

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM GHNÓTHAÍ FOSTAÍOCHTA AGUS COIMIRCE SHÓISI- ALACH

## JOINT COMMITTEE ON EMPLOYMENT AFFAIRS AND SOCIAL PROTECTION

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*Déardaoin, 20 Meitheamh 2019*

*Thursday, 20 June 2019*

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The Joint Committee met at 10.30 a.m.

Comhaltaí a bhí i láthair / Members present:

John Brady,	Alice-Mary Higgins,
Joe Carey,	Gerald Nash.
Joan Collins,	
Willie O’Dea,	
Brid Smith.	

I láthair / In attendance: Deputy Paul Murphy.

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. 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 10.35 a.m. and resumed in public session at 10.45 a.m.*

### **Bogus Self Employment: Discussion (Resumed)**

**Chairman:** I welcome Captain Evan Cullen of the Irish Airline Pilots Association. From Unite, I welcome Mr. Tom Fitzgerald, regional officer, Mr. Rob Kelly, regional organiser, and Ms Colette Godkin, secretary of the English language training branch. In a moment I will invite Captain Cullen to make his presentation and then I will invite the representatives from Unite to make their presentation. We will follow that with a number of questions from members of the committee. I ask those present to turn off their mobile phones or to put them on flight mode.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to the joint committee. However, if they are directed by the committee Chairman to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person 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 invite Captain Cullen to make his opening statement.

**Mr. Evan Cullen:** On behalf of the country's airline pilots I thank the committee for giving us this opportunity to address the issue of bogus self employment of pilots operating for Irish-registered airlines. We hope the committee's deliberations will result in long overdue action to tackle this pernicious problem, which has detrimental effects on the pilots themselves and wider Irish society. In addition, reputational damage has been caused to Ireland in many European countries where pilots are based and are subject to bogus self-employment with Irish airlines, resulting in at least two European states initiating investigations on the effects of such types of employment.

I will begin by pointing out that approximately half of pilots operating in Irish-registered airlines are not employed directly by the airline for whom they fly. That is an extraordinarily

high level for such an important, skilled and safety-critical profession which bears little or no comparison to other similar professions. It is worth pointing out that according to the Ricardo study on working conditions for aircrew which was completed for the European Commission, approximately 18% of European pilots have non-permanent indirect employment status. In that context, Ireland's rate of contractor pilots is approximately three times that of the European average. It is also worth mentioning that the Ricardo study found that 93% of self-employment in European aviation is fake. A 2015 study by Ghent University, *Atypical Employment in Aviation*, which was also carried out for the EU Commission, showed that young pilots are particularly affected by precarious employment terms, with almost 40% of such young pilots having no direct employment relationship with the operator for whom they fly. We know from our own experience in Ireland that the vast majority of contractor pilots in Ireland are also relatively young. In fact, many new pilots entering our profession are effectively forced to become contractors out of necessity rather than choice if they want to become airline pilots.

It is important to point out that while the position of self-employed contractors appears to be legal under Irish law, different pieces of legislation may view the contracts in different ways. That is a confusing situation that is mirrored in the UK. The convoluted manner in which their services are contracted has been carefully crafted to appear to meet the requirements of Irish law, but should they prove not to comply with the law, then the pilot will be potentially subject to sanction for a contracting arrangement that was effectively foisted on him or her.

I will explain how the contractor model works. Under the Irish version of this model, receiving a contract is subject to the pilot becoming a director and shareholder of a pre-existing limited company. The company will typically have between three and eight other directors, but the pilot will not be told who those directors are even when that information is requested. The company will not have normal employees other than the directors. The accountant who manages the billing and expense claims for the contractor pilot is also a director. The pilot will only be allowed to fly for one airline under this model and the whole arrangement is normally put in place by an intermediary agency. Such a contracting arrangement can have several consequences: the airline does not have to pay the 10.85% employer PRSI contribution with all the long-term consequences of that for the contractor pilot; the pilot does not enjoy the benefits or protections of employment law rights, for example, access to unfair dismissal legislation, paid maternity and paternity leave and sick leave and other benefits *vis-à-vis* the airline to which they supply services; and the pilot's rights to participate in any form of collective bargaining and industrial action are effectively neutralised. In effect, the pilot's relationship with the airline whose aircraft she or he operates and whose uniform she or he wears is based solely on contract law. However, the question as to whether a pilot is or is not a direct employee of the airline is an objective analysis based on a number of factors which will be explored.

In their guidance on the subject, the Revenue Commissioners list a number of indicators of employee status and the situation regarding contractor pilots is assessed under those Revenue criteria. As the members will note, all the employee indicators are listed as being true in the table presented. The Revenue Commissioners also include a number of indicators of contract styles. Of the 24 factors, 23 of them are listed as being false under the Revenue guidelines. Of the 24 criteria, Irish contractor pilots only meet one of the contractor criteria, and that is on a partial and qualified basis. They meet 23 of the employee criteria. Based on this assessment, it is IALPA's view that these contractor pilots are subjected to bogus self-employment and should be deemed to be employees and not self-employed contractors.

We are aware this Revenue guidance is not definitive and there are other factors which

need to be taken into account in determining the status of the contractor pilots. The following factors are important to note. Mutuality of obligation exists between the pilot and the airline for which they work. This means there is an expectation or understanding that the airline will provide work and the pilot will perform that work. It should be noted that the contractor pilot is rostered for work a number of weeks in advance and there is no casual element to the contractor pilot's obligation to operate their rostered flights. The contractor pilots are performing identical work under the same administrative and operational requirements and the same workplace terms and conditions with other individuals who are categorised as employees by the airline. The pilots are not engaged in independently marketing their services to a number of airlines. Their companies have no independent public trading identity. While agreements between the parties might label the pilot as an independent contractor, and whether they are an employee is a question of substance over form, easily tested by reference to the Revenue Commissioners guidelines, as previously outlined. The contracts are for definite durations, normally three to five years, and are not short, *ad hoc* or project specific. It is IALPA's view that any objective review of the contracts will show them to be unconscionable and one-sided.

It is conceivable that certain pilots may be properly considered contractors, for example, test or training pilots who sell their services to a number of airlines generally and operate on short-term or specific purpose contracts. Experience indicates that the number of pilots operating in this way is very limited and is entirely out of the intention and design of these pilots in question. However, based on the assessment of the Revenue criteria and the other factors that have to be taken into account, it may be generally said that ordinary pilots should be considered to be employees of the airline for which they work and not genuine contractors engaged as such on a voluntary basis. The working lives of contractor pilots subject to bogus self-employment arrangements do not vary in any meaningful detail from their employee pilot colleagues.

In terms of European interest, in 2011, a German prosecutor asked the British authorities to search the UK premises of a company that provides pilot services to an Irish airline. The prosecutor alleged the company in question was in breach of tax and social security law. The prosecutor pointed out that all work sequences for the pilot, including their uniforms, were specified by the airline. The airline in question determines which flights the pilot has to make and when, scheduling those flights weeks in advance. The contract concluded between the company in question and the pilots includes provisions that the pilots are bound to comply with specifications by the airline.

A pilot witness stated he was recruited by the airline and received an offer for employment from it once he had obtained the required aircraft type licences. After obtaining this licence, the witness was further trained by the airline to comply with its procedures and standards. Only afterwards was he referred to the agency in question by the airline and this agency finalised the contract formalities by email. The pilot witness never saw any office of the agency that completed the contract formalities.

The German prosecutor stated that the agency in question was responsible for processing the monthly work performance for approximately 1,600 ostensibly self-employed pilots with the airline, through 300 Irish companies which had the legal form of a limited company. These companies were administered by accountancy firms specified on a list of acceptable accountants that the pilots could engage with for the purpose of complying with the contract requirements. According to the German prosecutor, these companies may only serve to conceal an employment relationship with the airline.

The UK's tax authorities, HM Revenue & Customs, HMRC, conducted a separate inquiry

into the status of contractor pilots for tax purposes which led to a £47 million protective assessment against a UK based agency engaging pilots. However, individual pilots are also being subjected to HMRC scrutiny and find themselves having to explain a complex contrived structure which was not of their making.

In terms of the impact on pilots, for the pilots engaged as contractors, their status has a number of practical implications for them. The airlines are not bound by all normal employer obligations to these pilots - for example, for paid maternity and paternity leave – through this mechanism. The rights of contractor pilots to participate in any form of collective bargaining on pay and conditions, as well as their rights to take industrial action in the event of a dispute, are effectively neutralised.

