DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓTHAÍ FOSTAÍOCHTA AGUS COIMIRCE SHÓISIALACH

JOINT COMMITTEE ON EMPLOYMENT AFFAIRS AND SOCIAL PROTECTION

Déardaoin, 31 Eanáir 2019

Thursday, 31 January 2019

The Joint Committee met at 10 a.m.

MEMBERS PRESENT:

Deputy John Brady,	
Deputy Joan Collins,	

In attendance: Deputy Paul Murphy.

DEPUTY JOHN CURRAN IN THE CHAIR.

Business of Joint Committee

Chairman: Members are welcome. Apologies have been received from Deputy Bailey. Before we begin, I ask my colleagues to switch off their mobile phones. I propose that we go into private session to deal with some housekeeping matters before resuming in public session. Is that agreed? Agreed.

The joint committee went into private session at 10.06 a.m. and resumed in public session at 10.21 a.m.

Bogus Self-Employment: Discussion

Chairman: I welcome our witnesses this morning: Ms Patricia King, general secretary of the Irish Congress of Trade Unions, ICTU; Mr. Billy Wall, chair of the congress construction industry committee; Mr. Seamus Dooley, secretary of the National Union of Journalists, NUJ; and Mr. Brendan O'Hanlon, assistant general secretary of Fórsa. I will first invite our guests to make their presentation, and will then invite members to put questions. I remind members to confine their initial rounds of questions to about five minutes.

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. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the 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 switch off their mobile phones.

I invite Ms King to make her opening statement. All witnesses are welcome to contribute during the questions and answers session.

Ms Patricia King: I thank the Chairman and committee members for the invitation to attend today's hearing. I am joined by Mr. Billy Wall, chair of the congress construction industry committee and general secretary of the Operative Plasterers and Allied Trades Society of Ireland, OPATSI. Unfortunately, Ms Karan O'Loughlin could not be with us today, but Mr. Seamus Dooley, national secretary of the National Union of Journalists, and Mr. Brendan O'Hanlon of Fórsa are with us.

The practice of misclassifying workers as self-employed has been a problem in Ireland for a number of years. When a worker is misclassified, there are very negative consequences for him or her and a significant financial loss to the State. However, there are very significant benefits to the person who in normal circumstances would be his or her employer. This incentive has led a to number of employers in a number of sectors of the economy seeking to misclassify workers.

There are very negative and serious consequences for workers who are misclassified as self-employed. Because their employer is not required to pay employer's PRSI, they are not entitled to the full range of social welfare benefits. They are also denied access to the suite of employment rights which are available under Irish and European employment rights legislation. There are also very serious consequences for the public finances and the Exchequer. In the following sections of this submission we will seek to quantify the loss of tax revenue that arises from workers being misclassified. However, for the employer who forces a worker to work as self-employed, there are very considerable financial benefits.

The Irish Congress of Trade Unions has been highlighting the problem of bogus self-employment for many years. We have encouraged Government and its agencies to act to resolve the issue. However, any action which has been taken has failed to correct the problem. Over the past year, two significant reports have been issued which have sought to identify the extent of the problem. In January 2018, the Department of Employment Affairs and Social Protection and the Department of Finance published a joint report entitled The Use of Intermediary-Type Structures and Self- Employed Arrangements: Implications for Social Insurance and Tax Revenues. The Revenue Commissioners were also involved in the preparation of the report. This report showed that in the period between 2007 and 2017, there was an increase in the level of self-employment in seven of the 14 major sectors of the economy which make up the CSO NACE series. The report also highlighted the very high rate of self-employment in the construction sector when compared with other sectors. The report also examined the potential loss to the Exchequer arising from the misclassification of workers as being self-employed. The following is a direct quote from the report:

> Although illustrative, the data does indicate the potential loss to the exchequer for a person engaged in work at a rate equivalent to the average industrial wage (€37,500) amounts to €5000 per annum. This rises to €8000 per annum at a payment level of €60,000 and €15,000 per annum at a payment level of €100,000 per annum.

The annual report of the Comptroller and Auditor General published in September 2018 also examined the issue of self-employment, with a specific emphasis on PRSI contributions by the self-employed. As part of the report, the work of the special investigations unit of the Department of Employment Affairs and Social Protection and the joint investigations unit, JIU, is highlighted. The report notes that, in 2017, the JIU initiated a campaign specifically focused on the construction sector. As a result of this activity, €60.2 million was recovered by the Revenue Commissioners and nearly 500 subcontractors reclassified as employees. The Comptroller and Auditor General concluded that because there is no employer PRSI contribution for workers who are classified as self-employed, this creates an economic incentive for certain individuals to be improperly treated as self-employed. The report went on to make a number of recommendations, including an increase in the level of compliance activity.

The CSO labour force survey employment series shows the numbers of employees and number of self-employed people across a range of employment sectors. In particular, the number of self-employed people without any employees is detailed. For example, in quarter 2 of 2018, the percentage of people classified as self-employed with no employees in construction was 24.3% while in transportation and storage it was 14.8%. This compares with 3.9% for industry in general. The CSO data also shows that the number of workers classified as self-employed with no employees in construction has increased by more than 6,000 in the year to quarter 2 of 2018.

The issue of bogus self-employment was recently discussed in the Oireachtas as part of the

debate on the Employment (Miscellaneous Provisions) Provisions Bill 2017. During the debate on Wednesday, 19 December 2018, the Minister for Employment Affairs and Social Protection made the following comments: "The one thing I can safely say is that we are all in agreement regarding the fact that there are people in this country who are made bogusly self-employed through no fault or acquiescence on their part." She also stated: "I totally accept and appreciate that we have a difficulty in this country with people who are bogusly self-employed." Congress believes that the problem of bogus-self employment is a very significant one and needs interventions at a number of levels.

I want next to go through some ideas that we have developed which, in our view, will go a significant way towards resolving the issue. Congress is calling for the following control measures to minimise risk and to detect the fraudulent misclassification of workers as self-employed. Workers should only be permitted to register as self-employed if they satisfy agreed criteria. In 2012, Revenue discontinued the old paper-based system for the registration of contractors and moved the process online. Congress is firmly of the belief that all semblance of effective monitoring and control disappeared with the move online. Under the new system, an employer or principal contractor can go online and designate any number of workers as self-employed without challenge. Congress recommends that, at a minimum, workers without a taxation record no longer be permitted to register or be registered on their behalf as self-employed unless they satisfy strict criteria laid down in an agreed code of practice. Another measure we recommend is to make principal contractors liable for employer PRSI for all sub-contractors. There is no employer contribution for class S PRSI contributors. In his report of September last year, the Comptroller and Auditor General noted, "This creates an economic incentive for certain individuals to be improperly treated as self-employed". Indeed, earlier in the year the Department of Employment Affairs and Social Protection and the Department of Finance, in a joint review of bogus self employment and the implications for social insurance and tax revenues, recommended reducing the differentials in social insurance rates in order to reduce the economic incentive. Congress is encouraged by comments by the Minister, Deputy Regina Doherty, in an interview with *The Irish Times* earlier this month in which she signalled her willingness to introduce legislation for a new so-called "contractor's tax" in line with international best practice, whereby contractors are made liable for employer PRSI on behalf of workers they contract to provide work or services. Congress looks forward to engaging constructively with the Minister and her officials on the operational and design features of this important amendment to PRSI.

