DÁIL ÉIREANN

AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AND ATHCHÓIRIÚ

JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM

Dé Céadaoin, 1 Aibreán 2015

Wednesday, 1 April 2015

The Joint Committee met at 2 p.m.

MEMBERS PRESENT:

Deputy Pat Breen,*	Senator Sean D. Barrett.
Deputy Ciarán Cannon,	Senator Tom Sheahan.
Deputy Pearse Doherty,	
Deputy Regina Doherty,	
Deputy Stephen S. Donnelly,	
Deputy Sean Fleming,	
Deputy Mary Lou McDonald,	
Deputy Michael McGrath,	
Deputy Kieran O'Donnell,	
Deputy Pat Rabbitte,	
Deputy Arthur Spring,	

* In the absence of Deputy Tom Barry.

DEPUTY LIAM TWOMEY IN THE CHAIR.

The joint committee met in private session until 2.17 p.m.

Business of Joint Committee

Chairman: The committee is now in public session. We will have two separate sessions. Session A will be an update on issues pertaining to the liquidation of Setanta Insurance and session B will be to consider the following orders referred to this committee by the Dáil: Freedom of Information Act 2014 (Effective Date for Certain Bodies) Order 2015 and Freedom of Information Act 2014 (Exempted Public Bodies) Order 2015.

Setanta Insurance Liquidation: Discussion

Chairman: Setanta Insurance Company Limited went into liquidation in April 2014. At the time of entering liquidation, the company had approximately 75,000 policyholders. Currently, just under 1,800 claims are still open. As part of the liquidation process, all policies were cancelled by the end of May 2014. The purpose of the meeting will be to update the committee since its previous engagement on this topic and, specifically, to review progress relating to claims and the liquidation process.

I welcome the liquidator of Setanta Insurance Company Limited, Mr. Paul Mercieca. Mr. Mercieca is based in Malta and I thank him for taking the time and trouble to travel to Ireland and his willingness to appear before the committee. Mr. Mercieca is accompanied by his colleague, Dr. Matthew Bianchi.

I welcome Mr. Sean Quigley, Accountant of the Courts of Justice. Mr. Quigley is joined by his colleague, Ms Denise Mullins. I also welcome Mr. Ronan Hession of the financial services division of the Department of Finance. Mr. Hession is accompanied by Mr. Antoine Mac Donncha.

The format will be as follows: Mr. Hession, Mr. Mercieca and Mr. Quigley will make their opening remarks. I ask them to be brief. A question and answer session will then allow matters to be clarified.

I remind members, witnesses and those in the gallery that all mobile phones must be switched off. By virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. If, however, they are directed by it to cease giving evidence on a particular matter and continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I ask Mr. Hession to make his opening remarks.

Mr. Ronan Hession: I thank the joint committee for the invitation to attend to discuss Se-

tanta Insurance. I am a principal officer in the financial services division of the Department of Finance and joined by Ms Antoine Mac Donncha, head of the Department's legal unit. In my opening statement I would like to outline for the committee the role of the Department in the Setanta Insurance process thus far and explain the role of the Minister more generally in the statutory framework for insurance compensation.

The Minister's primary role relates to the statutory framework and funding arrangements for the insurance compensation fund which was established under the Insurance Act 1964. The purposes of the Act are to establish the insurance compensation fund to meet certain liabilities of insolvent insurers; to provide for the making of loans to the fund by the Minister; and to provide for contributions to the fund by insurers. The fund is maintained and administered under the control of the President of the High Court acting through the accountant for the courts of justice. The Minister has no statutory role in the payments process or the administration of the fund. Section 5 of the Act provides that the Minister may, on the recommendation of the Central Bank, advance from the Central Fund to the insurance compensation fund such sum as he thinks proper to enable payments from the fund to be made expeditiously. The funds provided by the Minister are in the form of a repayable loan. Having regard to the potential calls on the fund, the existing reserves and the expected insurance levy receipts, the Central Bank wrote to the Minister in January 2015 recommending that up to €140 million would need to be advanced by him to the fund this year. As potential calls related to Setanta Insurance could be met from existing reserves, this figure is required to cover calls by Quinn Insurance Limited related to the disposal of its UK book, as announced earlier this year. The Minister has agreed to make a repayable loan to the fund for this amount.