From the pilot's perspective this device of being a contractor or an employee of his or her own company is a difficult place to be, as it flies in the face of accepted Revenue custom and practice in most other sectors of employment. The arrangement causes difficulties for many pilots based outside Ireland as local revenue and social authorities have difficulties comprehending these intricate structures and there is no local equivalence of these types of arrangements. In addition, we are aware of contractor pilots who experience great difficulties in getting mortgages to buy a house or secure bank loans because of the uncertainty of their positions. As a final observation, the majority of the pilots subjected to these Irish arrangements are not Irish nationals, do not speak English as their native language and do not live or work in Ireland.

With respect to possible safety implications, the 2015 University of Ghent study on Atypical Employment in Aviation stated that such employment practices raise potentially serious concerns about the safety of the industry as the way that pilots are employed can have repercussions on safety decision making in the cockpit. According to the University of Ghent, nearly half of self-employed pilots struggle to amend instructions of the airline based on their own safety or liability objections, so atypical employment can have an influence on the independent decision making process and safety choices made by crews during or before flights.

Similar conclusions were reached by a 2016 London School of Economics study on safety culture, involving 7,000 European pilots. Its survey found that atypical employees are: less encouraged to voice safety concerns; feel more obliged to take uncomfortable risks; less confident on fair treatment of the safety reporter; less satisfied with the confidentiality of reporting and investigation; less involved in safety activities; feel more inclined to go to work when sick; more often tired at work; and less confident to file fatigue reports.

The safety culture that exists in any airline is moulded and sustained by a positive relationship between management and operational employees. It is obvious that a normal direct employer-employee relationship is the most conducive relationship to the existence of a good safety culture.

With respect to losses to the State, in addition to the impact on the pilots and possible safety implications, the fact that in the region of 2,000 Irish registered pilots are working as contractors means that the State loses out on the 10.85% employers' PRSI on those pilots' salaries. Based on data published by the Department of Finance and the Department of Employment Affairs and Social Protection in 2018, the use of intermediary-type structures and self-employment arrangements and implications for social insurance and tax revenues, IALPA conservatively estimates that this could cost the State around €15 to €16 million per year on an ongoing basis, a not insignificant sum.

In terms of more rigour from Revenue and social protection, the Revenue Commissioners are ordinarily extremely vigilant in policing the practice of a person acting as a contractor whereby they provide their entire services to a single client company-customer. In all such cases this is deemed to be an employer-employee direct relationship, and as such, there must be a PAYE employee relationship established and sustained.

It is IALPA's view that the Irish Revenue Commissioners and the Department of Employment Affairs and Social Protection need to approach their investigations into the status of Irish airlines' contractor pilots with the same focus and intensity as the authorities in Germany and the UK. As I pointed out earlier, the convoluted manner in which "contractor" pilots' services are availed of by Irish airlines has been designed in such a way as to appear to be in line with the requirements of Irish law. IALPA questions that assumption. We need legislative change to ensure that this practice cannot continue. These changes should be based on a presumption that all workers are employees unless the opposite is proven; putting the burden of proof on the employer, not the employee; and ensuring that such arrangements are not imposed on any worker through duress or threat of contract refusal. The status of the contracting arrangements should be analysed independently of the individual worker. We need the members' assistance as legislators to put such legislation in place and we look forward to working with them on such an undertaking.

**Chairman:** I thank Mr. Cullen and invite Mr. Fitzgerald to make his opening statement.

**Mr. Tom Fitzgerald:** On behalf of Unite the Union I thank the committee for the invitation to make a submission regarding bogus self-employment. I am a regional officer with Unite with particular responsibility for construction. I am accompanied today by Colette Godkin, secretary of Unite's English language teachers branch, and Rob Kelly, acting team leader in Unite's organising department, which has a role across all sectors of the economy.

It is by definition difficult to quantify the number of people who are falsely self-employed throughout the economy. In the fourth quarter of 2018, some 224,100 people were classified as self-employed with no employees. While many would be genuinely self-employed, it is Unite's view that many are not. We believe, for example, that the high level of self-employment in construction actually reflects a high level of bogus self-employment. This is borne out by Unite's experience on the ground in the construction sector. In November of last year, the assistant secretary of the Department of Employment Affairs and Social Protection, when asked about the outcomes of employer reviews and inspections, told this committee that her Department does not keep an "absolute record" of bogus self-employment and has not kept such statistics.

Unite is a general workers' union representing members throughout the economy, including thousands of general operatives and craft grade members working in the construction sector where bogus self-employment is especially prevalent. However, it should be noted that our officers, organisers and shop stewards also encounter bogus self-employment in areas as diverse as English language teaching and archaeology. An archaeologist may, for example, be instructed to arrive at a site at a particular time; instructed what work must be carried out and the manner in which it must be carried out; instructed when they may take a break; instructed when work can finish; and provided with tools by the employer. She or he may be working for an employer-defined hourly rate of pay, with an employer-defined timescale for how long that work will take. To all intents and purposes she or he is employed, working under the control and direction of the employer, unable to dispose of his or her time and unable to take up other work. However, unlike regular employees, they have no entitlement to sick pay, paid annual leave, parental or family leave.



Since the employer does not pay social insurance contributions, let alone occupational pension contributions, the impact of bogus self-employment follows a worker into retirement. Nor do bogus self-employed workers enjoy a range of statutory protections, including but not limited to minimum wage laws, protections against unfair dismissal, and working time laws. This is the experience of thousands of workers in all sectors of the Irish economy today. Bogus self-employment is part of the larger phenomenon of precariousness, a phenomenon which will inevitably increase with the growth of the so-called gig economy or platform economy. Bogus self-employment is not only about employers or contractors seeking to avoid social insurance payments, although that is a contributing factor. It is also a tool used by employers to maximise flexibility in the utilisation of inputs, putting labour on a par with parts, tools, equipment and materials. It also seeks to undermine solidarity, since the worker is no longer part of a workforce, but instead an atomised individual provider of labour, and is used as part of an aggressive union-avoidance policy. Addressing this committee in February, Professor Michael Doherty of Maynooth University pointed out that, in the case of non-employees, “independent undertakings are generally forbidden from coming to mutual arrangements over basic terms such as minimum payments, as they would likely contravene competition laws”, and he concluded that: “It is very difficult for non-employees to engage in effective collective bargaining.” This is bad for the economy as a whole, and for the construction sector in particular, since all the available evidence indicates strong links between collective bargaining rights and economic progress.

The highly fragmented nature of the Irish construction sector helps facilitate bogus self-employment. This gives rise to tiers of sub-contracting, or a sub-contracting cascade, with the worker at the bottom of the cascade several removes away from the principal contractor. This inevitably leads to an erosion of terms and conditions of employment, and means that statutory obligations relating to taxation and social insurance in particular are not met. The CSO Labour Force Survey shows that in the fourth quarter of 2018 the percentage of people classified as self-employed with no employees in construction was just over 22%. This compares to 7% in the rest of the market economy. The number classified as self-employed without employees in construction registered a year-on-year increase of 600. In 2018, there were 33,000 self-employed with no employees in the sector, an increase from 21,700 in 2012.

We may assume that the high level of self-employment in construction actually reflects a high level of bogus self-employment. As a percentage of total sectoral employment, however, in 2018 the proportion of self-employed with no employees had fallen slightly since 2012. This only reflects an increase in overall employment in the sector. The 2016 Think-tank for Action on Social Change, TASC, report on bogus self-employment in the Irish construction industry suggests that it may be appropriate to assume that 25% of all self-employed without employees in the construction industry are bogus self-employed. It is Unite’s view, based on experience, that this could be a conservative estimate.

In respect of English language teaching, ELT, Unite is currently aware of language schools in Dublin coercing workers into bogus self-employment contracts. We are also aware that two of these schools are fully accredited and are on the interim list of education providers. Unite believes that if not addressed, bogus self-employment will continue to spread more widely through the ELT sector and will be normalised. We have come to this view based on the fact that, like construction, the English language teaching sector is characterised by its transient nature. Bogus self-employment is just one aspect of precarious employment in the sector – a sector which the Government plans to grow to a value of €2.1 billion by next year. If teachers are to share in the benefits of that growth, precarious working practices in the sector must be addressed.

I spoke earlier about the impact of bogus self-employment on the individual worker, an impact that follows them throughout their working life and beyond into retirement. There is also a significant cost to the Exchequer, which means a cost to us all. By definition, it is as difficult to put definite figures on this cost as it is to definitively quantify the numbers who are falsely self-employed. The loss to the Social Insurance Fund due to non-payment of employers PRSI is likely to run into the hundreds of millions of euro across all sectors. This point was detailed and developed in a recent presentation made to this committee by the Irish Congress of Trade Unions, which referenced the joint report published by the Department of Employment Affairs and Social Protection and the Department of Finance entitled *The use of intermediary-type structures and self-employment arrangements: Implications for Social Insurance and Tax Revenues*. IALPA has already referred to the report this morning. There is also a loss of spending power in the economy due to loss of benefits arising from self-employment. While this will be marginally mitigated by the new regulations governing access by the self-employed to job-seeker's benefit, which are due to come into force in November, we believe the overall gain to workers will be negligible.