The Workplace Relations Committee, WRC, and Labour Court should replace the Department's scope section in reviewing reported misclassifications. It is the firm view of congress that the safeguards in place for workers incorrectly classified as self-employed are not timely or sufficiently robust. Requests to have an employment investigated to ensure the correct class of PRSI is applied are currently dealt with by the scope section of the Department of Employment Affairs and Social Protection. Congress calls for the reviewing of reported misclassifications to be moved to the WRC or Labour Court.

Revenue's capacity for PRSI non-compliance interventions should be strengthened. Both the Department and Revenue engage in compliance activity in relation to PRSI. Targeted investigations recently undertaken in the construction sector by the two detected a significant incidence of misclassification. Congress calls for the necessary resources to be made available to increase the level of compliance activity.

Unpaid PRSI should be backdated in full from employers found to have misclassified work-

ers and a determination finding that a worker's employment status has been incorrectly classified should always result in PRSI contributions being backdated in full. A universal cap, or case-by-case limit, on retrospective payments not only serves to undermine it as a deterrent to rogue employers, it also leaves the worker's social insurance record unnecessarily incomplete.

We should legislate to clearly define the terms "worker" and "employee". The terms "worker" and "employee" are not defined in Irish employment law. This results in ambiguity on how to determine whether to engage workers on a contract for service or directly as employees, increasing the risk of misclassification. While a common understanding is currently being negotiated at European level, congress calls for domestic legislation that clearly defines the terms be introduced without delay.

We have included, as an attachment to this submission, a one-page document which seeks to summarise the points made in this submission. I would like to thank members for their attention and we are happy to take questions.

Chairman: I ask colleagues to confine their questions to five minutes. I will come back to them again for a second round.

Deputy John Brady: I welcome the witnesses and thank Ms King for her very informative opening statement. The one-page summary is very useful and gets to the point of the problems the State is experiencing in missing out on PRSI contributions. She said congress believed the problem of bogus self employment was very significant and I believe this to be true. It contradicts what officials from the Department said at a previous hearing, which was that they believed the problem of bogus self employment was not extensive. I side with the witnesses in believing it is endemic across the Irish economy, particularly as we see certain sectors, such as construction, pick up.

I was reading a paper prepared by congress in 2015 entitled False Economy. The Irish Congress of Trade Unions estimated that the State was losing roughly €80 million in PRSI contributions on an annual basis, amounting to €640 million between 2007 and 2015. This shows it is widespread across many sectors. Construction and other fields have picked up since 2015, so would the figures have increased in the intervening period? What might the estimated loss to the State be of PRSI contributions now? Has ICTU done any further analysis?

Ms King said that ICTU had called on the Government and the Department to address the issue. What steps has ICTU taken? Has it met with the Department or the Minister or did it meet with previous Ministers? We heard a lot from the Department at our previous meeting but I do not believe the Department is sufficiently resourced to seek out bogus self employment. Huge resources were put into the social welfare cheats campaign and I have my own views as to what the purpose of that was. It coincided with an election campaign within Fine Gael and maybe one person was trying to show he or she was more right wing than the other. I do not see the same campaigns being rolled out for what is a significant amount of cheating that is taking place in the area of PRSI contributions, with the resultant denial of workers' rights and entitlements. Does ICTU think the Department is sufficiently resourced to seek out bogus self employment? Would ICTU like the WRC and the Labour Court to take on the responsibility for reviewing reports of bogus self employment?

The opening statement made a number of references to the construction sector and pointed out that 14.8% of people in the transportation and storage sector were self employed. What other areas have significant problems? Philip Boucher-Hayes has done a lot of work on the

State broadcaster, RTÉ, and there have been several internal reviews of work practices in that organisation. These issues seem to be widespread in that sector too. Are there other areas where there are significant problems with bogus self employment? How often do ICTU members raise issues of bogus self employment with the leadership? Is it done on a daily basis?

The recommendations ICTU is making are key to addressing the problems. One is to make the principal contractor liable for employer PRSI. At what rate should this be set? Ms King said that, in 2012, the paper-based registration of contractors was discontinued in favour of an online process. Do the delegates think there has been a significant escalation since 2012 owing to that single measure? Does the evidence seen by them show that it has resulted in a significant increase in the level of bogus self-employment?

Chairman: I hope we will have an opportunity to have a second round of questions.

Deputy Joan Collins: I thank the delegates for appearing before the committee. I think the first case of bogus self-employment was taken to the then Department of Social Welfare in 1993 by couriers and concerned the classification of their job; therefore, the issue has been in the ether for nearly 26 years. It moved across a cross-section of workers in the construction industry from 2000 onwards. The reason we are having this discussion is the committee wants to investigate how widespread bogus self-employment is in industry because we are told by the construction industry that there is no problem. We were told that the response to the advertisement last year was not significant and that it was not really an issue, yet we hear on the ground that it is a significant issue across the board. Where do the delegates see bogus self-employment and in what types of job? Have they taken many cases to the scope section of the Department. The major problem lies in the fact that while the scope section does actually make adjudications in favour of employees, people must take cases on an individual basis and cannot take them as part of a broad group. It is when it gets to the social welfare appeals office that things change. More often than not, that is where workers lose out and employers gain. We must carry out a really good investigation into this issue and be able to produce a report stating things need to change. Legislation was proposed by Fianna Fáil and the last Bill we had before Christmas was mentioned, but we want to bring forward robust legislation with the support of the unions and, obviously, the Minister. Where did the delegates see bogus self-employment begin in their industries? In which areas is it prevalent? How many cases have they taken? What is their opinion on the scope section and the social welfare appeals office? That is why they are proposing that cases be taken out of the hands of the Department and given to the Workplace Relations Commission. Will they fill us in on the thinking behind that proposal?

I will leave it at that because many questions have been asked. I want to get deep down into the industry to see where bogus self-employment is occurring.

Senator Alice-Mary Higgins: I thank the delegates for joining us and their presentation and advocacy work on this issue which has been very important. In some cases, they are representing those who may not yet be or who may not be in a position to be members of unions, recognising that there is a cohort of workers who are affected. What has come across very strongly - I thank the delegates for making it so clear - is that it is not simply the case that the deterrents against employers using bogus self-employment are inadequate but that there is an incentive for them to do so. Will the delegates comment on the question of there being a perverse incentive? Are we in danger of creating the wrong incentive whereby there is a reward for employers? I think the delegates made that very clear.

In terms of a deterrent, the significant lack of prosecutions is very striking. I think about 21

cases have been taken in the past few years, none of which was taken in 2017, despite the fact that such a significant cohort in the main areas of work in the State are affected and that we are looking at a rate of almost of one quarter of those involved in construction. Will Mr. Wall comment on the construction sector? It was interesting to hear actions taken by the Revenue Commissioners in 2017 discussed. A large number of subcontractors were reclassified as employees, yet we learn that there are now 6,000 more in that sector. Will Mr. Wall comment on this because it helps us to think about how we can really interrogate sectoral investigations? One of the things we discussed was individuals taking cases who might or might not receive satisfaction. A major concern was that individual cases were not extending into sectoral analyses and wide-scale change. If one employee of a company engaged in a particular type of work brings forward a case, it should trigger a wider review of that company and sector. Will the delegates talk about having that investigation and indicate whether it did or did not have a ripple effect?

The loss to the State is very striking. It is not simply about those who may end up being dependent on other forms of income - the loss to the active economy - but also pensions. Will the delegates comment on the long-term impact of bogus self-employment, particularly when we know that we are likely to move towards a requirement to have 30 pension contributions to qualify for a full pension? It is sometimes touted that the number of contributions will be 40, but I am hopeful we will be able to keep it at 30. I imagine that it is putting a pension out of reach of a significant cohort of persons.

