DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓTHAÍ FOSTAÍOCHTA AGUS COIMIRCE SHÓISIALACH

JOINT COMMITTEE ON EMPLOYMENT AFFAIRS AND SOCIAL PROTECTION

Déardaoin, 9 Bealtaine 2019

Thursday, 9 May 2019

The Joint Committee met at 10.30 a.m.

Comhaltaí a bhí i láthair / Members present:

John Brady,	
Willie O'Dea	

I láthair / In attendance: Senator Niall Ó Donnghaile.

Teachta / Deputy John Curran sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: Apologies have been received from Deputy Bailey. I welcome all attendees to this meeting of the Joint Committee on Employment Affairs and Social Protection, at which we will resume our consideration of the Pensions Amendment (No. 2) Bill 2017. Before I begin, I remind those present to turn off their mobile phones. I propose that we go into private session to deal with some housekeeping matters before returning to public session. Is that agreed? Agreed.

The joint committee went into private session at 10.43 a.m. and resumed in public session at 10.52 a.m.

Scrutiny of the Pensions (Amendment) (No. 2) Bill 2017 (Resumed): Discussion

Chairman: I welcome the chairman of the Pensions Council, Mr. Jim Murray. He is accompanied by Ms Roma Burke and Ms Kirstie Flynn. I also welcome Mr. Tony Donohoe, head of education and social policy with the Irish Business and Employers Confederation, IBEC. He is accompanied by Ms Maeve McElwee, IBEC's director of employer relations. A number of questions will be raised after we have received presentations from Mr. Murray and Mr. Donohoe on the Pensions Amendment (No. 2) Bill 2017. All of the witnesses should feel free to respond to the questions that will be asked by my colleagues. The questions will not be restricted to any one of the witnesses. Any member of the panel will be more than welcome to contribute.

Before we begin, 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 this 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. 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 those who have mobile phones to turn them off. I invite Mr. Murray to make his opening statement.

Mr. Jim Murray: I thank the committee for inviting us here. I am speaking on behalf of the Pensions Council, the sole function of which is to advise the Minister for Employment Affairs and Social Protection on pensions generally. As my opening statement sets out, the members of the council work voluntarily, in effect. No payment is made to members in respect of most of their work. We do not have a secretariat, as such. We get some support on an administrative level.

We would not usually look at something as specific as the Pensions Amendment (No. 2) Bill 2017. Instead, we would put forward some general ideas. Having been invited to consider the text of the Bill, the council did so at its April meeting. The Bill is one of a number of efforts to improve protections for members of defined benefit and other schemes. Such efforts are needed, if I may say so. We very much welcome the objective of the Bill. We assume that

the first section, which relates to the matter of so-called equity between the different kinds of pensioners, does not apply to the wind-up of insolvent schemes because the allocation in such circumstances is already specified by statute. Overall, we feel that the best starting point in dealing with the issues raised here is the principle that defined benefit fund deficits should be treated as a debt on the sponsoring employer. We do not suggest that this should be applied in every single instance, because there is sometimes a need to adapt to particular cases. We feel that it is the best starting point for considering all the issues in this area. The proposed Bill would certainly create a debt on the employer in relation to fund deficits in certain cases. While it should be commended on that basis, it does not fully embrace the approach we propose.

There are some legal and practical problems with the Bill, as drafted. It may or may not be the case that they are capable of being fixed. I remind the committee that with the possible exception of the chairman, the Pensions Council is a group of the most experienced experts on pensions and pension policy in the country. There are three groups within the membership of a pension scheme - the pensioners, the active members who are still in employment, and the deferred members who will eventually have some rights when they reach retirement but are not accruing benefits in the normal way. When we looked at section 2, which introduces the new section 48C, we asked whether this provision will apply to one of those groups or to all three. The number of deferred benefit pensioners is very much higher than the number of active members and pensioner members combined. It is a very large number. Some of them may have been dispersed to the four corners of the earth. Therefore, there may well be problems in securing a majority of members of a pension scheme.