There is no single measure which will remedy either the wider issues regarding precariousness or the specific issue of bogus self-employment in construction and other sectors. Unite argues that consideration should be given to a package of measures. First and foremost, the burden of proof needs to be switched so that an employer can show that a worker is not in an employment relationship. In respect of the construction sector, all contracts for labour should automatically be assumed to be a contract for employment under Schedule E, and the principal contractor should be responsible for the payment of social insurance and compliance with all relevant terms and conditions attached to Schedule E employment. The first contractor must be made the agent of responsibility. This would create a clear line of accountability in terms of social protection, health and safety and taxation. At the same time, the Government must establish a uniform framework that defines the distinction between employment and self-employment. Currently, there are different distinctions made by different agencies on the same case. For instance, Revenue may determine someone as self-employed for tax purposes, while the Department of Social Protection can determine that the same person is employed for purposes of social protection. It is Unite's view that legislation is required to remove this ambiguity and ensure clarity.

Unite also argues that the State should use its considerable purchasing power as the source of public procurement contracts to disincentivise bogus self-employment and other types of precarious working. We need to strengthen the policing and contractual provisions of public procurement contracts to prevent abuses. There must be provision for the contracting department or public agency to levy penalties on any contractor or company found to be engaged in bogus self-employment, with bond or retention moneys from projects exposed to such penalties and the contractor in question to be barred from bidding for future public procurement contracts. In the case of any company operating subject to a licence, permit or similar approval, such approval must be contingent on not engaging in bogus self-employment or other precarious work practices. This would mean that, in the case of English language schools, schools found to engage in such practices would be removed from the interim list of education providers, ILEP.

Unite argues that the above proposals constitute a win-win-win for workers, for the Exchequer and for compliant employers who may currently be at a competitive disadvantage *vis-à-vis* those who would use bogus self-employment and super-exploitation to give them a competitive edge in the market. I would like to thank the Chairman and members for their attention. We are happy to take any questions.



**Chairman:** I thank Mr. Fitzgerald for his opening statements. I will take questions from a number of colleagues, pool them and then revert to the witnesses who should feel free to respond to them.

I wish to clarify one point with Mr. Cullen before I hand over to members. Mr. Cullen set out very clearly and in great detail the structure. Has the issue been tested by Revenue or the scope section of the Department of Employment Affairs and Social Protection? Have they looked at the particular scenario that he has outlined, have they tested it and adjudicated on it?

**Mr. Evan Cullen:** We have attempted to process a test case through the scope section and it is tied up with senior counsel in the scope section for the past three years.

Let me state some matters of fact about the company that is involved in the scope section. I cannot remember exactly whether the pilot services company had five or eight pilot directors, but one of those directors has since left that company and is now directly employed by another airline. That pilot has taken a case for his social welfare entitlements. The other directors of that company do not even know that the company is participating in this legal process and has hired a senior counsel. They do not know about the arguments that are being made and have no idea about the case that is ongoing. They will not raise their heads because they will lose their jobs where they are operating at present.

**Chairman:** I thank Mr. Cullen for that clarification.

**Deputy Willie O’Dea:** I thank Unite the Union and Captain Cullen for appearing before us and for their very interesting presentations. A number of points that Captain Cullen made stick out. In his presentation he states that only about half of pilots operating in Irish registered airlines are employed directly by those airlines and that the rate of so-called self-employment among pilots here is three times the European average. Why is that the case?

In regard to safety, I am absolutely stunned by what he has said about safety implications. I will keep to my usual practice and stay at home for my holidays this year again. In his opening statement, he states:

According to the University of Ghent, nearly half of self-employed pilots struggle to amend instructions of the airline based on their own safety or liability objections – so atypical employment can have an influence on the independent decision-making process and safety choices made by crews during or before flights.

Will he elaborate on that point?

The Chairman asked about IALPA’s approach to the Revenue Commissioners and to the scope section of the Department of Employment Affairs and Social Protection. I think that what is happening in respect of the association’s difficulties with scope raises questions as to whether there is any interest in enforcing what we all understand to be the law of the land?

In his opening statement Captain Cullen points out the criteria set out by the Revenue Commissioners and demonstrates very clearly that these criteria point almost exclusively in one direction, to employee rather than self-employed. Has there been any discussion with the Revenue Commissioners about this? How can the Revenue Commissioners stand over a situation whereby their criteria are being so clearly ignored?

I want to raise the structure of these companies. Apparently companies are set up, where the people who are being appointed as directors of the company do not know the other directors.

My understanding is that under company law there has to be a board meeting at least once a year, there has to be an AGM. This seems to be driving a coach and four through company law. Has anybody even attempted to enforce the law of the land in this regard? It beggars belief.

I want to thank Unite the Union for its presentation. Most of what the union is saying is not news to me because I have said it repeatedly. I put forward legislation to deal with this situation which has disappeared into the Bermuda Triangle, like much of the legislation being put forward by the Opposition.

Unite the Union certainly justifies what I have been trying to argue on the figures. The figures would strongly indicate that this is a growing phenomenon. We have raised this and other issues with the Minister for Employment Affairs and Social Protection and asked questions in the Dáil. The Minister is trying to argue that the phenomenon is reducing. All the anecdotal evidence in my constituency and further afield is that it is a growing phenomenon and that as a result of the development of the gig economy, it will grow further. I thank the union for producing the figures which will be useful ammunition when we get to debate this subject in the future.

I note also the State seems to be a willing participant in this scandal. The State should use its purchasing power. When the State employs a contractor to build an extension to a school, to repair a school or to build a school, a price is agreed and the State has no further involvement. It does not care what the contractors are doing or how many are bogus self-employed. The State acts as if it is a completely independent player and has no involvement whatsoever.

The witness has cited the case of the two accredited language schools in Dublin, which are forcing teachers who are employed by the schools to pretend for tax, social welfare and employment law purposes that they are self-employed. That is outrageous.

I thank the witnesses for their presentations which have given us food for thought and extra ammunition in our campaign to do something about this.

**Deputy John Brady:** I thank the representatives from Unite the Union and Captain Cullen for coming in this morning. This is a continuation of an ongoing process. We have had witnesses from ICTU and other bodies appear before us. We have gathered evidence already and the evidence provided by Unite the Union and IALPA backs up all the statistics and the evidence that has been presented. I think people will be genuinely shocked and surprised by what is going on.

The officials in Revenue and in the Department have looked the other way and this has allowed the facilitation of massive tax fraud in the State.

The work of this committee will shine a spotlight and bring forward solutions and proposals. A number of Opposition parties, my own included, have brought forward legislation to deal with the massive issue of bogus self-employment and wholesale tax fraud.

I have a number of questions for the representatives from Unite the Union. The figures the union provided back up all of the statistics we have been given previously. More than 224,000 people who are classed as self-employed have no employees. I think it is a conservative estimate that 25% of those people are bogus self-employed.

When an issue is brought to the attention of Unite the Union, irrespective of the area of employment, what is the first course of action? Has the union brought many cases or helped to bring cases to the scope section of the Department? What has been the union's experience of

that process? Have many cases have been successful? What difficulties for English language teachers have our guests encountered ? They referred to a serious problem in Dublin. In my constituency of Wicklow, there is a large number of English language schools, as there are in other major urban areas such as Galway and Cork. Is it just a Dublin issue or has it raised its head in other areas? With Brexit coming and plans to expand the area with more than €2 billion, there are significant opportunities for us, notwithstanding the serious concerns that the problem will spread. Will our guests comment on that?

On IALPA, Mr. Cullen's statement was alarming, dark and frightening because of the safety concerns. When I hear the word "safety" used by pilots, it is enough to set off alarm bells. Will Mr. Cullen elaborate on those safety concerns and on whether they have been raised with the Minister for Transport, Tourism and Sport or the Irish Aviation Authority? If so, what kind of response was given? The issue has been investigated in Britain and Germany. It appears that Irish law is being used by some airlines to set up systems of questionable and precarious self-employment to get around our weak system, despite their being investigated by other countries. Do all Irish airlines use self-employment contracts? I refer to the likes of Ryanair and Aer Lingus. If they do, are breakdowns of the types of contracts available? Do non-Irish airlines set up in Ireland and use our system as a base and, if so, are there statistics in that regard?