The insurance compensation fund is, ultimately, funded by contributions from insurers. The Insurance Act 1964, as amended, provides that the fund is funded by contributions from insurers who issue policies in respect of risks in the State, whether the insurers are based in Ireland or another member state. Under the Act, the Central Bank has responsibility for determining whether the fund requires financial support and the level of contribution to be paid to the fund by insurers. The contribution may not exceed 2% of the aggregate gross premiums paid to each insurer for policies issued in respect of risks in the State. A levy in accordance with section 6 of the Act came into effect on 1 January 2012. The Central Bank has set the levy at the maximum 2% of the aggregate gross premiums paid. The levy is payable quarterly in arrears to the Revenue Commissioners which have responsibility for its collection and the transfer of the proceeds of the levy to the insurance compensation fund account.

Under section 2, the accountant for the courts of justice is required to submit an abstract on the fund's accounts and a report on the administration of the fund to the Minister which he must publish and lay before the Houses of the Oireachtas. The most recent published accounts relate to 2013. They show a total owing to the Minister for Finance of some €986.9 million, of which €197.8 million was issued in 2013, and show insurance levies for that year of some €64.7 million. They also show outstanding amounts owed to the fund from companies placed in administration previously - Icarom, formerly the Insurance Corporation of Ireland, €164 million; Primor, formerly PMPA, €139 million; and Quinn Insurance, €1.158 billion. I am advised that the current balance in the fund is some €96 million.

Having set out the Minister's role under the statutory framework, I will now explain the Department's role in the Setanta Insurance process thus far. On 16 January 2014 the Central Bank first wrote to the Department alerting it to the concerns about the solvency margins of Setanta Insurance and advising that a potential call on the insurance compensation fund could

arise. On the same day the Maltese Financial Services Authority directed Setanta Insurance to cease writing new business. On 16 April the Maltese regulator informed the Central Bank that Setanta Insurance had handed back its licence after the shareholders had resolved to wind up the company. At that stage the Department's understanding was that claims not honoured by Setanta Insurance could be submitted to the Motor Insurers Bureau of Ireland, MIBI. On 30 April a liquidator was formally appointed to Setanta Insurance. The Department met the liquidator's representative in Ireland and the liquidator within a week of their appointment. At the time the Department also held meetings with senior officials in the Department of Transport, Tourism and Sport and the Motor Insurers Bureau of Ireland.

I should explain that the Motor Insurers Bureau of Ireland was established in 1955 for the purpose of compensating victims of road traffic accidents caused by uninsured and unidentified vehicles. It operates under a written agreement dated 29 January 2009 between companies underwriting motor insurance in Ireland and the Minister for Transport. The Minister for Finance is not party to the agreement and has no responsibility in respect of the MIBI or the agreement.

On 23 July 2014 the MIBI advised the Department of Transport, Tourism and Sport that it had obtained legal advice from which it had concluded that the 2009 agreement with the Minister for Transport did not require the MIBI to satisfy awards against drivers covered by a policy of insurance where the insurer was unable to pay all or part of an award because of insolvency. On 25 July the Department of Transport, Tourism and Sport and the Department of Finance jointly sought the advice of the Attorney General on the question of MIBI liability. On 1 September the Attorney General's advice was received, on foot of which the Minister for Finance decided to proceed on the basis that the MIBI would not be playing a role in compensating claimants due awards under Setanta Insurance policies. On foot of this, the Department of Finance met the liquidator and the Courts Service regarding the arrangements for the processing of payments under the insurance compensation fund. Based on the information available, the liquidator stated it was not likely that he would be in a position to meet more than 30% of the insurance claims from the assets in liquidation. Therefore, on the basis that the insurance compensation fund might only pay out up to a maximum of 65% on an eligible individual claim, the possibility of advance payments of 65% on eligible claims to the fund was examined by the accountant. The accountant obtained clarification on this question. He informed the Department that, having considered legal advice on the operation of the legislation, he was satisfied that it was appropriate to make applications to the President of the High Court for approval to release moneys from the insurance compensation fund prior to completion of the liquidation of the company. Any payment from the fund would be a once-off and final payment. The State Claims Agency was engaged to provide support for the accountant in terms of (i) the necessary expertise required to ensure only valid claims would be paid from the insurance compensation fund and (ii) administrative support required to deal with the volume of work arising from the Setanta Insurance case.