On the suggestion made by the Minister about making principal contractors liable, while I can potentially see some positive aspects in that quality employment should be reflected in all contracting and tendering processes and that there should be an expectation of quality employment and progression in it, I have questions and concerns. Perhaps the delegates might comment specifically on public procurement and how we should ensure it does not contribute to bogus self-employment. I would really appreciate it if they could identify two or three areas of public procurement where the issue could be tackled because there is significant scope to tackle it. There is potential in providing quality public employment, but in the context of the specific proposal, I am concerned about liability. Under the proposal, is there a danger that an individual renovating his or her home would become the person liable for PRSI such that employers would almost get off the hook again and individuals would be held liable? It is very difficult for an employee or somebody named as a sole contractor who is, in fact, an employee to take action against individual small contractors rather than those for whom he or she is effectively working. I have concerns about that proposal and I am worried that it would distance us.

My last two questions concern the Workplace Relations Commission and the Labour Court. The idea of bringing them into the process is very positive. We have seen that decisions made by the scope section are appealed to the Department. We have heard about cases in which people are having difficulty because they are almost involved in two processes at the same time in trying to navigate the Labour Court and the process of registration at the same time. Will the delegates comment on this?

My last question is for Mr. Dooley who I know has worked extensively with many people involved in the arts. I spoke last week about precarious employment in the arts, where the problem is endemic. Have the Competition (Amendment) Act which was brought forward by my colleagues on the committee and collective bargaining possibilities assisted in tackling that issue in that sector?

Senator Gerald Nash: I wish to tease out a question with Mr. Dooley later in the proceedings. My initial appeal to the delegates is not to put a tooth in it and to be very clear about what

the practice involves on the ground. Without putting words in the mouths of colleagues around the table, it is fair to say Members of the Oireachtas are very clear in their view on what needs to happen in providing for more significant deterrents and more legally robust provisions to tackle in law the practice of bogus self-employment. It is fair to say the Minister, her officials and officials of the Department of Finance and the Revenue Commissioners may take a different view on the approach to be adopted in dealing with the level of bogus self-employment, but I am very clear on it. The practice of bogus self-employment amounts to nothing short of fraud. It is a fraud on the State and the taxpayer; in my clear opinion it is a matter of corruption on a mass scale. The State can have all the inspection regimes, investigation systems and deterrents that it wants but the numbers engaged in bogus self-employment are growing. The figures are very clear and it is not just a phenomenon exclusive to the construction sector, where it may be most apparent and members might see it most clearly. We know the practice is endemic in the transport sector and information technology, and it is growing in legal and financial services as well. It seems the legal deterrents just are not there.

I agree with Ms King that we need clear legal definitions anchored in primary law to indicate very clearly the difference between employment and self-employment. We could learn something from the legislation on which my colleague, Senator Bacik, and I worked with the National Union of Journalists, SIPTU and ICTU, namely, the Competition (Amendment) Act 2017. I would appreciate the view of witnesses in terms of what we can learn from that and how we can apply some of those provisions to the broader population to try to deal with this issue and the wider consequences of the gig economy, including implications for people in employment.

Do witnesses agree that we need to treat PRSI cheats the same way we treat tax defaulters? They will be aware that legislation I developed and which got through Second Stage last year is attempting to wind its way through the Oireachtas. I see the process as providing more significant evidence to compel the Minister to move on that legislation, as we need deterrents and clear legal definitions in law. That proposed legislation would insist that we treat PRSI cheats the exact same way as we treat tax defaulters. This should be treated as a criminal act and we should provide for criminal sanctions and ensure that we can recover the PRSI sums lost to the Exchequer. We must ensure there are more serious fines in place. As I understand it, currently the fine for not paying the appropriate level of PRSI is approximately €3,000. I cannot identify a single case where somebody has been jailed for not paying PRSI and for pulling the wool over the eyes of the taxpayer and the State and essentially defrauding the country.

There absolutely must be a stronger role for the Workplace Relations Commission, WRC, in this process. As witnesses are aware, I introduced a provision in that legislation that passed Second Stage last year to provide for that stronger role. I am really interested in Mr. Wall's views on a greater function for the WRC in determining employment status. I know that as the representative of construction workers, he and people like Mr. Paddy Kavanagh of Connect trade union have a number of cases that have been going through the system. There have been very interesting determinations from the WRC. I would like to tease that out with the witnesses to see the implications in that regard.

I have a question for Mr. Dooley with reference to the Competition (Amendment) Act 2017 and what we can possibly learn from it and specifically the transposition of definitions and characteristics relating to employment and self-employment into broader legislation. The Competition (Amendment) Act 2017 applies to session musicians, freelance journalists and voice-over actors but it also provides a route to collective bargaining for very exposed freelance workers. I

would like the witnesses to relate to the committee what progress the union movement is making in trying to organise very vulnerable workers. That might provide another fix for addressing some of the worst excesses of these kinds of practices.

Will Mr. Wall tell us about his experience in addressing the skills deficit in the construction sector? In my area, I know from speaking with people in construction unions that it is proving very difficult to attract apprentices into the system because they have no guarantee of permanent and pensionable employment. That is something they should be entitled to expect, given the skills they will develop and the requirements this economy has for skilled construction workers in future. Will Mr. O'Hanlon elaborate on his experience and that of Fórsa and the Irish Air Line Pilots Association in trying to organise pilots forced into positions where they are involved in intermediary-type arrangements by some airlines to allow them to work?

I have a question for Ms King. It has been said this practice really amounts to illegal State aid. It queers the pitch competition-wise by allowing some rogue employers to take all the benefits and it leads to an imbalance in competition in the sector. As Mr. Wall and others know, there are some good construction employers who will engage in sectoral employment orders and so on and they want to retain and recruit quality staff and provide them with the basic legal requirements but others will not. It could be argued that the growing tolerance for bogus self-employment amounts to something akin to a illegal State aid. I would appreciate ICTU's view on that.

Chairman: Before giving the witnesses an opportunity to respond, I note that a number of people have spoken about how to make it more difficult for employers to get away with this, including with greater fines. I have a concern in this regard, as the Department is unearthing a relatively small number of cases. The witnesses have specifically spoken about the WRC and Labour Court replacing the scope section and we should have a look at that. I specifically refer to the following numbers. In 2017, the scope section made over 1,000 determinations; the exact number was 1,097 decisions. Of those, 138 resulted in people being determined as class A. The Department's wording was that 35 could be described as "disputed" employment or self-employment cases. The rate of appeals in any given year is 5% to 10% and approximately 20% are overturned. The figures for what was determined as class A by the scope section were relatively small.

I refer to the evidence given at the committee by the Department relating to inspection work etc. The representatives stated that the Department, in conjunction with the Revenue Commissioners, did a number of inspections in the construction and other sectors in the west in the second half of May 2018. They indicated that the focus was on establishing correct insurability class and on challenging any cases where dubious self-employment subcontracting was suspected. Leaflets outlining the false self-employment campaign were issued to the main contractors and others as considered appropriate. The joint initiative special investigation unit inspections were undertaken in Galway city on 10 May on three substantial sites. A total of 163 people were interviewed; ten of these workers were identified as self-employment contractors or subcontractors, of whom just one was supplying labour only. A follow-up investigation regarding insurability is under way in this case. Although not a determinant in the overall scale of the matter at national level, the result of the inspection yielding just one suspected case of false self-employment is consistent with the data indicating that false self-employment may not be as common as the prevailing narrative suggests, according to the Department.