We may assume that the only people who could object to the way the funds are allocated are the pensioners. If they make an objection in accordance with the scheme of the Bill, they will be appealing for reallocation of what, in most cases, will be a fixed amount of money. Any group that is appealing will be asking for money to be taken from another group and given to it. The problem is that the other groups would then have to be heard. I remind the committee that what is equitable for a pensioner may not be equitable for an active member and may not be equitable for a deferred member. The potential exists for three groups of people to make arguments that will probably be perfectly plausible and equitable from their perspective. The non-pensioner group might point out that the overwhelming balance of any money in a fund is paid to the pensioners. The *per capita* payment made to pensioners in such cases is far higher - it is either six or 12 times higher - then the *per capita* amount paid to active members or deferred members. We do not think that in this case, the Pensions Authority could act like Solomon and say this is exactly how it should be and so on and so forth. We certainly could not do so without the risk of legal challenge. The point I am making is that when we tried to figure it out, it just was not clear how it would work in practice.

Section 3 proposes to amend the principal Act by inserting a new section 50D after section 50, and it meets part of the general principle that we like, which is that the deficit should be a debt on the employer, but only in part. We think it may pose practical problems or difficulties for the Pensions Authority which would have to decide in a very public way and declare a fund solvent or insolvent, with the possible consequences so far as that is concerned. We believe that the existing section 50 of the Pensions Act 1990, which provides for what I would best describe as an overall review or check by the Pensions Authority on how a scheme is to be restructured, is probably the best way forward, although it has to be said that the main concern of the authority, perhaps rightly, is to ensure that there is enough funding left to fund whatever has been decided in terms of restructuring.

I cannot emphasise enough, and we considered this at one meeting in a very general way, that there are many details that would have to be filled in in terms of applying this system, particularly for monthly employer schemes and the like. Certain procedural rules for wind-up would need to be required and improved. For example, there should be a clear period of notice so that, in effect, there would be an opportunity for the different partners or the different members to make their views known and time for the informal dispute resolution system that is there to be triggered in proper cases where there is a dispute between the trustees and the employers. Of course, in all of this, everything has to be looked at in terms of the fact that a pension scheme is a private contract between the trustee and the employer. While there is regulation applied by the authority, that is it in essence. Could the authority in those circumstances for whatever good argument insist that an employer should continue to pay into the scheme *ad infinitum,* so to speak, in what is a private commitment? There may be things in the trust deed that impose certain duties on the employer, but that is specific to the particular trust deed. To give an authority the power to insist that somebody should honour a contract *ad infinitum* will certain pose difficulties. We do not know what exactly the situation will be.

I will end by repeating the point that we have looked at this in a general way. We believe the idea of starting with the deficit as a debt on the employer, and within that dealing with specific hardship cases or especially difficult cases, would be the best approach to this, although a great deal of work would remain to be done on it. I thank the Chairman.

Chairman: I thank Mr. Murray and I now invite Mr. Donohoe to make his opening statement.

Mr. Tony Donohoe: I thank the joint committee for the opportunity to address it on an important issue for some long-established and strategically important businesses in the IBEC membership. The last time on which we provided an input to the committee on defined benefit, DB, pension schemes was on the heads of the Government's Bill in June 2017. Our concerns with that draft Bill and the Pensions (Amendment) (No. 2) Bill 2017 under consideration today are broadly similar. These concerns principally relate to the unintended consequences, potential risks and practical considerations arising from section 3 of the Bill. This proposes that it would be illegal for a solvent company to wind up a DB pension scheme without the consent of the Pensions Authority, the so-called employer debt.

Before looking at the practical implications of this, and Mr. Murray, the chairman of the Pensions Council has highlighted some of these, it is worth remembering that most DB pension schemes are established under a trust deed. The employer voluntarily undertakes to be bound by the rules of the scheme and to meet certain duties and liabilities. There has never been a statutory obligation on employers under Irish law to contribute to a DB pension scheme nor to accept liability for any deficits. This Bill will turn a voluntary contribution into a mandatory obligation and potentially jeopardise the viability of businesses which are unable to absorb this extra cost.