At the time the liquidator advised that he was aiming to make an application to the insurance compensation fund to meet outstanding claims early in 2015 in respect of the following categories of claims: claims where settlements had been agreed between Setanta Insurance and the claimant; claims where the Personal Injuries Assessment Board had issued orders to pay that had been accepted by Setanta Insurance and the claimant; and claims that had been the subject of court awards. The accountant advised at that stage that he was aiming to make an application in respect of the first batch of 300 claims to the President of the High Court before end of March 2015. On 26 March 2015 the Minister for Finance received a letter from solicitors acting for the accountant for the courts of justice. The letter states that prior to making any application to

the High Court for payment from the insurance compensation fund pursuant to the Insurance Act 1964, the accountant must be satisfied that it appears unlikely that the relevant claim can be met otherwise than from the fund. On foot of legal advice, the accountant has decided to make an application by way of special summons to the High Court, pursuant to Order 3, Rule 22 of the Rules of the Superior Courts, for a trial of an issue of law to determine whether the MIBI is liable for claims made under policies issued by Setanta Insurance. The letter emphasises that the accountant is anxious that this issue of law be determined without delay with a view to providing certainty for affected Setanta Insurance policy holders as soon as possible. We have been further advised that the direction of the High Court is being sought on the appropriate parties to the trial of this issue which may include the Minister for Finance. Obviously, this impending trial limits what I can say about any issue that may be relevant to the forthcoming judicial consideration of this matter. However, I will endeavour to be as helpful as I can to the committee within that constraint.

Chairman: I thank Mr. Hession. I ask Mr. Mercieca to make his opening remarks.

Mr. Paul Mercieca: I thank the joint committee for inviting me. I have gladly accepted the invitation because I hope my presence and that of my team will be of assistance to the committee. I also hope my presence will help to facilitate an early resolution of the process in dealing with claims. To give some background on the company, it was incorporated on 21 June 2007 in Malta and was regulated and supervised by the Malta Financial Services Authority, MFSA. The company was authorised to write the following classes of insurance business - accident, land vehicles, goods in transit, motor vehicle liability, miscellaneous financial loss and legal expenses. The company was also authorised to sell private and commercial motor vehicle policies in Ireland in exercise of its European passport right as an insurance undertaking to provide services in terms of the relevant EU legislation and directives. Accordingly, since 2007 the company carried out its business from its offices in Dublin.

On 23 January 2014 the board of directors resolved that, save in the case of receiving funds, the company would cease writing any new business, and offer renewals beyond the close of business on 24 January 2014. As a consequence, at an extraordinary general meeting of Setanta held on 16 April 2014, it was resolved that the company surrender its insurance business licence to the MFSA and be immediately dissolved. Furthermore, at a meeting of the creditors of the company held on 30 April 2014, I was appointed liquidator of the company. The liquidation is a creditors voluntary liquidation under the provisions of the Maltese Companies Act 1995 and is, I am advised, similar to a creditors voluntary liquidation under the Irish Companies Act.

The situation I found on liquidation was that the statement of affairs drawn up by the company as at 16 April 2014 showed a deficiency, meaning net liabilities exceeding assets, slightly in excess of €17 million. The outstanding claims reserve included in the statement of affairs was €28 million. This reserve is the provision for claims that have not been paid and should include provisions both for claims which had been notified to the company and for claims which had occurred but which had not been notified to the company. At the time of being placed in liquidation, the company had approximately 75,000 policyholders, approximately two thirds of which were commercial vehicle policies and approximately one third being private motor insurance policies.

Policyholders were immediately advised of the liquidation by means of the company website and notices in two national daily newspapers in Ireland. They were advised that their policies would be cancelled in due course and advised to take out new policies with immediate effect. All insurance policies were subsequently cancelled on 26 May 2014 with respect to

private vehicles and 29 May 2014 with respect to commercial vehicles. The cancellation was considered to be in the best interest of policyholders in order to avoid a situation where policyholders would continue to drive vehicles insured by the company in circumstances where their claims will not be paid in full.