Has the joint investigations unit of the Department and the Revenue Commissioners the capacity to unearth and determine these types of cases? Has the scope unit the capacity? The

figures they are unearthing are relatively small in comparison with the narrative we are hearing about construction or transport, for example. The scope section does not seem to be unearthing the figures we believe it should be on an annual basis. Will the witnesses comment on that?

Ms Patricia King: I thank the members for their questions. I might break it down into a few headings to address the questions as accurately as possible. First was the question of whether bogus self-employment is cheating, and the answer is "yes". We can then consider the questions on the amount involved. As for potential loss to the State, members may be happy to know they do not have to rely on our figures. I suggest they look at the Comptroller and Auditor General's report from November 2018. I will match that with figures from the Central Statistics Office to give the committee an estimate of what it could be looking at in this regard. We have been going around the houses with this. I have been associated with the issue for more than 15 years, but the Competition Act that we got through took 12 years. Any such campaign is a long haul. The Comptroller and Auditor General said that a person on €100,000 who is paying tax and PRSI in the normal way would have a yield to the State of €44,600. The take for the State from a self-employed person would be €29,648. The take to the State for a person operating through a company and so on would be €29,900. The difference between a PAYE contributor and the self-employed or company person is €15,000 per individual worth €100,000. Let us consider one sector for example. I picked the sector that shows the biggest figures. I went to the CSO and asked it to prepare those figures specifically for this purpose, because I knew we were coming here and I wanted the figures this committee was going to hear to be as accurate as possible. The CSO did that, in fairness. The sector with the highest number of people who are self-employed with no employees is construction. This is a big indicator. If we take the €100,000 figure and the €15,000 loss per person, we can multiply it by 32,000 workers. It would not be entirely correct, however, to use the whole 32,000 because some people are genuinely self-employed with no employees. I married one of them so a few of those could be removed as engineers, architects and so on fall into that category. I always have to be careful when I say that because I usually have to go home. The 32,000 figure for self-employed with no employees, with a €15,000 difference if they were all earning €100,000, would be a loss to the State of €480 million. I do not have an accountant's background but it might be safe to divide that figure in two, so one is looking at a €240 million loss to the State just in one sector, in both PRSI and tax. This is not just a PRSI problem, it is also a tax issue. A Senator urged us to be stark and straightforward. By any standard, this is a potential huge financial loss to the State, in my judgment. I did not make up all of those good, solid indicators of figures; the Comptroller and Auditor General was bold enough to put this in the report. People have a strong respect for the Office of the Comptroller and Auditor General and what it does on behalf of the State. This represents one very strong indicator from just one sector.

I will move on and draw that into the question about public procurement. I am very glad that question was asked because it is something I have tried to raise many times but in certain quarters people look at me as if I have lost the plot or as though they do not understand what I am saying. I will give an example to the committee and will stick with the construction industry. If there is to be a big public procurement project as part of Project Ireland 2040, with lots of taxpayers' public money to be spent on something like roads, hospitals, schools and so on, it is essential to get it right. In the case of a big project with a donkey load of taxpayers' money to be put into it, I have asked what is there to stop the scenario I will now outline. A contractor tenders for a big job on the basis of the following criteria: all the workers will be directly employed; all the workers will be paid the rate for the job through the sectoral employment order, the legal basis for which was passed by the Houses of the Oireachtas; and the quantity surveyors or the people who put together all the figures put in the price to the State for doing

the job with everybody on the project to be directly employed and everyone to receive the rate. This will be the cost to the State, and this is what the State would want to see happening. The contractor gets the contract, goes on site and the job starts to happen using publicly procured money. I would have a big question mark over whether all the jobs on that site are direct and whether all the jobs are paying the sectoral employment order rates. If they are not, the State has committed to pay this price for the contract to be concluded and the contractor will get all that money. What is the difference now and where does the money go when these workers are no longer employees and the contractor is not paying the PRSI? The contractor has charged the State for this and has charged the State for paying the workers the proper rate. I know of no mechanism for anyone to go out and check to see if this is the case in such projects, yet this has a big potential financial loss to the State if it is not monitored. When I say this, very few people actually take this on, but it is another feature. The members asked about the losses and in our judgment there are two major potential areas of loss that the State could put right if it had proper procedures in place. That is one piece.

I am taking the lead from Deputy Brady's questions because he touched on all the topics that were also raised by other members. The question was asked about if we are sufficiently resourced. This also ties into the question asked by the Chairman on the scope section. I will make a comparison. Reference was made to the contribution from the Department when its representatives appeared before the committee to answer questions, during which they spoke of the approximately 1,000 determinations and so on. If one considers the figures related to the activities of the joint investigations unit and the special investigation unit - the combination group the trade union movement sought to put together way back - when that investigation happened there were 5,017 interviews in one year in that sector. They got €60 million in tax back, 484 subcontractors were reclassified and 749 individuals were re-entered as employees. The Comptroller and Auditor General said that it was a 24.1% rate of misclassification and that there was a significant difficulty in that sector. If one matches this type of misclassification across all sectors, I rest my case with regard to productivity levels in that regard. The problem is that we are told there are 117 people and 17 members of the Garda attached to the whole investigation unit but to be fair to the scope section in the Department, we believe the resources are not there.

Chairman: I ask everyone here to check their phones because they need to be in flight mode or switched off. It interferes with the recording and the broadcast of the meeting.

Ms Patricia King: Resources are deficient everywhere in this regard. They are deficient at the WRC as there are some 57 labour inspectors for the entire economy. Within the scope section, there are these 117 people utilised to do this work between the joint investigation units and the scope section of the Department itself. Some 146,000 people are employed in construction with 32,000 of them declared as self-employed. How can 54 labour inspectors in the investigation unit and the small number of people who are directly employed in the scope section to counter that? Why would people not come to the view that this can continue to happen and nobody will deal with it? We talked about the paper system and the online system. At the moment a contractor fills in all the details online, classifies workers as self-employed and nobody questions it.

One of the reasons is very clearly highlighted in the Comptroller and Auditor General's report. The Revenue Commissioners do not view themselves as having any role in questioning any of that; they are mere collectors of the money into a fund and they pass it on to the Department of Employment Affairs and Social Protection. However, they have no role in questioning. Apparently every now and then there are telephone calls between Revenue and the Department

of Employment Affairs and Social Protection if trends are apparent. That is how the system operates.

We felt that under the paper system, people were going through the papers and something might be picked up, but actually it is not any stronger of that. Overall Revenue has no function. I met the chairman of the Revenue Commissioners who is a very nice man who talked to us and so on. He was very clear that the Revenue Commissioners' function is to collect it. They do it because it makes it easier for the State to collect the money in that way, but they do not believe it is their job to question any of that. That is in the case of PRSI. They have a different view on income tax because they have a different role altogether in that area. We believe there is dysfunction in that regard. Does it not suit those who utilise it to have that dysfunction? They are all operating based on that dysfunction because they believe they will be able to get away with it and nobody will stop them.

The other big prize is contained in the appendix we provided to the committee. Apart from the big economic incentive of not having to pay the employer PRSI at 10.9%, the employers divest themselves of all employment law responsibilities. Therefore, they do not need to deal with that gang called the trade union which is looking after these people. Apart from their social welfare contributions which will affect their pensions and damage their chances of income at a later stage in their lives, it is harder to deal with an issue about holiday pay or their employment on a site. Why would the contractors not want that? Is that not the panacea they look for? From that point of view, this is highly imbalanced and leads to all sorts of difficulties that my colleagues will outline to the committee on if it is building sites or any of the other areas where this mechanism is utilised. The resources are not there and the State will need to make a decision about that.

