they will get training. While we all support just transition and a just transition commissioner, for the sake of a balance, are the points I made valid?

**Chairman:** Sorry, Senator O'Reilly, but to whom are you directing your question?

**Senator Joe O'Reilly:** To the Department.

**Chairman:** I call Mr. Carroll.

**Mr. Brian Carroll:** Yes, jobs and retraining opportunities are at the heart of the Government's just transition plan. As to the number of jobs, 400 direct and indirect jobs will be created through retrofitting of homes in the midlands starting with social homes. Up to 100 jobs will be created in the National Parks and Wildlife Service. Bord na Móna will be prioritising job creation. There will be 100 new direct jobs and more than 150 indirect jobs involved in the development of renewable energy assets by 2023. There will be 100 new jobs in new recycling options and potentially another 150 to 300 new jobs in green business projects. Yes, Senator O'Reilly is correct in that regard. It is also correct that the full machinery of State will be activated to engage with the issues facing these workers. In my opening statement or somewhere in the questioning, I referenced the group chaired by the Department of the Taoiseach and the comprehensive involvement of all relevant Government Departments. Through their various agencies and fora, they are already active on the ground in engaging with the workers, so yes, the full machinery of State is being brought to bear on this to deal with the issues being faced.

**Senator Joe O'Reilly:** I thank Mr. Carroll very much for that clarification. Could I assume that workers who want and who need various educational and training opportunities will avail of Athlone Institute of Technology? Will the Athlone Institute of Technology specifically be marshalled in that regard along with the various educational institutions in the region? Are any steps being taken to harness it to assist people? If that is the case, there would need to be very real financial support and logistical support for people to avail of that. I am just interested to know whether the institute is being marshalled in that regard. There is a very fine institute there with very high calibre graduates. I am from that catchment area, and I have a son who is a student there. It is a wonderful institution. Is there a partnership or collaboration with the institute to assist the just transition?

**Chairman:** Would Mr. Carroll like to respond?

**Mr. Brian Carroll:** In the first instance, I should reference the just transition funds and the budget, which is €6 million. Decisions have yet to be made about the disbursement of those

funds, but those funds will be made available very quickly to support that re-education and retraining. Again, I know in the whole-of-Government approach, all relevant agencies and institutions are being marshalled and there would clearly be a role for Athlone IT given its location in the midlands.

**Senator Joe O'Reilly:** I am a former trade unionist and I chaired a trade union in my area. I am very strongly in favour of people's rights so that is not an issue. I wanted to put that on the record for the sake of balance. We have to protect people's rights through this process. I wanted to establish that that was happening. I put the following point to our guests and, very respectfully, to my colleagues. We cannot have it every way. If we are going to break eggs and make an omelette, we are going to have a difficulty. We cannot have the green agenda on the one hand and on the other hand expect no dislocation in the process. We have to protect people and families. I fit into all these categories and I represent people who fit into these categories and I have family connections with this area. What I am saying is that we need to get this right. We are either going to have the green agenda and tackle climate change or not. If we are going to do so, there is going to be dislocation. Obviously, we must mitigate and protect people in the process, but we cannot just maintain the *status quo* and still deal with climate change. Is that a reasonable proposition?

**Chairman:** I call Mr. Doyle.

**Mr. Macdara Doyle:** Not too long ago, Bord na Móna workers signed up to a plan that saw their jobs going by 2027 to 2028. They have already recognised the fact that peat is gone. They signed up to that and there is no issue there whatsoever. The only promises they have had so far have been promises about replacement jobs. They are vague and uncertain. We do not know when those jobs will come on stream. We do not know what pay rates will be paid. Will people be on the same rate of pay or less? Will people have trade union rights? Who will the employers be? Will the Bord na Móna workers who have left already, who are about to leave or who are being made redundant be guaranteed those jobs? We do not know if they will have first choice in respect of those jobs. In any transition process anywhere in the world where this has worked, replacement jobs are set aside for the workers in the industry affected. Our fear is that what is going to happen here is that new industries will be set up and the existing Bord na Móna workforce will be cast aside.

**Senator Joe O'Reilly:** I would respectfully say that that is speculative. I respect fully the crucial role ICTU has as a major social partner in preventing such a scenario. That is purely speculative. I do not want to be blasphemous about the doubting Thomas story in the gospel. We cannot just create evidence of the jobs in the morning. All there can be is earnestness of intention to create them. It is ICTU's role as part of the trade union movement to ensure, and to be a crucial social partner in making sure, there are bona fides in this area. I think there are bona fides. Those who want to tackle climate change recognise one has to tackle the corollaries and the unintended consequences. Would Mr. Doyle accept my point that there is no evidence yet of a lack of bona fides?