I have appointed Deloitte Malta to perform a review of certain procedures and decisions on the transactions undertaken by the company in the six month period leading up to the liquidation of the company. This review is to be carried out in connection with the requirements of the relevant provisos of the Maltese Companies Act 1995. This review has been hampered due to the fact that details of the majority of the ultimate beneficial shareholders are not publicly available as the shareholdings are registered in the names of licensed trustees and-or nominees. Accordingly, an application has now been made to the relevant Maltese courts to obtain the names of the ultimate beneficial shareholders from the trustees and-or nominees holding the shares and from the MFSA. Furthermore, Deloitte Malta has been asked to perform a review of the business to assist me in obtaining an understanding of the circumstances that brought about the failure of the company. On the basis of the draft report provided to me by Deloitte Malta, I have engaged a lawyer to review the company's records and relevant documentation to establish whether, in his opinion, there are grounds to suggest an action could be brought against the persons responsible for running the company. This review is currently ongoing and I am due to have a preliminary meeting with the lawyers next week on this matter.

Upon my appointment as liquidator of the company, I proceeded with appointing the actuaries Towers Watson to review and assess the claims position and to report such assessment of the claims reserve. Towers Watson presented its report on 3 September 2014 and subsequently issued the final report on 16 September 2014. The report comprises an analysis of the unpaid reserves, estimates of the liability for outstanding claims at 31 May 2014 together with a valuation of the volatility of the estimate. The report estimates the gross claim liability at €67.7 million on the assumption that the claims run off is paid in line with normal circumstances. The report further concludes that additional reserves of between €20 million and €27.5 million represent a reasonable estimate of the adverse development potential on future gross unpaid claims as a consequence of the company's liquidation. Accordingly, the total provision for claims is estimated at between €87.7 million and €95.2 million.

I will provide some information on where we are today. In active claims, on my appointment on 16 April 2014, there were 1,669 claims, which has increased by 79 to 1,748 last week. There are 1,037 personal injury claims and 711 damage to property claims. Of these claims, 1,265 are eligible for payment from the fund and 483 are not. The claims estimate I referred to in the statement of affairs was €28 million, which has increased to €53 million as of 24 March. This means it has almost doubled, increasing by €25 million. The basis of estimating liability for claims by the company is still based on the assumption that claims run-off is paid in line with normal circumstances and does not include any provision for adverse development potential arising as a consequence of both normal random variations in claim costs and from the impact of the company's liquidation. It is pertinent to point out that, even on this basis, claims have already increased by €25 million from the date of liquidation. I have appointed Arthur Cox as my legal advisers in Ireland and the firm is co-ordinating all the court cases involving the company and liaising with other lawyers handling our cases.

There has been an increase of 201 active cases since the company's liquidation in April 2014, taking it to 619 cases. I have prepared an estimated outcomes statement on the assumption that the liquidation process will take at least another three years to conclude. I have also

taken into account the actuarial report available to me in terms of the potential claims liability and the assets available. Based on the above, I estimate that the amount available to creditors having insurance claims on the final liquidation of the company will not exceed 30% of the amounts due to them. I must emphasise that this is a best estimate and the estimate could change materially as circumstances change.

On the insurance compensation fund, discussions have been ongoing with the Department of Finance and, in particular, the accountant of the courts of justice since I met his representatives on 3 September 2014 about accessing the insurance compensation fund in Ireland. As it is the prerogative of the accountant of the courts of justice to apply to the court for access to the compensation fund, I have been working closely with him through my representative in Ireland to facilitate this process in every way possible. Indeed, there has been a high level of co-operation between all concerned in dealing with what is a very complex issue. I have submitted a preliminary list of claims to the accountant of the courts of justice who retained the Irish State Claims Agency to review those claims. I understand that the agency has confirmed that the claims are suitable for submission to the compensation fund. While I have been informed that the accountant of the courts of justice had received advice that the MIBI had no role to play in compensating claimants, I understand that a contrary legal opinion has been received recently from his solicitors. Until this matter is resolved the accountant of the courts of justice is reluctant to submit the relevant application to the Irish courts for access to the compensation fund. While, as liquidator, I am entitled to seek access to the compensation fund, I am advised that I have no direct right of recourse to the MIBI. Recent developments have unfortunately created a situation of uncertainty, which hopefully will be resolved speedily for the benefit of all concerned, and most especially the claimants. I consider the positive resolution of this matter to be fundamental in unlocking the claims situation and therefore speeding up the liquidation process. I am also advised that the equivalent compensation scheme in Malta is not available for claims against the company made by any of its policyholders and claimants.

I am obliged to hold a creditors meeting by July 2015 at which I shall present an account of my actions and dealings in winding up the company, together with a summary of receipts and payments. It is my intention to hold this meeting in June this year.