I take the points made about the proposal relating to the end user that could be introduced. If I understand it correctly, I think it is a bit of a cop-out because it would allow the contractor to put the cost back on the person getting the job done. We should be able to classify people properly. Workers deserve to be classified correctly. We should be able to do that and have a system that supports that rather than this stuff.

The other option that is coming, which is somewhat welcome, is the issue of drawing in the contractors to pay more money. However, at the moment the proposals coming from the Government - indeed decisions have been made in respect of the self-employed - have severe implications for the Social Insurance Fund in itself because the self-employed pay 4%. That fund is under severe pressure with 70% being paid out in State pensions to people who have reached retirement. The most recent actuarial review of the fund suggests it could be in severe financial difficulty by 2035. Why would it not be in difficulty if one group is offered all the benefits for 4% while the rest of us can only be in it if we have an employer to match our 4% with a further 10.9%? There are big issues all around.

In 2017 the Department of Finance tax strategy group made a recommendation that the self-employed contributions should be proportionate with the benefits they would get. It estimated that proportion to be a 12% contribution. Clearly there was a decision made to have a proportionate contribution into the Social Insurance Fund from self-employed people. I am slowly doing away with my chances of going home peacefully. If there is a chance to get self-employed people to pay 12%, which is regarded as proportionate, then the economic incentive for employers would lower greatly because everybody would have to pay this 12%. Therefore, these people bogusly classified as self-employed instead of paying 4% would actually pay 12%. That would be significantly different. I agree with the Minister if that is what she is proposing.

In other words, if she is talking about setting the rate economically, then economically it would be a disincentive rather than an incentive. I believe that deals with the perverse incentive. The policymakers need to do considerable work to put that right.

I have dealt with the financial piece, the public procurement, the perverse incentive and the resources. There is some hope for the EU directive although the phrase about time running out seems to be used for everything now. If the transparency and predictable work directive were to come through, it is possible that we would have a better definition of the word "worker", which might be helpful for the classification and bring a decline in the misclassification. I gather from our research that the Government has not been advocating in line with what has been proposed at the various European Commission meetings and so on. The Government is not necessarily in favour of the definition proposed. We are getting strong indicators from other countries that they want to water it down and not have it as robust as it started out. Hope is fading in that regard.

People have asked what the experiences are. My colleagues will answer on that. The fear is quite strong. Workers on a building site or any other place of employment where this is widespread practice may know they have been misclassified fairly early in the process. They may ask the employer why they are classified in that way because they feel they are a worker, filling all the control mechanisms and everything else. The answer is likely to be that if they do not like it, they can go somewhere else and take a job. That is the reality of the choice a worker has. In most cases that is no choice.

I will leave it at that. I have tried to cover the main issues members have raised.

Mr. Billy Wall: I thank the committee for the opportunity to appear and to respond to the questions posed by members. On the Workplace Relations Commission, WRC, one may take one's case to the scope section of the Department of Employment Affairs and Social Protection but it is a very long-winded process and a person's rights will not be vindicated. However, if one brings a case to the WRC in regard to bogus self-employment, the case will be heard because that is where workers' rights are heard. The rights of workers will be dealt with as well as the issue of classification and a decision will be issued. We have been very successful in recent cases taken to the WRC. Senator Higgins mentioned procurement. One of our cases regarded the bogus self-employment of six plasterers on a procured site involving the construction of a school by Carillion. The plasterers had no contracts or holiday pay, the sectoral employment order was not being enforced and there were a couple of other issues. It amounted to a loss of €20,000 between the six workers. The decisions were issued and not appealed. They went to the Ministers for Finance and Employment Affairs and Social Protection but we have not heard anything back from either Department. We note that the company is now in liquidation. The decisions have been forwarded to the liquidator. We hope that the Social Insurance Fund will cover the awards. The State will have to pay twice or possibly three times.

Another recent case involved a plastering contractor who decided to designate a plasterer as self employed and registered him every week with the Revenue Commissioners. That is supposed to raise a red flag with the Revenue Commissioners but on this occasion it did not. Each week, this worker was paid through the electronic relevant contracts tax, eRCT, system but a flag was not raised. We took a case to the WRC and an award of €4,300 was made. It has not been appealed and we have received the cheque. However, there are outstanding issues for the Department of Employment Affairs and Social Protection and the Revenue Commissioners in regard to the employer's PRSI and the fact that the worker was classified as self-employed with a 0% tax rate. There are three tax rates under the eRCT system: 0%, 20% and 35%. The State

is at a loss in regard to tax forgone. I do not know whether that will be recouped. That is a decision for the Revenue Commissioners.

Senator Nash asked about the skills gap. There is a significant skills gap in three disciplines, namely, plastering, painting and bricklaying. Those are three of the main house-building trades and have been around for centuries. Young people are not going into those trades for several reasons, the main one being their parents' influence. When a student is filling out a CAO form or deciding on an apprenticeship, his or her parents will raise horror stories regarding people in the construction industry not being paid or being designated as self-employed with no rights and point out that they do not want their child to serve time as an apprentice plasterer in order to receive a national craft certificate which is not recognised anywhere because the only qualification needed to get onto a building site in Ireland is a SafePass. One gets a SafePass by spending on day in a classroom. Parents do not want their child to go through four years of apprenticeship and be left in that situation, so encourage the child to see what arts or other degree is available.

We managed to get positions for a 20 year old and an 18 year old as apprentice plasterers with the sub-contractor on a procured site in Tallaght. I will not identify the builder. He treated them abominably. He did not register them with SOLAS and they were being paid €50 per day, supposedly after tax. We referred the matter to the WRC, at which two awards were made, amounting to approximately €8,500 between the two workers. That took place on a procured site on which everything must be done right. The contractor signs a contract from the Office of Government Procurement, OGP, containing a clause stipulating that sectoral employment orders must be adhered to. The contractor signs a declaration on every interim payment that the correct rates of pay and pension contributions have been paid, that a death in service benefit is in place and sick pay as required under the SEOs is in place. None of it was in place. The culture on the site was such that there were no checks and balances.

We recently had two meetings with two city councils at which we identified issues regarding the outsourcing of voids to contractors. There is a framework involving several contractors who sign model form 15 under the short-term or term refurbishment contract from the OGP and are supposed to do several things such as pay pension contributions, comply with the SEO and observe all employment law, including provisions regarding holidays, redundancy, unfair dismissals and employees receiving a statement of the main terms and conditions of employment. We discovered that on one of those sites the contractor who got the job subcontracted it to another contractor, who in turn subcontracted it to another contractor. We visited the site yesterday morning for the second time and have discovered that the contractor carrying out the work has two people working for him who are both nominally self employed but work from 8 a.m. until 4.30 p.m. and are paid a pre-determined wage every day. There is no entrepreneurial skill involved in that. One cannot introduce better management structures or sub-contract the job in order to make more money. That is what is happening on procured sites. There are no checks and balances on them. We have raised the issue with two city councils.

I have stated that the scope section of the Department does not vindicate rights of workers but, rather, only decides on whether or not they should be designated as self employed.