I was struck by some witness inputs on employer debt during the previous session of the joint committee meeting on 11 April. To paraphrase, they suggested that schemes have had many opportunities to close or wind up, that this type of legislation has been under consideration for two years with no evidence of that happening, and that schemes that now remain have decided they are in it for the long term. I tend to agree with that as a generality. However, while this point was being used to support the argument we would make that the risk to employment and business viability is exaggerated, I would then ask what problem the Bill is trying to solve.

The Bill proposes an unfair burden on long-established and highly reputable employers who voluntarily set up defined benefit pension schemes and invested significant sums to maintain them through very difficult times. There would be no corresponding obligation on employers who have set up defined contribution schemes or the vast majority of smaller businesses, particularly, which have no pension scheme at all. I will give members some insight into the size of the cost and competitiveness implications. I refer to recent research by Roma Burke of LCP and Tony Gilhawley which suggests that employer funding for defined contribution, DC, members averages 7% of salary compared with 22% for DB scheme members. That raises issues of equity within companies between different categories of employees in the same company.

IBEC shares the ambitions of committee members to protect scheme members, to encourage employers to ensure that schemes are well funded, and to prevent employers who will not pay or who will not propose an equitable alternative arrangement, as opposed to those who cannot pay, from walking away from the schemes they sponsor. Advocates of employer debt ignore the reality of business risk. They are asking companies to assume responsibility for factors that have undermined the DB pension model and are outside their control, such as volatility in stock markets, demographic pressures of increasing life expectancy, falling bond yields and regulatory requirements. As a small open economy, Ireland is especially vulnerable to uncertainty, global economic slowdown and turbulent international trading conditions. We can ill-afford to add unnecessary risks to our companies' balance sheets.

Committee members will have seen in the Oireachtas Library and Research Service's briefing paper the figures on the long-term decline in the number of DB schemes in Ireland. We are, in effect, moving towards a long run-off phase for increasingly maturing DB schemes and we should be trying to nurse them through this process. This will only be achieved by addressing the rules surrounding the funding standard and not by additional regulation. In that regard, we welcome the proposal in section 4 of the Bill that the Pensions Authority should prepare a report on the feasibility of changing the way in which the funding standard is calculated. I would question, however, whether we require legislation to mandate this.

The experience of recent years has demonstrated that DB schemes are best managed through discussion and negotiation between trustees, employers and members, and where efforts are made to reach agreement on the steps required to secure scheme viability. As we have argued previously, these steps may include a mix of measures such as increased employer-member contributions, longer working and amended benefits.

The painstaking process of supporting schemes to move gradually to a more appropriate funding level may not attract the same media attention as a small number of high-profile scheme closures. However, it is more likely to secure sustainable member benefits than additional regulation. The fact that almost 80% of DB schemes now meet the regulator's funding standards is testament to the progress that has been made. It is estimated that just 20% met this standard ten years ago.

While most of my comments have been from an employer's perspective, we should not forget that this type of proposal could result in a far worse outcome for some scheme members, particularly younger ones. In some cases, preventing an insolvent scheme from winding up can result in its ongoing deterioration before inevitable closure, with older members using up the assets before younger members retire. This point was acknowledged in the research service's briefing paper.

We believe that the Bill would be unfair on employers who, unlike many of their competi-

tors, had voluntarily set up DB pension schemes and invested significant sums in maintaining them. The proposed legislation would destabilise the future efforts of many employers and trustees to support and deliver on the pension promises made to scheme members. The pensions liabilities and investment risk assumed could be too big for companies to support in what can be a very uncertain business environment, and could jeopardise the viability of the business and jobs of those employed. If implemented, the Bill would result in a far worse outcome for some scheme members, particularly younger ones, whose assets could be used up before they retire by older members.

I thank the committee members for their attention and look forward to answering their questions.