Has IALPA spoken to the Revenue Commissioners and the Department of Employment Affairs and Social Protection about the state of affairs and, if so, what was the response? Has it reported its concerns to all the relevant authorities? Has it raised them with the Taoiseach, the Minister for Finance or the Minister for Transport, Tourism and Sport? If so, what was the response? Mr. Cullen referred to young pilots being forced into precarious positions of work. Are there cases of young pilots leaving, or starting training, being forced out and not completing their course because of the arrangements? Why is Ireland's rate of self-employment for pilots three times higher than the European average?

**Senator Gerald Nash:** It is startling, albeit not surprising for people such as me who have focused on the issue for some time, that there are such high numbers of contractor pilots in the country. People might assume that most of the contractor pilots, who are engaged through arcane and Byzantine intermediary structures to conceal their employment status, are not necessarily from airlines that are household names in this country or those that are strongly associated with the country. Will Mr. Cullen elaborate on why he believes that airlines globally use Ireland as a base for their registration? Does he believe they do so to take advantage of the weakness of our employment protection and tax laws? It is nothing short of an utter scandal. It does not just deprive airline pilots and other individuals who should be deemed as direct employees. As well as ripping them off, it rips off the taxpayer and the Social Insurance Fund. Mr. Cullen cited a stark figure when he conservatively estimated a loss of between €15 million and €16 million per year to the Exchequer and the Social Insurance Fund arising from the misclassification of the employment status of airline pilots. That sum would cover the pay claim of SIPTU-represented healthcare support staff. Although a strike has been deferred today, the claim is for the same amount. That puts the matter into a human context and allows one to understand the impact and consequences. It is not a victimless crime. The taxpayer and citizens are being ripped off by the enabling of such dodgy and dubious practices.

Contracted pilots display all the characteristics of an employee but have receive none of the benefits and are deprived of their employment rights, their employment status and all that flows from that. Where any worker has a concern about his or her employment status, he or she should, as reflected under Irish law, bring that concern to the Revenue Commissioners and the

scope section of the Department of Employment Affairs and Social Protection to have a determination on the insurability of his or her employment. Mr. Cullen made very clear the difficulties that at least one Irish airline pilot has had in seeking a determination from the scope section and the battery of lawyers the pilot has faced in the pursuit of the vindication of his rights. Deputy O’Dea referred to the arcane, complex structure, where pilots cannot identify the other directors of the company that has been foisted upon them to enable them to have a job with an airline. It is bizarre and unacceptable and it is done purely to conceal someone’s employment status and deprive the State of revenue, taxation and social insurance owed to it.

Have any Irish accountancy firms, or lawyers or legal firms, been held to account for such practices? They are essentially tax avoidance schemes. Have they been held to account by the Irish courts, the Revenue Commissioners or their own professional bodies? I am concerned by the treatment of female pilots. For the safety of expectant mothers and babies, there are periods when they are not permitted to fly. I hope that directly employed female pilots are entitled to maternity leave for their own safety, that of their child and the vindication of their rights. Self-employed pilots are in a different position. Will Mr. Cullen outline the difficulties that some female pilots have faced, in his experience? I refer to those who are indirectly employed and caught up in the arrangements that have been discussed. What kind of experiences have they had? I have been alerted by union activists to some horrific examples of the mistreatment of female pilots in pregnancy when they are caught up in indirect employment.

I welcome our colleagues from Unite. Mr. Fitzgerald, Mr. Kelly and Ms Godkin have vast experience dealing with the phenomenon of bogus self-employment in a number of sectors. It is the most insidious form of precarious work because the workers are entitled to nothing. They have no benefits or social protection and are deprived of other employment rights and the vindication thereof.

Mr. Fitzgerald made an interesting point regarding the urgent requirement to insert key definitions of what constitutes employment and self-employment into primary law. I sought to do so through my Protection of Employment (Measures to Counter False Self-Employment) Bill 2018 which was frustrated and, ultimately, defeated on Committee Stage in the Seanad a few months ago. We can do all of the tinkering we wish with codes of practice and regulations, but, ultimately, the future of this phenomenon and the thousands of Irish workers caught in bogus self-employment relationships turns on the need to introduce into law very clear definitions of what constitutes employment and self-employment. If that is not done, this phenomenon will continue to grow and get out of hand.

**Deputy Bríd Smith:** Are the witnesses going to have an opportunity to answer members’ questions? Are they going to respond when all questions have been asked? I wish to ask a question and get an answer to it and so on.

**Deputy Willie O’Dea:** Perhaps the witnesses could answer the questions that have been asked before we move on.

**Chairman:** If the witnesses wish to do so, I am agreeable.

**Senator Alice-Mary Higgins:** I may have to leave early because I am due to host a group. May I put my questions?

**Chairman:** Are members happy for the witnesses to respond to the questions that have been asked, after which I will come to Deputy Smith?

**Deputy Bríd Smith:** I am happy with that.

**Senator Alice-Mary Higgins:** With apologies to the Chair, I will have to leave early, unusually for me. I hope to put my questions now, if that is possible.

**Deputy Bríd Smith:** I will let the Senator go ahead of me.

**Senator Alice-Mary Higgins:** I do not normally ask for latitude, but I am due to host a group from Sudan.

**Chairman:** Before the witnesses respond, I wish to ensure they are aware of the work the committee is doing and that this is not an isolated meeting. Mr. Fitzgerald referred to previous meetings of the committee. The committee will be drafting a report on this issue and that is the context for their presence. In particular, I ask them to address the steps they have tried to take on this issue and the way in which those steps have not worked. Those are the matters with which the committee is concerned because there seem to be recommendations that could flow from that. I ask them to be conscious of what we are trying to do. They highlighted the issues in various sectors and that is why they are here. I ask them to also address the ways in which the system has failed and to provide detail on their frustrations such as that provided by Captain Cullen when he referred to a test case having been tied up for three years in scope section.

**Senator Alice-Mary Higgins:** I requested that I have the opportunity to ask my questions before the witnesses respond

**Chairman:** If the Senator wishes to ask her questions, she may go ahead.

**Senator Alice-Mary Higgins:** I am very interested in their responses. I will be brief.

As was stated, the importance of definitions of what constitutes an employee and a self-employed person has become clear. I wish to commend Senator Nash, who made a very good attempt to set those definitions.

I ask the witnesses to comment on what seems to be the inadequacy of the case-by-case approach. Although it is important that test cases are being taken, we have seen that all that is needed for a case to be dropped is for the person involved to pull back or a new form of employment to be found for him or her. The scope section and Revenue looking at this matter on a case-by-case basis does not deal with the sectoral issues. I ask the delegates to address the sectoral investigations which they consider should appropriately be undertaken. I note with interest the point made in one of the presentations regarding the extent to which the European Union and its institutions are interested in the failures of our system. There is pressure from a European level regarding having a definition for an employee.

I am shocked that a person could be a director of a company and not aware of its other directors. It is not just a question of flouting company law, as pointed out by Deputy O’Dea. It seems to be an extraordinarily unusual situation. Mr. Cullen mentioned that in the case of the contractor models to which he referred, the accountant is also a director and the company has a recommended list of acceptable accountants. While I acknowledge that Mr. Cullen may not be privy to the interior workings of each company or pseudo-company, could it be the case that an accountant director would be in a completely different and privileged position compared with the other directors as he or she may be aware of them and is in a position whereby he or she benefits from a recommendation by the company? That is an issue of potential concern in terms of from where the determinations come.



On safety implications, it is very alarming for anybody who flies to hear of safety concerns being flouted in this way. Does it create any ambiguity in terms of liabilities? If pilots are working for what are, effectively, pseudo-companies which are separate from the owner of the aeroplane, it seems to create a potentially ambiguous or dangerous situation which would be of significant concern to the wider public.

I wish to congratulate Mr. Fitzgerald and his colleagues from Unite on seeking to support the unionisation of sectors which have been very much neglected. I spent three years working as an English language teacher before returning to college. At the time, employment in the sector was insecure, but that insecurity now seems to have been systematised. Although it is not always the case for those engaged in English language teaching, archaeology or project work, there are mechanisms whereby companies can offer quality short-term or part-time employment. Although it may not be permanent employment, it allow companies to treat people as employees and recognise their rights pro rata and so forth. It came across clearly from the testimony of Mr. Cullen and others that career development may be stymied in some cases such that people cannot get to the next rung on the ladder.

On procurement, I brought forward legislation pressing for a price and quality approach to procurement, rather than a price-only approach. There are certain tools which may be used, such as the exclusion of those who breach laws. On quality criteria, the party seeking a contractor should seek to be satisfied that the tendering company has permanent employees who will have a consistency of delivery. That quality measure is of particular importance in State procurement.