As Ms King stated, the building industry is a casual industry. If one puts one's head above the parapet, one is marked. If one continues to seek to vindicate one's rights, problems will arise. That has been the experience of some of our members. Workers are very slow to act when their rights are explained to them, particularly in a casual industry. I am sure my colleague, Mr. Dooley, will outline that his members encounter similar treatment. Workers are very slow

to vindicate their rights. However, the WRC is the only avenue that should be pursued for the reasons I have outlined. In addition, a referral to the WRC will be heard and a decision issued within approximately two months. An unsuccessful respondent has 42 days to appeal that decision to the Labour Court. If the appeal is unsuccessful, a further appeal is only possible to the High Court on a point of law. In the seminal Irish case on this area, the Denny case, Ms Mahon began her case with the scope section and it was appealed repeatedly. It went to the High Court and then the Supreme Court. Workers will not wait around until the Supreme Court makes up its mind. In our view, the only way to deal with these issues is through the WRC.

Mr. Séamus Dooley: I thank the Chair and members of the committee. I agree with Mr. Walls's final point in particular. As a trade unionist, I have long believed that lawyers should be avoided like the pledge. Industrial relations matters should be settled through the industrial relations process. We do not use the scope section very often. I have had a positive experience of its staff on an individual basis but the State simply has not equipped it with the powers or resources to deal with this problem. It was asked whether fraud is involved. Yes, there is a fraud, but there is also a conspiracy of silence by the State that has allowed this to happen. The attitude is to shrug one's shoulders, conclude there is nothing to see here and revisit it every ten or 15 years. Interestingly, the current criteria in regard to the designation of self employees have their origins in complaints about the Competition Authority. At the early stage, when we were told that setting rates for freelance workers was part of a price-fixing exercise, the national social partnership talks were ongoing, and those criteria, which are good and clear and which define what is a worker, what is an employee and whether one works under control and direction, were one of the outcomes of the social partnership process. The State, however, is not taking that seriously, because if one takes it to its logical conclusion in the construction industry, no one believes a builder is going in and working under control and direction. He cannot say, "damn this for a game of soldiers, I am going to work for someone else tomorrow". He cannot meet any of those tests, and he cannot profit from it.

In my industry I will deal with the overall situation and then make specific reference to RTÉ. It is important to state that freelance work is legitimate and casual contracts are legitimate. There is room and a necessity for the opportunity for a number of employees to take short-time gigs, to work as a production editor on one newspaper and as a columnist in another. There is a legal framework within that. There is a framework in relation to part-time work and casual work. All of that exists and yet, within our industry we have an abuse of the ability to offer contracts for service both within the national newspapers, the regional press sector and the national media. In effect, there are bogus self-employed contracts. They are not freelance contracts and I want to make that distinction in the context of the Competition (Amendment) Act. What are the lessons in relation to that? The provisions of the Competition (Amendment) Act link into Ms Patricia King's comments on the need to properly define a worker. What is interesting about the legislation is that we may already have to revisit it. Congress, SIPTU, and the NUJ in particular are looking at a significant determination which may not even have come across the Senator's desk yet in terms of a complaint lodged by congress before the economic and social rights committee of the Council of Europe, taken by us in advance of the legislation being passed by the Houses, which is really useful in terms of saying one cannot use competition law to restrict the rights of workers. The first lesson is on the issue of definition. We are at the stage of recruiting freelance workers and reorganising them. SIPTU and the NUJ have had a joint conference in relation to that. We are examining the rates, but it is difficult to make up for what is effectively 20 years of an inability to represent freelance workers.

The main lesson is not a legislative one, it is that it is proof of what legislators in both the

Dáil and Seanad can do working together when they get their teeth into something. That is encouraging from the point of view of this committee. This is the centenary of the International Labour Organization, ILO, and it would be an interesting legacy of this committee if it could mark this centenary, seeing as everyone is so fond of centenaries at the moment, with some real action on this.

At last November's gathering where Ireland reported on the outcome of the Competition Authority Act, which was passed unanimously by both Houses of the Oireachtas, there was an attempt, not just by the Irish employers group but by the international body of employers, to prevent reference to that achievement on the part of the ICTU and the acknowledgment of rights by workers and to have that formally recorded as part of the record of the session. That says, to me, that it is not an accident that we have an abuse of bogus self employment but rather that it is part of a wider approach by employers.

The reason there are very few complaints in our workforce is simple. People are terrified. Some politicians spend their lives complaining about journalists and they think journalists are competent and confident. They are as weak and as vulnerable as any other section of workers. For the majority of people working in a newspaper, radio station or television station who are offered a contract, it is not an offer, it is the equivalent of a pint or a transfer for a garda. There is no choice involved. If a person does not sign the contract, he or she does not have a job.

There is an additional dimension in relation to well-paid posts, namely, that frequently organisations such as the national broadcaster require people, as a condition of their offer of employment, to register for VAT, because of the level of their earnings. Once one is registered for VAT, one is "agreeing" that one is not an employee. One can go to the Workplace Relations Commission or to the Labour Court, which I have done, and try to prove that one is an employee, and the employer who cannot afford to pay one under the proper terms has no hesitation in bringing down an army of lawyers and barristers to prove that Mr. Dooley, for example, agreed that he was a company and he registered for VAT. One of the reasons there are so few investigations is that people are afraid to make complaints.

I link the issue of bogus self employment within our industry to bogus redundancies. Frequently, within our industry – I will not name companies – we have a situation where workers are offered what is a bogus "voluntary redundancy" and then rehired under a contract for service. It is done in such a way that it is a voluntary redundancy. The terms are above the statutory rate and one is rehired within an indecent period. That has happened and it will happen within this city in the next year in one of the large national newspaper groups that I will not name. They are not voluntary redundancies but everyone goes along with it. A person is brought in and is told that he or she is at risk of being made redundant. He or she is interviewed for the only post. The person is not being made redundant but he or she is the only one who holds the post. What does a person do in that situation? It is exactly the same situation when one is offered an inappropriate contract.

The RTÉ trade union group is currently engaged in protracted and complex negotiations with RTÉ on the implementation of the Eversheds Sutherland review. We are due to meet senior management tomorrow. It has been a tortuous and extremely difficult period. I have spent more time in Montrose on this subject than any human being should be required to do.

Members will appreciate that I am reluctant to comment on specific aspects of ongoing negotiations, but from an NUJ perspective I acknowledge that the current director general, the HR director and the board have sought to address a legacy of blatant disregard for the employ-

ment rights of a significant number of workers over a long period. Ms Patricia King is a former member of the RTÉ authority who raised this, as did previous trade union nominees over many years. My union, SIPTU, and other trade union affiliates have been highlighting the issue of inappropriate contracts for many years. This morning I read detailed notes of a meeting attended by my colleague, Karen O'Loughlin and myself in January 2015, when not for the first time we warned the then HR director and his staff of the consequences of misclassifying workers. I acknowledge that some progress has been made but we are not happy with the speed of it. RTÉ's failure to provide appropriate contracts will have consequences for the organisation. It is probably useful to remind ourselves that where workers are denied rights they have a right to retrospection. I remind the committee of the headline figures in the review. Of a total of 433 contractors reviewed, 106 have been assessed as having attributes akin to employment. RTÉ objects to the term "bogus self employment" so if members could kindly use the phrase "attributes akin to employment" or "attributes which are not akin to employment" that would be very good. A total of 51 contractors were assessed as having attributes akin to both employment and self employment. A total of 276 contractors were assessed as individuals who would not normally be considered as employees and require no further individual review.