Chairman: I thank Mr. Donohoe. I will make a comment that is not for him to answer. He stated that most of his comments had been from an employer's perspective.

Mr. Tony Donohoe: Yes.

Chairman: That is precisely why he is here. I am not being flippant in that regard. The committee has received a variety of witnesses who represent the views of different people. We acknowledge that that is Mr. Donohoe's role today. We expect him to represent employers. This is part of the committee's consultative work.

I will ask Deputy O'Dea to put his questions, after which the witnesses might reply. Deputy Brady will follow.

Deputy Willie O'Dea: Mine are more comments in response to what has been said than questions. Regarding Mr. Murray's remarks on section 2, he will be aware that, in a restructuring situation, the pensioners have no say. Consistent representations have been made to us about the unfairness of that. We are trying to give them a say. The wording might need some amendment. Mr. Murray mentioned detailed rules, notices etc. I would envisage all of those matters being dealt with by way of regulation.

I take the point about the possibility of deferred pensioners being scattered all over the world. We have an election in a couple of weeks' time and some people might not be available to vote, but the result will come from those who do vote.

Mr. Donohoe's statement echoes the submissions that IBEC has already made on this issue. I understand his points. Of course there is no legal compulsion to provide for workers who have retired by way of a defined benefit scheme. By definition, an employer who opts to have a defined benefit scheme will be at a competitive disadvantage compared with an employer who has no scheme at all or a defined contribution scheme. We are trying to address the fact that solvent employers, which can afford to continue their contributions to defined benefit pension schemes, can walk away without let or hindrance. Employees join firms on the basis of a signed contract, a salary, a defined benefit scheme, the employer paying into that scheme, etc. Suddenly, the whole thing can be terminated at the sole discretion of the employer. That is unfair. If it was not unfair or something that needed to be dealt with, there would not be legislation such as that in the United Kingdom. As the Chairman stated, not only have previous witnesses supported the Bill, but they have urged us to get on with this as quickly as possible.

I take Mr. Donohoe's point about solvency and a risk to the balance sheet. I have tried to draft the Bill in such a way that solvency would be protected. For example, it could be spun out over a period of time. It may be that further adjustment is required. As Mr. Donohoe knows, we

are providing for an ultimate appeal to the High Court. Perhaps it is in the High Court that the overall threat to solvency of applying the legislation in a particular case could be considered.

Regarding the risk to the balance sheet, if an employer has a defined benefit pension scheme, does it not have to provide for that on the balance sheet anyway? It is a contingent liability.

Mr. Tony Donohoe: It is. One has to show it on the balance sheet but it would be recognised as a particular type of contingent liability by funders and so on if one was trying to raise capital.

Deputy Willie O'Dea: Okay. I take Mr. Donohoe's point that a situation might arise where the scheme fails and younger members could be at a disadvantage, as it would have been better for them had the closure not been delayed. If all of the younger members of defined benefit pension schemes were polled, though, I imagine that they would prefer to have some type of protection in place.

I thank the witnesses for attending. I welcome Mr. Murray and Mr. Donohoe's points. This is a pre-legislative session, which means that the next Stage will see the Bill undergoing detailed committee consideration. I do not doubt that there will be amendments in the course of that. We will take into account what the witnesses have stated. Other parties will table amendments and we will consider any that is reasonable. Our intention is not to drive any company into insolvency and create unemployment for their employees. We will ensure that the final product is carefully drafted to safeguard against that.

Chairman: Before I move on to Deputy Brady, do the witnesses wish to comment?

Mr. Tony Donohoe: While I am assured by Deputy O'Dea's comments on solvency, I do not fully agree with the assertion that solvent employers can simply walk away from schemes. Schemes are governed by trust deeds, which impose rigorous requirements on the trustees and a commitment from employers. It is not often done in the courts, but the latter can sometimes be exercised by making a contribution demand on the employer. That can be written into the trust deed. I will invite my colleague, Ms McElwee, to discuss some of the realities on the ground but such situations are normally handled through a process of negotiation. It is a sensitive process with many moving parts and we do not want something that would destabilise it.