The State is giving other benefits to companies which are flouting these laws, as was mentioned, such as recognition on the interim list of education providers and, presumably, in the trade missions undertaken by the State. Have some of the companies employing these poor practices had the opportunity to participate in or benefit from Irish trade missions? This is an area of expansion and it is crucial that it be an area of quality employment.

**Chairman:** I ask Mr. Cullen to address the issues raised, to be followed by the representatives of Unite.

**Mr. Evan Cullen:** If I overlook any questions, it is due to the volume of questions that have been asked. Members should feel free to refer me to any unanswered questions.

In response to Deputy O’Dea, Ireland facilitates these self-employment arrangements to a greater extent than does any other state in western Europe. It has reached the point that airlines from across Europe set up subsidiaries in Ireland in order to use Irish employment law to create what the Department of Transport, Tourism and Sport refers to innovative employment models and which it supports. In some airlines, less than 5% of pilots are engaged in this manner, whereas in others it is 100%. Certain airlines employing pilots across Europe do not fly into or out of Ireland, but are Irish airlines subject to regulation under Irish company law and safety criteria. These airlines are not household names in Ireland.

On how much Ministers and so on know, the Taoiseach and the Minister for Finance, Deputy Donohoe, are former Ministers for Transport, Tourism and Sport. The Taoiseach was also formerly Minister for Social Protection. We have engaged with each of those Departments over many years and pointed out this situation to them. I was dismayed to read the transcript of the committee’s engagement with the Department of Employment Affairs and Social Protection and the response of the Minister, Deputy Regina Doherty, to questions on bogus self-employ-

ment in the Dáil on 4 April. We have not engaged with the current Minister for Employment Affairs and Social Protection but have engaged with previous Ministers and we have had much engagement with officials from that Department. I am incredibly dismayed by the statements they have made to this committee and the information they are giving to their Minister. They were well briefed on all this for many years. What they said was just extraordinary given what they were told.

On the obligations on these companies to hold AGMs, we know of one lady, who is a solicitor in north County Dublin, who is the company secretary for over 200 of these companies and that UK Revenue has been pursuing her for copies of the minutes of the AGMs of these 200 odd companies. I note the Revenue Commissioners here do not care about what these companies are doing. We estimate there are up to 800 of these companies, containing three to eight pilot directors. As I said, in some of these companies, 100% of the pilots are in this kind of precarious employment. The State is willing participant this practice. The Department of Transport, Tourism and Sport has used the phrase “innovative employment models”.

On the safety issue, the agencies that are used to direct the work towards these pilots are not covered by the Irish Aviation Authority. The airline is registered and is in the jurisdiction of an aviation authority and the pilots, as licenceholders, are in the jurisdiction of an aviation authority but the agency, however, is outside any of the laws with regard to aviation regulation. The airline would justifiably say it is not intimidating its pilots by threatening to cut their work if they do not toe the line on a safety issue as against a commercial issue. The agency, which is not in the jurisdiction of the Irish Aviation Authority, is free to do what it likes, including disciplining pilots, cutting their hours and so on.

I briefed the Minister for Transport, Tourism and Sport on the use of personalised fuel league tables. This is where an airline would rate its pilots against one another on their fuel burn. It is important to understand that the more fuel one carries, the more fuel one burns. If an aircraft was to fly from Dublin to New York and was supposed to carry 40 tonnes for that trip, if there were thunderstorms in New York, a pilot might add five tonnes. He or she will burn one of the five tonnes carrying the other four tonnes. Fuel is 40% of the operating cost of an airline. Pilots, in law, determine how much fuel goes on board. The airlines always look at the fuel burns of pilots. Some airlines have these personalised fuel league tables, where the pilots are rated against one another. The pilots at the top would be in the green zone and they get a letter every month saying they are good boys and are in the green zone. However, the pilots in the bottom 20% are in the red zone on the website and they get a letter saying they need to review their fuel management policy. I have explained to the Minister in great detail that if one is in precarious employment and on a zero-hour contract and one's hours of work, which are directly related to one's income, are determined by one's employer, and one is in the red zone, what is the motivation for picking fuel up when one needs it?

Another example of this is that when one is on an approach to a runway in a storm, one should really throw away the approach - we call it doing a missed approach - because one becomes destabilised by severe gusts of wind. In such circumstances, one will burn a great amount of fuel. A standard A320 or 737 will burn two and a half tonnes of extra fuel just to perform that manoeuvre to come around and try again. If one is on a fuel league table and a precarious contract, in the back of one's head one is thinking whether one will press ahead with this landing in these conditions, or will one burn the two and a half tonnes and put oneself at the bottom of the fuel league table.

Another example of where a safety decision comes up against the commercial one is in

respect of EU 261, which is the compensation to passengers. If I am a contractor and I find a defect on the aircraft and I want it fixed, the passengers will be delayed and will require compensation for lunch and possibly an overnight stay in a hotel. All this is commercial pressure against the safety decision. A contractor must make this decision. He or she will get a phone call, and not a text or an email, asking why he or she is delaying the flight and whether he or she realises he or she is wiping out the entire profit for this flight, or for the day in this base, if he or she does not cop on and fly this airplane. That is how it impacts safety.

Every EU-funded and commissioned study - the Ghent, the London School of Economics and the Ricardo studies - all said that pilots in these contracts are less likely to report safety concerns.

The whole process of Scope is a joke. It is nothing more than some kind of figleaf to satisfy social partners, or whatever. It is designed to frustrate and to delay and it is a war of attrition on ordinary people, trying to establish and vindicate their rights. Nobody in the Department of Employment Affairs and Social Protection seems to be interested in amending Scope or taking it seriously. Our experience of Scope is extremely negative.

On the back of the German investigations, more than 100 pilots were arrested and charged with criminal prosecution for being in contracts like these Irish ones. Vereinigung Cockpit, which is our brother airline pilot association in Germany, did a deal with German Revenue where each of these pilots turned state's evidence against these companies. There was some kind of a settlement because it has all gone away now but the Germans did not let go of it and they are very pleased with the outcome.

Young pilots are led to believe they joining the airline and that they will participate in it but at the last minute, they are directed into a room where they sign up with the agency and end up being placed into these companies. They can find out who their fellow directors are through the Companies Registration Office and they have done that. That is how we have made contact with other directors. I asked numerous contract pilots to attend here and I asked one to give evidence but, understandably, none has. They said I must be joking and that they would not attend.

**Senator Gerald Nash:** Was it for the fear of being sued? They were afraid of the implications.

**Mr. Evan Cullen:** It was not for the free lunch. It was absolutely out of fear.

On the high number of contractors, as I said, it is between 5% and 100%. Globally, Ireland is the base. If one looks at the European figures, Ireland facilities most of the European figures, with our employment, commercial or company law. We believe the €15 million to €16 million loss in employers' PRSI is extremely conservative. What is remarkable is that these companies must use one of a shortlist of accountancy firms, which must be Irish. The pilot companies must be Irish-registered as must the airline. There is some arrangement between the shortlist of accountancy firms and the beneficiary of all these arrangements.

I said that I was dismayed by the submissions made to this committee by officials and by the view the Minister took in the Dáil on 4 April.

I am sorry if I have missed a question.

**Chairman:** We will have further opportunity.

**Mr. Evan Cullen:** There was a very important question from Senator Nash. It is a matter of fact that female pilots have terminated their pregnancies when they were in this arrangement. They have a choice. They must terminate their employment under this type of employment or terminate their pregnancy. They cannot have both.

**Senator Gerald Nash:** That is an utter disgrace.

**Mr. Evan Cullen:** That is absolutely what is going on.

**Deputy Willie O’Dea:** Does Mr. Cullen have a list of those accountants?

**Mr. Evan Cullen:** I can certainly get the Deputy a list.

**Chairman:** Will Mr. Fitzgerald give the committee Unite’s point of view?

**Mr. Tom Fitzgerald:** I will go through the questions and try to answer as many as I can. Most of my experience is in the construction sector, so my colleagues will have more to say than I do on the English language teaching issue. There is a clear overlap in the experience of workers in both those sectors. In regard to the scope section of the Department of Employment Affairs and Social Protection, without meaning any disrespect to any individual, it has been our experience that it is not fit for purpose. We were involved in a major industrial dispute in 2017 relating to State-funded projects where it was clear as day that a chain of contractors was engaging in bogus self-employment. Exactly like the experience in the airline industry, we had individuals saying they were directors of a company who had been bounced into that position. It is very difficult to unravel those types of situations, but we brought clear evidence to the scope section of such practices. The dispute in which we were involved since 2017 is in the public domain and, almost two years later, the response we have received is that the officials in the section knew those workers were employed and were denied their rights. The cynic in me finds it hard not to believe there is something at play that is delaying a resolution. I do not see how difficult it can be to take a set of facts and benchmark them against an individual experience.