It is not possible, unfortunately, to make an accurate prediction as to how long the liquidation proceedings will take as there are too many variables at this point, many of which are out of my control.

Mr. Seán Quigley: I thank the Chairman and members of the committee for the invitation to attend the meeting and brief the committee on the operation of the Insurance Compensation Fund, with particular reference to Setanta Insurance Company. I am joined by Ms Denise Mullins from the accountant's office. I am conscious of the time constraints so I will keep my opening statement as brief as possible. However, I wish to take the opportunity to briefly outline the background to the fund, how it operates and some significant activity in managing the fund, particularly since 2011. I will also update the committee on the current position regarding the Motor Insurance Bureau of Ireland, MIBI, relating to Setanta Insurance.

The Insurance Compensation Fund was established under the Insurance Act 1964 to make arrangements to meet certain liabilities of insolvent insurers. The fund is maintained and administered under the control of the President of the High Court acting through myself, the Accountant of the Courts of Justice. Amounts are paid from the fund, with the approval of the High Court, to a person in relation to an insurer in liquidation or administration, in respect of claims under policies issued by the insolvent insurer in circumstances where it seems unlikely

that the claims can be met otherwise. In regard to claims for companies in liquidation, all payments are subject to a limit of 65% of the amount of the claim or €825,000, whichever is the lesser. The fund will also pay the full amount of legal and other costs necessarily and reasonably incurred by the person endeavouring to secure payment from the fund.

As was stated earlier, the Minister for Finance puts the Insurance Compensation Fund in funds where there are insufficient moneys to pay out. From October 2011 to the end of December 2014, the State has advanced a net €833.3 million to the Insurance Compensation Fund. The total interest charged by the Minister for Finance on amounts advanced during this period amounted to €80,390,482. The closing balance on the loan from the Minister for Finance to the fund at the end of December 2014 was €913,690,482. The current balance on the Insurance Compensation Fund is €96 million.

A levy was introduced in 2012 and €190.3 million has been paid into the fund by the Revenue Commissioners in respect of that levy up to the end of December 2014. I provide an annual statement on the fund to the Department of Finance and the Central Bank.

Furthermore, the Accountant of the Courts of Justice is, in respect of any amount paid out of the fund, a creditor of the insolvent insurer which has received the funds. The total creditors of the fund at 31 December 2014 amounted to €1.361 billion. The details of that have been provided to the committee.

To focus on some of the activity since 2011, since the introduction of the Insurance (Amendment) Act 2011 there has been significant activity for the accountant's office in managing the fund. I will give a brief summary of the main areas of activity.

In March 2010, by order of the High Court following an application by the Financial Regulator, joint administrators were appointed to Quinn Insurance Limited, QIL. Between November 2011 and December 2014 the fund made nine payments amounting to €1.158 billion to the Quinn Insurance administrators. In 2014, the fund received €100 million back, which was forwarded to the Department of Finance as part repayment of the loan. The net payments to Quinn Insurance administrators have amounted to €1.058 billion to date. The last payment to Quinn Insurance was in November 2013, which was €40 million, at which time the President of the High Court set a limit of €1.158 billion on the amount that would be paid to Quinn Insurance administrators.

Another claim on the fund arose in respect of Lemma Europe Insurance Company Limited, in liquidation. Lemma Europe Insurance Company Limited is a Gibraltar registered company and the Supreme Court of Gibraltar ordered its winding-up on 24 January 2013. In November 2013, a claimant against Lemma Europe Insurance Company wrote to my office making an application to the fund. Our legal advisers reviewed this claim and were satisfied that it was valid. I subsequently made an application to the High Court in July 2014 to pay out 65% of the total claim. The amount that was paid was €29,166. The Lemma Europe Insurance Company liquidator has indicated that there are potentially 14 other claims. However, these claims have not been settled and we are not in a position to give a value for these potential claims. One distinction between Lemma Europe Insurance Company and Setanta Insurance is that the former did not issue motor insurance policies.