According to the PAC periodic report from January to May 2018, there were 472 contracts of service in RTÉ and they involve 81 incorporated limited companies. I will make a number of points on this. All broadcasting and media organisations have a fetish about personalities. There is a belief among broadcasting organisations in particular that, in some way, on-screen talent should be treated differently. I reject this notion. Whether in the public service broadcaster or anywhere else, it has a number of negative consequences. It denies some employees the opportunity for promotion, favours people who are on contracts for service or limited companies and has the potential for discrimination on age or gender grounds. I have not seen any justification for offering people contracts for service by virtue of the fact they perform one job rather than another.

Workers who have been denied contracts of employment in RTÉ will look for retrospection, as happens on an ongoing basis in other companies. Returning to the question that has been asked about why people do not put their heads above the parapet - my colleagues will have had the same experience - it is because they are told by the organisation that it cannot afford to make them employees as it would cost too much if it must pay retrospection. They are told they are endangering the profitability of the company. We have been very clear that workers who have been denied rights are under no obligation to subsidise in any way the cost of correcting a wrong. This is also reflected in congress's submission.

I stress that this problem is not confined to RTÉ. It has been rampant in many media organisations, mainly but not exclusively those that are not unionised. The problems identified by Ms King and Mr. Wall are also linked to inadequate protection arising from trade union membership or refusal to recognise unions. The issue is linked to bogus redundancies. In many ways, it is also linked to the operation of outsourcing programmes in our industry, whereby people have been forced out of work and then offered work for a company that, on the face of it, has no connection with the original parent company but when we dig deep enough we find they are all part of a family.

Mr. Brendan O'Hanlon: I thank the committee for this opportunity to outline to it the developments in the aviation sector. I do not know whether members think it is unusual that a pilot is in bogus self-employment. Deputy Joan Collins asked what sectors bogus self-employment is growing in. We see it growing in aviation. In one company in particular, Ryanair, more

than 50% of the pilots are on self-employment contracts. Senator Nash asked how it impacts on our ability to collectively bargain. It is very obvious that the strategy is designed to keep people in these contracts of employment where they cannot be collectively represented like their colleagues who are employed directly as pilots. This is an attempt to deliberately influence our ability to improve terms and conditions, deal with issues with regard to recognition and enforce the statutory rights the pilots have.

This growing area is not linked only to low-cost carriers. It is a significant issue in the low-cost carriers across the board and there is no doubt about this. Ryanair is not unique. However, it is also in some of the legacy airlines. It will increase when the legacy airlines must start to compete on certain routes and the costs they incur are significantly more than those with bogus self-employment contracts. There is only one way this is going, which is up.

According to a 2015 study by Ghent University in Belgium, one in six pilots throughout Europe was on a bogus self-employment contract. This information was backed up by 2016 research by the London School of Economics. When we look at this trend it is very easy to see that if this is not changed, the airlines with direct employment, which we describe as responsible airlines that are fulfilling their obligations with regard to PRSI, tax and employment law, will have to compete in this area. We will see continual growth of what we are seeing in low-cost airlines. It will creep into some of the larger airlines that have good agreements with trade unions and negotiate. They will ask us quite legitimately what we are doing about it. If we are seen to be doing nothing, they will tell us they are now competing in that field and will have to go down a similar road.

The Irish Air Line Pilots Association made an extremely detailed presentation to the Department in 2013. It focused in particular on Ryanair. It demonstrated the extent to which these organisations are willing to go to create bogus self-employment. I will give an example of how far they are willing to take this to avoid the detection of people being seen as direct employees. It is important to state that in all of these cases where people are on bogus self-employment contracts they are absolutely 100% under the control of the airline. The airline determines what routes they fly, when they fly and when they are available. There are obligations with regard to the maximum number of flying hours a pilot can do per annum, which is 900. Ryanair will recruit somebody in April and max him or her out during the peak period so when that person is let go his or her flying hours have been used up and he or she cannot gain other employment. It is open to Ryanair to do this and it gives it a significant competitive advantage over its competitors.

To focus on the extent some of the companies are willing to go to, Ryanair uses a UK contractor as a hiring agency. I will avoid going into names but the companies in question were mentioned in the submission to the Department in 2013. Ryanair uses two particular companies to do this. They are based in the UK and neither is regulated by the aviation authorities. The pilots become part of a limited company. They set up the pilots in a limited company and an accountant acts as the financial director. Two or three pilots might be in this limited company. Ryanair is not party to the contract. The pilot provides services directly and exclusively to Ryanair and, as such, is totally and absolutely under its control. The nature of the contract means that when Ryanair decides to dispense with the services of the person or the contract comes to an end, that person has no recourse to any employment legislation or protection. Mr. Dooley and Mr. Wall have touched on various employment rights. Pilots in the airline industry do not have any of these protections. When we see this elaborate set-up to avoid the obligation it tells us the benefits involved in doing it. It is very obvious. What organisation would go to these

lengths if there was not something to be gained by it?

Mr. Dooley ended his presentation on the issue of us being able to collectively bargain. When contracts of employment contain clauses - this exists for direct and non-direct employees of some of these airlines - providing that the employee's home base can be changed overnight such that he or she is based in Dublin today and Poland tomorrow and this will be the location from which he or she will work, and there is no means available to prevent that from happening, this threat alone will stop people wanting to raise any issue. The fact that he or she would have to move his or her family to the other side of Europe to be based there is enough to keep any worker quiet. That is the effect of such contracts and we see it. We had a recent dispute with one of the low-cost airlines where our ability to organise the workers was limited. It had been deliberately designed that way to get all of the benefits of the cost and competitive advantages. It also prevents workers from joining trade unions because they are not direct employees. It prevents us from being able to represent them. The only recourse they have is to challenge their employment status when they run the risk of being shipped anywhere across Europe as their new home base. They are major challenges for us in the aviation sector, but it is important to emphasise that it is not unique to Ryanair. We have it in Norwegian and all of the other low-cost carriers because they are directly competing with each other. However, we also see evidence of it in the legacy airlines. Recently, I spoke to my colleague who represents cabin crew staff in the aviation sector and there are now examples of bogus self-employment contracts in one of the low-cost airlines in Poland. That is the start of it. It will creep in and the other low-cost airlines will be in the same position. Deputy Joan Collins asked which sectors were involved. Aviation is definitely one of them and one can see the implications across the board with which we are trying to deal.

Ms Patricia King: On the point about aviation about which I know a little, there is complexity in that both the investigation by the consultative group that the Department set up to look at the issue and the Comptroller and Auditor General's report have only looked at the misclassification of workers in the ordinary sense. Both reports look at the person services companies and managed services companies which are more common on, say, the communications side, but in aviation the models that have been developed are much more complex. We have received advice that the remedy lies in company law. In the past year some of the disputes and resolutions in the aviation sector have demonstrated that, from a collective bargaining point of view, one can reach agreement and agreement has been reached for direct employees. It covers quite a number of people in trying to remove the pillars of fear and putting in place mechanisms to try to give people fairness in the distribution of their employment locations, etc. That was one of the key pieces in a recent dispute in which I myself was involved. It shows the value of a collective bargaining outcome, whereby one can deal with the employer directly to try to find a common response to the issues involved. There is the same outcome, no matter how complex the model. As Mr. O'Hanlon stated, the worker is denied all of the employment rights legislation and the benefits of the social welfare contributions system. The models can be so complex that company law can be the remedy, rather than the competition about which we have talked.

Chairman: I will take supplementary questions and ask members to keep them brief.

Deputy John Brady: I thank the delegates for their insightful and useful presentation. It certainly blows completely out of the water the myth of the Minister that bogus self-employment is not extensive across the State. The evidence the delegates have outlined hits that point home.