Deputy O’Dea asked about the extent of the problem. Our experience is exactly the same as that of my colleagues in IALPA in this regard. We can give numerous examples of such practices if members require them. The difficulty is that the practice of bogus self-employment, particularly in construction, is a growing phenomenon rather than something that is going the opposite way. Moreover, it is reasonable to conclude that there is a chain of causation between precariousness in general, precariousness in the construction sector in particular, and the ability of workers who are building homes to buy homes. Housing affordability is a significant social issue of the day and certainly a link is there to the issue we are discussing.

Deputy O’Dea also asked about what is happening with schools building projects. The initiative that was launched some years ago in that area involved a substantial investment of taxpayers’ resources. I visited one school where I met a young worker going onto the site in a pair of runners who told me he had never been on a building site before. He had received a text asking him to come to fit gas pipes in the school. Wearing runners on a building site was detrimental to his own safety, but there was the further concern that despite having no experience, he was fitting gas pipes in a primary school. That is the type of thing we are hearing about on a day-to-day basis.

Deputy Brady asked what we do when we learn about these sorts of practices. We try, in the first instance, to resolve the situation. That involves doing all sorts of stuff and trying to get over being demonised for doing so by various parties. We only move to engaging with the

State as a last resort, not the default position. One is in the mire if one is relying on the State apparatus to advance these types of situations.

Senator Nash referred to the need for definitions. The issues relating to bogus self-employment have been well ventilated in this committee, including in discussions with Professor Michael Doherty of NUI Maynooth and Ms Patricia King, general secretary of the Irish Congress of Trade Unions. We do need clear definitions, but we are often told by politicians that there is a difficulty in that regard. What we really need at this stage is outcomes. Any report or subsequent legislation that might flow from the work of this committee needs to be very clear in its capacity to arm the people who are trying to stop the practices described by Unite and by our colleagues in IALPA. I am happy to hear that Deputy O’Dea feels armed with the information we are giving him to look to making real changes.

Senator Higgins asked about sectoral measures that might be adopted. There certainly are tools that can be used in the case of procurement, for example. This is taxpayers’ money we are talking about, and we want a situation where workers are properly paid because that will give a dividend by way of taxes returned. It is a positive circle that will also produce better outcomes for State-funded projects such as schools and hospitals. We know that bogus self-employment is a feature of the national children’s hospital construction project. In fact, the Irish Congress of Trade Union’s construction industry committee is being forced to stage a protest next week at the hospital site to register our concerns. Migrant workers on that project are being forced into bogus self-employment, placed on C45 tax and coerced into being contractors and, in some instances, directors. They do not speak the language, never mind anything else, and there is little they can do. Our experience is that buildings sites can sometimes feel like a war zone for workers, with significant dangers, including the danger of death. The State apparatus is not equipped to allow us to tackle that, despite the best efforts of many people within the political system. We can give specific examples if it would help the committee. The challenges are significant but given the purchasing power the State has, they are easily overcome. To my mind, it is a question of there being the will to do so.

**Ms Colette Godkin:** Deputy Brady asked about the scope of the problem of bogus self-employment in the English language teaching sector. It is difficult for us to determine the extent, partly because it is a newly unionised sector, so we have to approach people individually and ask about the situation in their school. One issue we keep encountering is the fear on the part of employees of speaking up. It is a sector that has a long-standing culture of employment abuses and the position of workers is very precarious. It is quite common, for instance, for people to be told on a Friday that there is no work for them the following Monday. It is difficult for people to speak up for their rights because they are afraid of losing their job. We have determined with certainty that there are two quite large language schools in Dublin engaging in bogus self-employment, and I heard this week of two more that are doing the same. There is also a temping agency, which provides cover teachers, engaging in the practice.

**Chairman:** Is Unite challenging those organisations either through Revenue or the Department’s scope section?

**Ms Colette Godkin:** We have not done so yet for two reasons. First, we only received some of this information very recently and, second, it is difficult to get the teachers to put their names forward to challenge it. As we see again and again in cases of employment abuse, workers in precarious employment are the most vulnerable. If we say to people that what is being done to them is against the law and can be challenged, there is a genuine fear that if their employer finds out they are challenging it, they will not be there next week.



**Mr. Rob Kelly:** Unfortunately, our experience as union officials aligns with the experience of our members in the construction industry who have suffered bogus self-employment - there is no point in going to the scope section of the Department of Employment Affairs and Social Protection. Mr. Fitzgerald referred to the situation at Kishoge community college. It took two years to get a response in that case from the scope section, at which point the main contractor, who was deemed to be the employer of the workers concerned, challenged it in the High Court. The matter is somewhere in abeyance and has not been resolved. We would not recommend for English language teachers to take any case to the scope section because it is not fit for purpose. There are more television licence inspectors in the country than there are officials working in the section, which is something that must be addressed.

Mr. Cullen spoke about cases in the airline industry where shelf companies have been set up and people are being forced into being directors of them. That is something we are seeing spread into the construction sector. For example, we have had many cases recently of crane operators who were coerced into becoming company directors. It is a similar structure to that which is used where accountants are made to be directors. My cynical assessment of the situation is that where there are ways and means of making more money and increasing profits, some companies will use them time and again, to the detriment of workers. There was a very sad case recently on a building site just down the road from Leinster House, where one of our members had been working on PAYE on a contract for a major project in Cardiff Lane. Only weeks before an accident on that site, which resulted in him losing his left leg from the knee down, he had been coerced into becoming self-employed through another shelf company. Therefore, he lost out on a substantial amount of sick pay from the construction workers pension scheme, which is an entitlement under the sectoral employment order for employees. This is having a massive effect on workers in the industry. It is up to the committee members to influence that change, if they can.

**Deputy Bríd Smith:** I thank the witnesses for their very enlightening contributions. Deputy O’Dea said the State seems to be a willing participant in all of this. Having listened to the contributions, and knowing in advance that I would concur with them, I believe that at this stage we should start naming who the State is participating with. We are skirting around the names here. I want to ask Captain Cullen about this directly. Page 5 of his presentation refers to a German prosecutor who searched the UK premises of a company that provides services to an Irish airline. Was that airline Ryanair?

**Mr. Evan Cullen:** Yes.

**Chairman:** I want to remind the Deputy of what I said at the start of the meeting, namely: “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.” We are not looking at individual companies *per se*. We are looking at the practices.

**Deputy Bríd Smith:** If the Chairman will let me proceed with the line of questioning-----

**Chairman:** I am just reading that point to you first.

**Deputy Bríd Smith:** That is fair enough. That is the Chairman’s job, which I appreciate. However, I am aware that Ryanair will be before this committee in our next scrutiny session.

**Chairman:** It is invited.

**Deputy Bríd Smith:** I would like to ask Captain Cullen and others if they have any specific questions they would like us to put to a company that had a German prosecutor go to the British authorities to ask them to do something about this. An interesting point is that the German and British authorities are much keener to track down bogus self-employment and will do things like co-operate with each other, take people to court and so on. This is because the social insurance contribution of an employer in Europe is much higher than it is in Ireland. We have one of the lowest contributions and, therefore, our Government can turn a blind eye. The former Minister for Social Protection, before he became Taoiseach on the back of his “Welfare cheats cheat us all” slogan, when he was going after the low hanging fruit, could have gone after companies that actually cheat us all and practices that actually do us down, given a huge amount of revenue is forgone through bogus self-employment practices. The witnesses today have shown that very clearly and very well.

I would like the Unite representatives to tell us if they have the names of the contractors or providers of labour at both the national children’s hospital and some of the schools they mentioned that were part of the expenditure of public money where these employment practices are happening.

I would also ask Ms Godkin about the English language teaching, ELT, situation. All of us would be familiar with people in this position because we have met them and they have given presentations and have been outside the Dáil. There is an intention by the State to invest something like €2 billion in students and language for the future. This is very evident in my constituency, where something like 4,000 student accommodation rooms are being built against the will of the local population in Dublin 8, and this is repeated in Dublin 1. The planning laws are being relaxed and money is being put into this. Although Unite has referred to legislation, how can we, as a trade union movement, challenge this in some way, rather than it just being seen as a matter for legislation? Do the witnesses agree that, at some point, either through ICTU or activity between teachers, builders and pilots, some form of action should be taken by those who are victims of these practices to try to put manners on these companies?

I want to go back to my line of questioning with Captain Cullen before the Chair interrupted me. He said that something like 800 companies are involved in this bogus employment practice. Are those 800 companies spread out through several airlines or is it all Ryanair?