DB schemes are set up to have a lifetime. While I have seen various figures, this is shown by the fact that between 70% and 90% of DB schemes are not taking in new entrants any more. There is no new money coming into them. I have seen one scheme at relatively close quarters where the younger members were pushing for the scheme to be closed because they could see where it was going. Younger people also tend to move around between different employments now and would prefer to have that control over their own pension pots. To put it bluntly, they felt that they were subsidising the significant pensioner liabilities on the scheme. They viewed it as inequitable.

I will take this opportunity to make a related comment. The most important obligation in the complexity of pensions legislation is to do no harm and minimise the unintended consequences. There are business consequences in this regard, given what are huge liabilities in some schemes. Some companies look more like a pension fund with a company attached to it than a company with a pension fund. Were this debt to be brought in, what might look like a solvent company would very quickly become insolvent. The only way to negotiate out of that situation - I have cited some examples concerning retirement ages and member benefits - is to

let time take care of it. Often, the remedy is a ten-year process. It is difficult to know how any agency - in this case, it is suggested that that be the Pensions Authority - would be able to take a view on the solvency of a company ten years hence. It could take a view in the immediate term, but that is rarely relevant to pensions discussions.

The Taoiseach raised an issue in a statement in the Dáil in response to questions. There are other unintended consequences. For example, I would be interested in knowing how the Bill might apply to semi-State companies. While it might not put such a company out of business, the legislation would make its debt so high that it would be unable to invest any more. That would have a serious impact on the public good, as large State-owned enterprises need to be able to borrow in order to invest in infrastructure. If the company cannot do that because of the pension scheme deficit on its balance sheet, that would create societal problems. I make this point just to show the Bill's potential unintended consequences.

If the Chairman does not mind, I will invite my colleague, Ms McElwee, who works with companies that are trying to go through this process, to reflect on the realities involved.

Ms Maeve McElwee: I will make a couple of quick points on the issues that have been discussed. Organisations with defined benefit pension schemes were employers of choice. They have put in place significant benefit schemes. I will pick up on the Deputy's use of the word "opts", as he should actually have used its past tense. They opted for these schemes many years ago at a time when we were in a different situation. We could not foresee the future and the challenges being faced now. Many companies have no new entrants into their schemes. They are in a negotiated situation. It is a very sensitive employer relations issue. Where a company made the decision many years ago to be that employer of choice and put in place the best benefits that it could in good faith, it is in every circumstance where feasible and possible going to negotiate with its trustees and undertake a significant programme of negotiation with its staff in respect of the changes, amendments or closure that must come about based on the financial situation of the pension scheme as it stands.

We must recognise that the world of work changes all of the time. It is a private contract entered into freely and at a cost to the employer. However, all contracts change over time. In every other aspect of employment contracts, changes come about. They need to be open to negotiation relative to the position of an organisation at any time. We see that as it comes through.

I appreciate the comments about the need to consider hard cases, but the question is how will they be determined and how will any organisation entering into these types of discussion be in a position to determine in advance that they would be considered a hard case and, consequently, given that opportunity to negotiate. The challenges of trying to differentiate between one and the other are significant for businesses.

Mr. Donohoe referred to younger members. The Chairman mentioned that IBEC was present to represent employers, which is the case. In my direct engagement with organisations' human resources directors, however, the issue of internal equity between different cohorts of staff arises constantly. They feel, and we feel in advising them, a considerable responsibility for managing some of the challenges posed by the differences in the terms and conditions applicable for people with significant DB and contribution pensions and newer staff who have not been able to access schemes that are now closed. Employers are concerned for their staff in this regard. In particular, they are concerned about younger and newer employees being at a disadvantage and the challenges it presents to good, stable and harmonious industrial relations within their businesses.

Chairman: Does Mr. Donohoe wish to add something further?

Mr. Tony Donohoe: Quickly, and I apologise for speaking again.

Chairman: It is okay.