**Mr. Macdara Doyle:** The evidence is in a lack of advanced planning for the scenario we are seeing now.

**Senator Joe O'Reilly:** The climate emergency, tackling climate change, the climate action plan, the Oireachtas committee and the Citizens' Assembly are all very recent. They are all in transition. It is not like a seven-year economic plan where we deal with it as we go along. ICTU is the crucial social partner dealing with this, and it has to be dealt with. Anybody who

properly represents people and has respect for people is not for a moment suggesting there be a diminution of people's rights or a diminution of opportunity and believes that every citizen counts. My difficulty is that I cannot see how we can expect nirvana and a sort of *deus ex machina*, that almost everything will be put right and we will deal with climate change at the same time. If we are going to make an omelette, we have to break eggs and it is going to be a painful and difficult process. We have to have faith in each other. That is all I am saying.

**Chairman:** The gist of the concerns, from my reading of them, are around accountability of this commission to the Oireachtas, the Government of the day, be it this Government or a future Government, and to the Minister of the day and around cutting across other structures within the State when dealing with industrial relations. Would the commission, as proposed, have the power to direct a public or private company to carry out particular actions as long as those actions were in relation to the just transition? Are those powers limited or unlimited? That is the sense I am getting from one of the critiques of this Private Members' Bill.

**Mr. Brian Carroll:** My reading of the Bill, as currently drafted, is that it could direct a public or private entity to do certain things in relation to the just transition. The limitations are not apparent to me on my reading of the Bill.

**Chairman:** Is that in relation to accountability to the elected Government of the day?

**Mr. Brian Carroll:** Yes.

**Chairman:** We have to accept democracy and that there has to be some level of accountability. That would be a fundamental concern. I refer to the just transition commissioner and some of the concerns. Leaving aside the industrial relations matter, which is, as has been mentioned, part of another structure, are the witnesses confident that having Mr. Mulvey co-ordinate this overarching strategic vision for this just transition, which is in this early phase, will deal with that and with every facet to ensure we protect not only the Bord na Móna and ESB workers, but future workers? Are the witnesses confident that the just transition will fulfil its remit?

**Mr. Brian Carroll:** I am confident. Clearly we are talking about the just transition commissioner and that is a very important part of it. As I said, it is a whole-of-Government response, deeply embedded in the climate action plan, and it is through the group in the Department of the Taoiseach is marshalling all Departments to work alongside the just transition commissioner.

**Chairman:** Okay. I am going to bring in Deputy Ryan, sponsor of the Bill.

**Deputy Eamon Ryan:** On that point about compatibility, and we had an interesting discussion with the various trade unions groups on this, in the final draft of this we decided not to give that excessive power. We felt it was better as a mediation service. Section 37 states that where the commission has attempted to resolve a dispute referred to it under this section and such conference or the employment of those other means has not resulted in a resolution of the dispute, the commission shall notify the parties to the dispute and the Minister of writing of the fact. There is a reference back to Government at every stage and not a compatibility, and I believe that is appropriate because, as I said, this is a piece of a jigsaw which encourages long-term planning, partnership and engagement with all stakeholders. It is not a super authoritative stroke of a pen outlining what one shall do. This is what we need.

I refer to the variety of circumstances in which this could be deployed. I was just thinking about this in terms of where we started today. We started with the chairman of EirGrid, who is the former Secretary General of the Department, coming in. The committee will likely agree

his one key message, in terms of its work, was that more than anything else what it needs is to bring community together, to bring people along and to engage in an innovative stakeholder mediation process. That was his main message. That is a perfect example. The need to develop our grid is a critical piece of climate infrastructure. We have seen how it can go wrong and how it is difficult for companies sometimes to manage that mediation process with communities and-or workers.

We started today with a really good example of how this piece of mediation architecture could and should work. As I said, we are going to have to come back to other pieces of the jig-saw before the Government makes a decision on whether it will issue a money message or not, because it seems clear we have a majority in the Oireachtas supporting this on Second Stage and, I hope, on Committee Stage. We need that review from NESC by the end of the year as it would be very useful. As I understand from Mr. Carroll, it would include an example of other areas where this sort of mediation service or a just transition commission could be deployed. It would very useful because we would have a better idea of what has happened in the midlands in terms of this. It is very clear, as we heard last week, that resolution of this difficulty in the midlands is not something that can wait months. It has to be resolved within weeks. If we can come back early in January or whatever appropriate date-----

**Chairman:** As agreed earlier, we will be inviting IBEC and other groups in.

**Deputy Eamon Ryan:** We should invite in any other stakeholders. I really appreciate the Department of the trade unions coming in today. It has been a useful discussion.

**Senator Joe O'Reilly:** Will the transport companies be invited in?

**Chairman:** Yes. I have asked the members of the committee to email their suggestions on the stakeholders they believe need to be present in relation to this Private Members' Bill.

Deputy Ryan said he was satisfied with the accountability back to the Minister. Would Mr. Carroll agree with that?

**Mr. Brian Carroll:** We would need to look at that again. We have not expressed a legal view on this yet.

**Chairman:** Okay. Thank you. If there are no further questions, on behalf of the committee I thank you all for coming in this afternoon. All your opening statements will be published on our website.

The joint committee adjourned at 5.38 p.m. until 1 p.m. on Tuesday, 3 December 2019.