**Chairman:** Does the Deputy have other questions?

**Deputy Bríd Smith:** I do. I want Captain Cullen to come back on that because it will lead to the next question.

**Mr. Evan Cullen:** No, every airline in Ireland is doing this to a different degree, from very low percentages up to 100%. To be clear, Ryanair is not the 100%. The practice is very prevalent. We find the good employers are forced to do it because of the cost advantages given to their competitors by doing this. We do not have fair competition. We do not have a level playing field.

**Deputy Bríd Smith:** A lot of what Captain Cullen spoke about would be very pertinent to the transport committee. Has he ever given evidence to it?

**Mr. Evan Cullen:** The transport committee is not interested in evidence from IALPA.

**Deputy Bríd Smith:** Is that particularly from IALPA?

**Mr. Evan Cullen:** That is particularly from IALPA.

**Deputy Bríd Smith:** Has it been blocked from giving evidence to the transport committee?

**Mr. Evan Cullen:** Yes, we have.

**Deputy Bríd Smith:** I want to ask about how much the current Minister and the previous Minister know about this. I asked my colleagues when the current Minister for Employment Affairs and Social Protection took office, and I asked it for a reason. I had some research done in May 2017, over two years ago, on bogus self-employment. In that, the Oireachtas Research and Library Service quoted to me the Minister for Employment Affairs and Social Protection from 27 April. Was that the current Minister or the previous Minister? I know the Taoiseach celebrated two years of being Taoiseach.

**Senator Gerald Nash:** It was Deputy Leo Varadkar.

**Deputy Bríd Smith:** His answer to that parliamentary question was that if an arrangement constitutes bogus self-employment and results in reduced income tax and social insurance contributions, it is something neither he nor the Minister for Finance would be prepared to allow to continue. That was two years ago and two years is quite a long time. I say that publicly because I want to draw the attention of the current Minister for Employment Affairs and Social Protection to the fact that, two years ago, her predecessor said they would not allow this to continue.

We have the case of Global Technical Services, which is public knowledge. In February 2017, the Department of Employment Affairs and Social Protection wrote to the workers concerned, telling them a decision was made in regard to this company and that it was guilty of bogus self-employment and needed to correct it. The company never appealed that so the letter stated to the workers that the formal decisions referred should mean the company would engage with them and resolve the situation where they are owed money. Last week, I got a letter from the employees stating that, over the recent period, Revenue has begun issuing threatening letters from bailiffs and the full weight of the law to recover the workers' presumed debts arising from the period of bogus self-employment as certified by the Labour Relations Commission. The letter states the workers have sought and are still seeking confirmation that their former employer assented to the judgments of the scope section of the Workplace Relations Commission and the Labour Court, and legally changed their employment status. It has not done so. The workers find that Revenue is using threats and warnings against them and they are trying to find solutions to this issue. They are suffering extreme stress and threats because they were in bogus self-employment and while the Labour Court found they were correct, the employer has done nothing about it. That is exactly two years ago.

We are facing a disgraceful situation. The evidence today is hugely important and I want to thank those who gave it. Beyond legislation, what do Unite and Mr. Cullen think can be done to stop this outrageous practice?

**Deputy Joan Collins:** Many areas have been covered already so I will not refer to them. I thank our guests for attending. Many Opposition Deputies have been raising this issue for a long time. The shutter has been pulled down. It is similar to what is done at The Ivy - the curtains are pulled shut - every time people go in to protest tip theft. I have met Mr. Cullen before and he said then what he has also explained here. I felt that IALPA had to come to a public forum such as this in order to be able to make that known. I hope what he stated will have a substantial impact in the media, especially the point about the position that women have found

themselves in because of what is involved here and the way the association has been treated in recent years. It has been stated that companies have been able to use Ireland as a tax haven. Accountants here are facilitating such behaviour. This is a serious matter. I will not hesitate to push this issue as much as possible in order to try to deal with it. We should work with our guests in respect of it, rather than having people running off and doing their own thing.

I have been in contact with Martin McMahon. Many people know his name. He has met the Minister for Employment Affairs and Social Protection to discuss bogus self-employment and has explained what has happened over the past 20 years. This committee is trying to raise that to a level where it is not all smoke and mirrors and it is not seen as the small figure that we are led to believe by the officials. It is bigger than that and it is growing, especially among English language teachers. I have been a trade union activist all my life. I recall that teachers and pilots had well-paid jobs 20 years ago and that they were respected and had trade union rights. Pilots were full-time and permanent employees. Construction workers were directly employed and had reasonably good conditions and pay. In the past 20 years, under social partnership and the Industrial Relations Act, we have seen a rowing back in respect of workers' rights to the point where it is nearly like 1916, with people going down to the docks to look for work and being afraid to say anything in case they do not get that work.

I hope that this report will have resonance in society and that it will encourage workers to organise and fight back because that is what will have to be done. When I talked to workers in The Ivy, they were afraid to say anything. There are frequent audiovisual checks on them. The company has stooges come in to ask staff questions in order to try to catch them out. Workers are operating in a very difficult environment. In an international context, this is what has been happening to pilots in recent years but it has not received the attention it needs and neither has it been addressed. This committee has to use its authority to try to expose this type of behaviour and, as the Chairman indicated, take action in respect of it prior to the summer recess.

In the context of the impact on pilots and the way in which some of these companies have been set up, how cunning are those involved in terms of how they have thought up ways to make workers vulnerable and deny them the decent pay, maternity rights and sick pay rights to which they are entitled.

**Deputy Paul Murphy:** I thank our guests for their presentations and for the work that they are doing to tackle this serious and widespread problem. As Deputy Joan Collins stated, many questions have already been asked, so I will be brief. The current line of the Minister when asked about this is to state that she recognises it is an issue, that there needs to be a whole-of-Government response to it, that it is being worked on and that it should be left in the Government's hands. How would our guests rate the response of the Government in respect of this issue? Is it taking it seriously enough? Has it acted fast enough? Are the measures it is proposing going to be sufficient in terms of dealing with the issue?

When one raises this matter with the Government, one often gets an answer along the lines of that which I received from the Minister for Finance, Deputy Donohoe, at a meeting of the Select Committee on Finance, Public Expenditure and Reform, and Taoiseach in 2018 regarding a proposed amendment to the Finance Bill. The Minister for Employment Affairs and Social Protection gave a similar response in the Seanad at the time. The Minister for Finance stated:

If I could anchor the algebra in more prosaic words, it is the view of the Department that, at an aggregate level, the data are not indicative of a significant increase in the prevalence of self-employment in the economy over the past 16 years.

The Ministers emphasised that, on the whole, self-employment has not gone up. Hidden behind that is the idea that bogus self-employment probably has not gone up. Can our guests speak from what they have experienced on the front line over the past ten to 16 years or so? Has the incidence of bogus self-employment in the various industries with which they are connected increased and, if so, by how much? I presume this matter arises in their negotiations and discussions with individual employers and employer groups. What is the attitude of individual airlines, IBEC and the Construction Industry Federation, CIF, to it?

What Mr. Cullen said is striking and horrifying, particularly if it is accurate. I take his word for its accuracy. The idea that any woman would be forced to choose between employment and pregnancy and would be obliged to terminate her pregnancy in order to maintain her employment is horrifying. Will Mr. Cullen confirm that he knows of cases where women who otherwise would not have had terminations felt that they had no choice but to do so? I stress that I am pro-choice but, for me, that is both sides of pro-choice, namely, the ability of a woman to choose to have a child - and without this kind of incredible outside influence - or to choose not to do so. If what Mr. Cullen outlined is accurate, then it is anathema to the concept of pro-choice.

Mr. Cullen was clear and blunt in stating that Revenue does not care about the situation. That is probably accurate. Will Mr. Cullen indicate the basis on which he can so confidently state that Revenue simply does not care?

**Chairman:** That concludes the questions. I will call Mr. Cullen and then our guests from Unite.

**Mr. Evan Cullen:** I confirm that female pilots have told me that they have terminated pregnancies because they had no entitlement to maternity leave and, therefore, no guarantee of having jobs when they returned. The attitude of the Government is bizarre. Some members of the Government state that there should not be bogus self-employment, yet others believe in “innovative employment models” in order to keep costs down and ensure that Ireland remains competitive. Deputy Paul Murphy described the way that the Minister for Finance answered the question. It is interesting that the latter is a former Minister for Transport, Tourism and Sport, so while the totality of his answer is probably correct, he would know what is going on in aviation. The airlines have told us privately that they are unhappy with this practice but they are being forced to engage in it because there is not a level playing field. Airlines that carry the full social cost of direct employees will not be able to compete with airlines that engage substantially in this practice.