Mr. Tony Donohoe: I am conscious that I did not pick up on Deputy O'Dea's comments on the UK. I will refer him to a report last year from the UK's Pensions and Lifetime Savings Association. Some 11 million people in the UK expect to receive benefits from a DB scheme. According to the report, 3 million of them have only a 50% chance of receiving that benefit. The UK has experienced employer debts, as the Deputy rightly pointed out, but its legislation has not solved the problem. The flight from DB to DC has accelerated and there are serious concerns that the pensions protection fund will not have anywhere near the resources - and one should recall that it is a much larger economy than ours - to meet those liabilities. The UK has gone down this route but has probably not got the results it was seeking.

Mr. Jim Murray: As to pensioners having no say in restructuring, that is true strictly speaking if the Deputy means that they do not have a certain established right in law or something like that. In practice, however, time is of the essence. It must not be possible under any circumstance for an employer to close a scheme overnight before anyone has a chance to offer an opinion. The Pensions Council would concur with much of what Mr. Donohoe stated about the parties to the contract being the ones who should play a part through the trustees, who are supposed to be looking after all of the parties in the scheme. Often, pensioners are a very organised and vocal group, which they are perfectly entitled to be and there is no problem with that. The Pensions Council would feel that it would not be quite correct to say without qualification that pensioners had no rights.

Regarding younger members, I should expect that the council is well aware of the general arguments against many of the points that it is for. It was not entirely convinced by the argument that, when combined with a funding proposal, which would be an element, an extension would necessarily be adverse to the younger members. This issue would arise in the context of any restructuring scheme. The younger members will be well able to make their thoughts known, as most of them will probably be active members. Actually, we do not know. The number of deferred members is high at 400,000 or thereabouts. I will have to get my figures right.

Ms Kirstie Flynn: There are approximately 100,000 active members and 100,000 pensioners.

Mr. Jim Murray: Yes. I suspected I should not say "millions", and of course not. There are 400,000 deferred members, 100,000 plus or minus active members and 100,000 plus or minus pensioners so there are twice as many deferred members as the other set of members combined. Again, the question of whether a continuation of the scheme is very much to the detriment of the younger members depends on the case. The Pensions Council certainly did not think it was something that would always have to be applied. Depending on the case, the parties will have plenty to say for each other perhaps. When the Pensions Authority comes to review any scheme under Article 50, the only thing it must ensure is that any restructured scheme is sustainable and that there are enough funds or enough of a prospect of funds to continue it.

What Deputy O'Dea said about elections is true but these always have an influence. Without in any way appearing to suggest that pensioners are well off because they are clearly not, we must go back to the point that 100,000 pensioners, which is about 16% of the total number

of members, share 59% or 60% of the funds available. The other 500,000 pensioners between them have about €20 billion in terms of liabilities so there is a significant loss, particularly to active members, when a scheme is closed down. Usually, there is a loss to pensioners but the loss of prospects for the younger members needs to be taken very seriously. I am not trying to pit young against old but from the point of view of a legislator or Government, one must look at the overall situation. One would need to start on the basis that all three sets of members of pension schemes believe they are hard done by. It would be a natural enough sentiment to have but a Government or a law and the trustees must look at the overall situation.

Deputy John Brady: I will be fairly brief because a lot has been covered at this stage. I have a few questions, which are mainly directed at IBEC. I am not sure whether it is being done purposely but listening to some of the comments about the Bill and companies being unable to look into the distance when these contracts, which is essentially what they are, are signed off on, this Bill has come forward, although it is not the only Bill. There are a number of Bills. I have brought forward one, as has the Labour Party. Indeed the Government was looking at heads of Bill as well so there are serious concerns here, which is why it needs to be addressed. We are all very aware of the high-profile companies, all of which are highly profitable, in the recent past that have shifted defined benefit to defined contribution schemes. Even looking into the future, I am sure those profits are fairly secure.