Mr. Dooley spoke about the difficulties in RTÉ. He is dead right that bogus self-employment

is not confined to the State broadcaster only, that it is endemic across the sector. I am aware that in Leinster House those who operate the communications cameras are also engaged in scoping exercises. It is happening here in this institution. That is how extensive the problem is.

Ms King outlined the conservative figure of €240 million for the defrauding of tax and PRSI in the construction sector. I assume that is the figure on an annual basis. One would not need to be an Einstein to do the mathematics. If one were to apply that figure to all sectors, we would be dealing with a conservative annual figure in excess of €1 billion, yet in all areas of the scope section and the joint investigations unit, we see minuscule numbers of people being cited.

The point about the State procurement process is important. It is a job of work for the committee to also delve into that matter.

Mr. Wall mentioned Carillion and the six workers who had been engaged. I am aware of some of them. I am also aware of the difficulties, not only in the context of Carillion because workers I know were engaged in another State procurement project, a housing construction project in my constituency, that rant into financial difficulties the other side of Christmas. Some of the workers were also caught up in Carillion. It has an impact not only on workers' rights but also on redundancy. Some of the workers were caught up twice in that process on State projects. That should be enough for the Department to lose the false sense that the problem is not endemic. The reality is that it is.

Deputy Joan Collins: The delegates covered the main areas that we really need to cover. We hope to bring in workers from the English language schools and other areas too to delve into the matter. We will come up with something to allow the committee to bring forward legislation. In particular, the issue of company law about which Mr. O'Hanlon spoke in the context of pilots is one at which we will also have to look. I thank the delegates for coming. I will continue to work with them in the coming period to ensure we will make a difference in dealing with this issue.

Senator Alice-Mary Higgins: Mr. Dooley mentioned the centenary of the ILO. Of course, we have also celebrated the programme of the First Dáil. It made clear that the Government should be seeking the "co-operation of the Governments of other countries in determining a standard of Social and Industrial Legislation with a view to a general and lasting improvement in the conditions under which the working classes live and labour". There is, therefore, a double incentive for us to ensure a tide of improvements, rather than moving at the extraordinary speed with which bad practices tend to spread, as outlined eloquently by Mr. O'Hanlon.

I thank the delegates for providing clarity on the issue of repercussions. It was even admitted by the scope unit when it presented to us. In a short line in its presentation it stated the 10,500 who visited its site only translated into very small numbers of telephone calls and emails, but within them, according to the Department, there is evidence that people want to retain their anonymity and fear repercussions. That is clear. It can be frustrating, therefore, when we raise this issue, perhaps directly with the Minister, that we are constantly told to bring example to the Minister. What is clear is that there is a fear of repercussions. It is important to delve into these issues and how we can address them.

The issue of definitions that were mentioned is key. I would like to receive a follow-up note specifically on that directive and how we can contribute in some way in pressing Ireland's position on the European directive. I was interested in some of the phrases used. There was mention of those who are "labour only" and "under the control of". Perhaps, as with every

definition, there are also loopholes. For example, is somebody deemed to be labour only if he or she is required to bring certain amounts of equipment? I am interested in how that is shifted around in order that we can try to guard against it in the definitions.

I want to touch, in particular, on the issue of procurement. I have an interest in this area and I hope to introduce legislation on it later in the spring. We addressed the issue of what I would describe as fraud within public procurement which was described by Ms King but I would like to address two other issues that arise in that regard. There are problems where contracts are not fulfilled. Within that point of contract, are there situations where the lowest cost is being used when the price-quality ratio should be used and a stronger emphasis placed on quality in terms of employment standards?

I know Mr. O'Hanlon also represents many public service workers. The employment control framework and the constraints of the recession allowed for a considerable amount of contracting out in the public sector and this seems to have lingered. Will Mr. O'Hanlon comment on areas where we should be moving out of public procurement and into direct employment within the public sector? It was noted that even in the Oireachtas there are people who should be directly employed because they have one employer, their role is not especially seasonal and it is work that is not going away.

I was very interested in what we heard about red flags and repeat registration. It strikes me that bogus redundancies or large-scale redundancies should be another red flag. Perhaps Mr. O'Hanlon will indicate other red flags that we should mark as effectively triggering investigation in advance, rather than waiting for individuals to bring cases, as we said.

Mr. Séamus Dooley: Senator Higgins has raised a number of issues. I am anxious that we would do justice to those so maybe we could arrange a further presentation or a written submission addressing them.

Chairman: A written submission on those specific issues would be very helpful.

Senator Alice-Mary Higgins: That would be very useful.

Mr. Billy Wall: One issue that I did not mention, although I touched on it in terms of qualifications and the causes of bogus self-employment, was the fact that no one is coming into apprenticeships. A register of qualified tradespersons or craftspersons exists on the Isle of Man but not on this island. When someone has served their time here, his or her name should be placed on such a register. That would be very helpful in tackling bogus self-employment.

Mr. Brendan O'Hanlon: I refer to Senator Higgins' point about outsourcing in the public sector. Fórsa is opposed to this practice. There is no doubt that it grew to some extent during the moratorium and the downturn in the economy. I deal with various public sector agencies and we are trying to gradually make sure the core work is carried out by direct employees.

Ms Patricia King: I will respond to Senator Higgins's points in particular. The Office of Government Procurement could answer a number of the Senator's questions around the issue of how all these matters are monitored and controlled within its model of public procurement. It seems to me that it would be valuable to spend some time getting answers on some of those matters. We have tried very hard to get some of those answers. However, the OGP does not feel obliged to directly answer the questions that we have put to it. Perhaps the Senator would have more success in that regard.

In thanking the committee for this opportunity to address it, I also want to say that there should be legislation to control all of these matters. We recognise that during the course of the discussions on the Employment (Miscellaneous Provisions) Bill 2018, which has since become law and which we were very active in lobbying for, various parties tabled some very progressive amendments and proposals on bogus self-employment. Our foremost concern was that the legislation was passed and we believed there may have been a view that if issues related to bogus self-employment were included, it would delay the legislation. That was unfortunate. We needed the legislation for other reasons to protect workers around banded hours and everything else and to be fair, Deputies from various parties co-operated with us in the passage of that Bill. That does not negate in any way the value of the content of the proposals and the Private Members' Bills introduced by Senators and Deputies on the matter of bogus self-employment. We would like the committee to try to convince the Government to allow us to arrive at a stage where we have legislation in place that regulates all of this.

Chairman: I thank all of the witnesses for their direct, open, informative and frank contributions. This is the second session the committee has undertaken in its work on bogus self-employment. We will have other witnesses before us in the months ahead, after which we will produce a report and issue recommendations within months. We have not restricted the time for doing this because we often find at one meeting that further witnesses should be invited. We want to be open and thorough, while also making very specific recommendations. It is clear from the evidence presented today that the capacity of the existing system to identify people who are in bogus self-employment contracts is not sufficient. The numbers simply do not tally, be it total numbers or sectoral numbers. There is a deficiency in the system and that is a cause of concern. We cannot rely on the State numbers as they underestimate the extent of the practice. There is work for the committee to do in that regard.

If, in the coming months, the witnesses wish to present further information or evidence they believe would be of use to the committee and its work, they should feel free to correspond with us. A report will be published in a few months. On behalf of the committee, I again thank Ms King, Mr. O'Hanlon, Mr. Wall and Mr. Dooley for their time and their presentation.

The joint committee adjourned at 12.10 p.m. until 10 a.m. on Thursday, 14 February 2019.