I will give a classic example of how the Department of Transport, Tourism and Sport operates. It recently granted a permit to Ethiopian Airlines to operate between Dublin and Madrid. All of the people who are employed on that aircraft are based in Addis Ababa in Ethiopia with an Ethiopian labour cost base but they are competing directly with workers in Aer Lingus and Ryanair who are on an EU labour cost base. That the Department has no difficulty with that illustrates its attitude. There are currently 39 flights a week between Dublin and Madrid being operated by EU airlines. I have no problem with Ethiopian Airlines flying from Addis Ababa into Dublin and returning to Ethiopia but I have a problem with the company competing with us by flying in the European Union because we have an EU cost base.

For many years we have brought these issues to the attention of the Revenue Commissioners but they have done nothing. For this reason, I have concluded that they do not care.

**Mr. Tom Fitzgerald:** I will address some of the specific issues Deputy Bríd Smith raised,



being mindful of parliamentary procedure. The contractor in Kishogue to whom Mr. Rob Kelly referred was JJ Rhatigan. It is a matter of public record that the Labour Court awarded workers €100,000 for the underpayment of wages. It was established that they were employees and that their self-employed status was bogus. The reason for the cynicism, which is not just related to the nature of our job, is that the former Taoiseach opened a building site for that contractor. We have established definitively with the State agency for dispute resolution that these workers' self-employed status was bogus, notwithstanding the logjam, whether by accident or design, in the scope section of the Department. Then we have the former Taoiseach opening a project for the company on the north side of Dublin.

The biggest example of bogus self-employment goes back more than a decade to Gama Construction. Members of the Houses of the Oireachtas were highly exercised by the levels of exploitation of migrant workers in that company. All sorts of things went on and at one point, a figure of €100 million owing was exposed. I do not believe that figure is exaggerated. Despite this, within two years, the then Tánaiste signed off on a decision to award the contract to build the Castleblayney bypass to Gama Construction. That is the reason we are cynical, although we are generally positive.

We were asked what can be done. I will outline what we do traditionally. We organise and build strong movements to redress the power imbalance between employers and workers. We do that every day but it should not preclude parliamentarians from taking action to aid and equip us to undertake our task of delivering for citizens in a society, as opposed to what often feels like taxpayers in an economy. They are not mutually exclusive roles, as I am sure Deputy Bríd Smith understands. We will not be found wanting. It has been very difficult to organise in the English language teaching sector but it is testament to our organisers and, more important, our members that they have been able to weather the inevitable storms. We have experience which we have shared with our members in order to protect them in those circumstances.

We appreciate the point made by Deputy Joan Collins that this is a serious and significant breach. We can point to hundreds of millions of euro that are not being paid to the Exchequer. There are decent contractors and employers who are trying to do the right thing but the structure does not allow for benevolence and decency. This gives rise to a race to the bottom. As I said, these practices are linked to workers' inability to secure the basics in life, including homes.

Deputy Paul Murphy directed his questions in the main to Captain Cullen but some of the points overlap. He asked whether the Government will deal with the issue at this point. I have just given examples from a period of more than 20 years during which the Government has not done so. I am a bit pessimistic in that regard but I appreciate the opportunity to appear and listen to the contributions of members on what could be done.

I was asked about the attitude of the CIF and IBEC. I think they find themselves in a conflict. They will say a particular contractor is doing everything right and defend the indefensible, as was the case of JJ Rhatigan. We are far better off having proper schools built by qualified workers who are properly employed. That is obvious and it is logical but that rationale is undermined by the pursuit of profit. That is the essence and the system lends itself to the view that profit will undermine what is rational, sensible and in the interests of workers.

From the point of view of Revenue, we specifically pointed out the contradictions between two Departments. One Department is saying one thing about workers' status, while another is saying something else. We said the scope section is not fit for purpose. The reality is that when we interface with the system, things get worse rather than better. That is an indictment of the

system. We are hopeful, however, that the committee will listen to the evidence we and others have presented and produce recommendations that will make enduring changes for the work we are trying to do on behalf of citizens.

**Deputy John Brady:** Two main issues jump out at me. The first is the fear that employees are facing and the second is that the scope section of the Department is not fit for purpose. As the witnesses will be aware, the Minister has spoken of bringing a memo to Cabinet, increasing inspections and so on. Without delaying the proceedings, is what the Minister for Employment Affairs and Social Protection proposing to do sufficient to address these issues or is it just a continuation of the same old point?

**Mr. Tom Fitzgerald:** That is a very important question. There is an opportunity right now and the sense of urgency could not be more palpable. Our group of unions has been forced to organise a protest at the biggest construction project in the State next week. We would like the Minister to hear that message and ask what can be done to register the sense of urgency this issue needs.

**Mr. Rob Kelly:** To respond to Deputy Paul Murphy's question, in our experience bogus self-employment has increased. The reason is that the few decent contractors who are trying to do things properly by paying workers' PAYE and pensions contributions, sick pay and so forth are at a distinct competitive disadvantage because other contractors do not pay social contributions, pensions, holiday pay, sick pay and so forth. If they want to stay in business, decent contractors are being forced to go down that route. It is a competitive nightmare.

On the attitude of employers, this has now become the structure of the industry. As Deputies Bríd Smith and Joan Collins said, 20 years ago decent contractors employed workers directly and took on apprentices every year to give young workers a trade. That is no longer the case. A direct example of that is the national children's hospital. A decent contractor which did substantial work on and built a new extension to the Mater Hospital was lined up for the children's hospital project. It has the experience to do this work but because some other contractor came in and cut the legs from underneath it by using certain practices and engaging in tiers of sub-contracting, the taxpayer is reaping the results of a project that has escalated into lottery figures. That is the way the industry is going right now. We need to close the loopholes that allow companies to engage in some of the practices to which we have referred. If we close one legal loophole, employers will find other loopholes so we must close all of them.

It was extraordinary to hear some of the evidence of Captain Cullen. Our members, individual workers, are facing the same situation. A crane operator who sits in a tower crane for 12 hours a day was told by his employer that it would be good for him if the employer set up a company and made the crane operator a director of it. We raised these issues with employers. We had a worker who sat down with the Construction Industry Federation to try to negotiate better terms and conditions and health and safety. Within 24 hours, the worker was blacklisted and ended up out of work for a substantial period. I managed to find a contractor who was willing to employ him. He started with the contractor on Monday and that contractor received five phone calls last week from people telling him not to employ this individual. Two of them are major contractors. JJ Rhatigan and Company was one of the companies that tried to influence other contractors not to employ workers who are willing to stand up and try to effect change in an industry.

**Ms Colette Godkin:** It is interesting to hear what Mr. Kelly had to say. This comes back to Deputy Bríd Smith's question on what we could do, as a trade union. One of the issues in the

English language training sector is lack of union recognition and victimisation of union members. We need to gain union recognition in ELT schools and put an end to the victimisation of members for a couple of reasons. We need to support our members if they should decide to take a case and pursue the question of whether they are bogus self-employed. In addition, we have to educate our members because we have found a lack of awareness, particularly among younger teachers, as to how harmful bogus self-employment is to them. They are not necessarily aware that they are losing out on social welfare, that their status will affect their pension in the future and that they are basically being excluded from unfair dismissals legislation and legislation that protects their parental rights. As a union, we want to be able to educate our members about this and support them if they want to take cases and pursue the issue. Union recognition is very important to us to be able to do that.

There is also a legislative avenue for us, specifically in English language teaching. To be able to accept visa students, which is a significant part of the ELT business, schools need to be on a Department of Justice and Equality list known as the interim list of education providers. There is a mechanism for the State to determine whether schools are engaging in bogus self-employment. If a school is engaging in that or other abuses of Irish employment law, it should be removed from that list and lose its accreditation, which would mean it could no longer take in visa students. That would act as an incentive to schools to stop engaging in this practice and treat their workers properly.

**Chairman:** I thank our witnesses, Captain Cullen, Mr. Kelly, Mr. Fitzgerald and Ms Godkin, for attending. Their opening statements and responses to questions were very informative and helpful. The committee has had a series of meetings on this topic and is in the process of concluding a report on it. We hope to produce the report before the summer recess, which is a tight timeframe. It will make some specific suggestions. If, following the meeting, there is anything the witnesses feel might be useful to our deliberations, they should feel free to contact us by email or letter in the next week or thereabouts and it will be considered. Sometimes things occur to witnesses after a meeting. If there is anything of that nature the witnesses would like to bring to our attention, please do so. I thank them for their attendance and for the direct manner in which they responded to the questions.

The joint committee adjourned at 12.35 p.m. until 10.30 a.m. on Thursday, 4 July 2019.