I do not know whether Mr. Donohoe is deliberately trying to muddy the waters but there is no attempt to force employers to establish or pay into a defined benefit scheme through this Bill. Employers establish and pay into defined benefit schemes through their own will and this Bill will not change that. This is about solvent companies that are choosing to renege on their pension commitments to employees not because of financial difficulties but, essentially, to remove the risk from their own books. That is the issue this Bill is trying to address. The other legislative items that have been brought forward have also tried to address it. I think IBEC is deliberately trying to mislead people on this matter. What is IBEC's view about highly profitable companies that have wound down their schemes? They include some very high-profile companies. What is IBEC's position regarding those companies shutting down those schemes? I will not delay things. All the points I wanted to raise have essentially been covered. What is IBEC's position on highly profitable companies shutting down defined benefit schemes? The witnesses from IBEC say there is no need for legislation and that the protections there. Clearly, this is not the case and legislation is needed. What is Mr. Donohoe's view on that?

Mr. Tony Donohoe: I thank Deputy Brady for his comments. His question contains an assumption that defined benefit is good and defined contribution is bad, which is not the reality. Defined benefit as a model has been shown to be unsustainable. As I said in my opening comments, we must nurse its long-term demise in the most sensitive and fair way possible. When there are no entrants to a defined benefit scheme, there are no new funds coming into it and by definition, it cannot carry on. At some stage in the future, there will be no new members and the last pensioner passes off this planet. It is an unsustainable model.

Deputy Brady used the word "risk", which is the most important word in this regard. Highly profitable companies removing risk is a legitimate business action because they want to maintain their profitability and, more importantly, their sustainability. This is apart from the issues of internal equity. In most of these companies, there are two groups of workers, one of which is on defined benefit while the other is on defined contribution, and the companies are trying to manage that. It is perfectly understandable that companies would try to remove that risk and they should be supported in doing so. That is not to say that companies should be walking away

from their commitments. I will not comment on any particular companies but we look at some of these highly profitable high-profile cases, we will see that in these negotiations, nobody is walking away from anything. These negotiations literally went on for years in some cases. I would argue that in other cases, the outcome was much better for the workers. I can think of one company whose contribution to a defined contribution scheme was higher than what it paid into the defined benefit scheme but it wanted to remove the risk. The risk is the most important thing. There is nothing wrong with that but that is not the same as saying companies can walk away from their commitments without putting a viable and equitable alternative in place.

Defined contribution is the way of the world. This is not just an Irish phenomenon but one that is happening across the globe. Some countries such as Australia have had defined contribution funds as part of their pensions structure paying very good pensions for three decades. I question the assumption that defined contribution is necessarily inferior, whatever about the risk element of it. I would also argue that it is a more realistic option in this new world of work where people go through multiple careers.

Deputy Willie O'Dea: In response to Deputy Brady, Mr. Donohoe said he could understand why companies want to remove risk but it is not a question of taking risk and sending it out into orbit. What one is doing is moving the risk from the company or the pension fund to the employee. People can argue back and forth about whether that is a good thing in an overall context.

The witnesses mentioned that solvent employers who can perfectly well afford to keep a defined benefit pension scheme in operation are sometimes constrained by the trust deeds. That is sometimes the case but it varies from company to company. Having read many of them in my time, I know that every trust deed is different Some of them clearly are not constrained but it has happened. There have been some negotiations but it has happened. Companies have unilaterally changed over to defined contribution schemes where the entire risk is on the back of the employee who depends on the success of those who invest the money in bonds or on the stock market. We have a lot of examples of spectacularly unsuccessful investments and ordinary people are, as we speak, bearing the consequences of that.

This discussion is taking place in the context of an obligation we are seeking to place on the Government. The witnesses have said that it does not require legislation to set the minimum funding requirement but I believe that it does. If legislation was not required, we would have introduced it. We have been beating this drum for the past five years and there is no sign of the Government doing anything about it. The only way to make the Government do something about it is to put it into legislation and compel it to act. The witnesses will agree that the way liabilities are measured at the moment is daft. One can talk about large debts overhanging companies and pension funds but it very much depends on how one calculates the liability. If it is calculated in such a way that is grossly exaggerated, then naturally there will be a continuing problem.

I also accept the point made about the situation in the UK, which I have been following closely. The witnesses have said that it has not solved the problem there. Of course, it has not solved every problem in the UK and the legislation put forward by Deputy Brady or whatever legislation ultimately becomes law here will not solve the problem entirely either. There will be situations were companies will be found to be not solvent, the risk will be too great or companies will not be able to make up the difference because of profit flows in the future. If we had the guy in here who drafted the ten commandments, he would not be able to draft legislation that would solve every problem in every instance. What we are trying to do here is solve a par-

ticular problem, namely, that companies that can well afford to keep a defined benefit pension scheme going are deciding that it is better for their shareholders and for their profitability to just walk away from it and replace it with a defined contribution scheme, under which the employee carries all of the risk.

Mr. Tony Donohoe: I will take the point on a minimum funding standard first. I bow to the Deputy's judgment on whether legislation is required but I agree fully that it should be reviewed. The OECD has commented to the effect that it should reflect the long-term cost of the scheme rather than a snapshot at a particular time, which does not reflect the reality of buying annuities in the event of a wind-up. The risk reserve calculations do not make sense either and one needs flexibility on valuation dates as well. This is a fairly technical work but it seems strange that a pension fund might not look too bad in February but by June it looks shocking because of the way the bond markets have moved. The fluctuations are significant.

I still take exception to the idea that employers can just walk away from schemes and that there are no constraints on them. The Deputy may know of companies that have done so in the past but the rate of wind-ups has declined significantly since 2014. In that year, there were 41 wind-ups but by 2017, there were only 16 and I suspect there were even fewer in 2018. Companies that were going to walk away from this less altruistically would have done so a long time ago. There were 1,200 schemes 12 years ago and now there are 611 schemes, according to the latest data. Most of these companies have gone. They have moved out and those that remain are generally very well established, reputable companies. They are companies of a sort and scale that they could not just treat their employees flippantly.

The notion that defined benefit schemes are without risk is false. As we have seen, they are very risky. We have seen what happened with wind-ups where active members saw their pension promise completely decimated. That was a risk. The risk on the individual is more manageable. At least the individual can manage his or her own risk. However, he or she must be educated and advised on how to address this. This relates to another issue which I hope this committee will get a chance to deliberate on, namely auto-enrolment. Hopefully, we will see a lot more employees with their defined contribution pots accumulating. How that is going to be managed is important, especially as 65% of private sector workers do not have a pension at all. There will be issues relating to education, the cost of advice and a range of other matters in the context of mitigating individual risks and making sure that people are informed.

Chairman: Does Mr. Murray have further comments to make?

Mr. Jim Murray: No member of the Pensions Council wants schemes to end but that is not to say that we think we can pass a law which keeps schemes in existence forever. It is a clear problem but that is all I can say on the matter.

Chairman: Before we conclude, I wish to refer back to the issue of auto-enrolment raised by Mr. Donohoe. I assure him that this committee has been working on and will review the development of auto-enrolment. We have also been working on the issue of bogus self-employment because people who are in that category may fail to benefit from auto-enrolment. Those lines of work are running in parallel.

I thank Ms McElwee, Mr. Donohoe, Ms Burke, Mr. Murray and Ms Flynn for their attendance. This meeting forms part of the pre-legislative scrutiny process and the issues raised by them have been both helpful and informative. As Deputy O'Dea said, the Bill is not complete and it will be amended as it progresses through the Houses. Amendments may be made by the

sponsor of the Bill, members of the Opposition or the Government. We are getting feedback from a range of witnesses from a variety of different perspectives. We specifically set up our meetings to get all views on the issues.

I thank the witnesses and advise members that our next meeting will be on Tuesday, 21 May 2019.

The joint committee adjourned at 11.50 a.m. until 10 a.m. on Tuesday, 21 May 2019.