As the committee is aware, Setanta Insurance went into liquidation in April 2014. It was a Maltese incorporated company. While this company was based and regulated in Malta, all of its policies covered motor insurance risks in the Republic of Ireland. Following Setanta Insur-

ance going into liquidation in April 2014, the Office of the Accountant of the Courts of Justice has had significant engagement with the Department of Finance and the liquidator through his representatives in Dublin. There were a number of legal and administrative issues to be resolved, which also required extensive engagement with our own legal advisers. This was the first time we had to deal with an insurer in liquidation on this scale and the first time we had to deal with one that was registered in another EU state. The processes are different compared with an insurer in liquidation registered in the State. The essential differences are, first, it is the accountant and not the liquidator who makes application to the fund and, second, claims on the fund can only be made very six months.

The Setanta Insurance liquidator indicated at an early stage that there would be a significant shortfall between the funds available from the liquidation and the value of the claims. The available funds after liquidation would not exceed 30%. On this basis, given the cap on the payment that can be paid from the Insurance Compensation Fund of 65%, as the Accountant of the Courts of Justice, I decided to facilitate the processing of payments from the fund as soon as possible, and therefore it was agreed to make advance applications to the fund before the liquidation process was completed. The liquidator had advised that settlements could only be paid out by him after all of the company's liabilities were quantified, including claims.

The legislation provides for the recovery of amounts that, in the aggregate, exceed a sum due to claimants from an insurer in liquidation in respect of a risk situate in the State. These provisions and penalties give me, as the accountant, sufficient comfort should a situation arise where an overpayment is made. I will only make an application to the President of the High Court where I am satisfied that claims qualify under the provisions of the applicable legislation. To ensure this is the case, we have been working closely with the liquidator of Setanta Insurance to identify eligible claimants in accordance with the Insurance Act 1964, as amended. I am also pleased to inform the committee that the State Claims Agency agreed to my request to provide expert advice and input that was not available within my office to validate claims before they are brought forward to the High Court.

The accountant's office had all of the necessary arrangements in place to deal with Setanta Insurance claims by the end of December 2014 and it was expected that the first tranche of claims would be submitted to the High Court in the first quarter of 2015. The first tranche of claims reviewed by the State Claims Agency on my behalf included 189 claims with a value of some €4 million, together with legal costs of approximately €132,000.

There was one other matter we had to deal with in respect of the Insurance Compensation Fund in recent years. This was a judicial review relating to an insurer, Independent Insurance Company Limited, a UK insurer that had gone into liquidation in 2001. I refused an application for payment from the fund, as the liquidation occurred before the introduction of the Insurance (Amendment) Act 2011 and, as such, the claimant was not deemed eligible under the provisions of the Act. The claimant did not agree with this decision and initiated judicial review proceeding against the Accountant of the Courts of Justice. This matter came to court in July 2014 and the position taken by the accountant was upheld.

Finally, I will address the issue of the Motor Insurance Bureau of Ireland, MIBI, in relation to Setanta Insurance. The issue of the possible liability of MIBI for claims from policy holders arising from the Setanta Insurance liquidation was raised with me at meetings in the Department of Finance in August and September 2014. I was advised that MIBI was not liable. This was confirmed in an e-mail dated 29 September 2014 from the Department of Finance. I was informed that this position was based on the advice of the Attorney General. While I did not

receive a copy of the Attorney General's advice, details of the key points considered by the Attorney General in arriving at the decision were provided to me by the Department. At that stage, taking account of the Attorney General's advice, I had no reason to believe that MIBI was liable for Setanta Insurance claims.

I then proceeded, as a matter of priority, to address the legal and administrative issues that had to be resolved to enable claims to be made on the fund.

As I mentioned, we had all the necessary arrangements in place to deal with claims in December 2014. In late January 2015 the President of the High Court received representations from the Law Society expressing serious concerns regarding the exclusion of the Motor Insurers' Bureau of Ireland, MIBI, from the process of dealing with Setanta claims. Having immediately reviewed the matter with the President of the High Court, we agreed that the matter needed to be resolved, in the interests of protecting taxpayers' money, before we could proceed to make any payments from the fund. As you will appreciate, the President, as the person who controls the fund, needed to be satisfied that any payments made from the fund complied with the legislation. I immediately sought the opinion of senior counsel on the matter. That opinion was received on Thursday, 19 March 2015. While I cannot disclose details of the opinion, I can give the committee an extract from it:

> I believe there is an arguable case that the MIBI could have a liability in respect of Setanta claims. It would be incumbent upon the Accountant, and ultimately the Court, to ensure that before payments can be made out of the fund, a view is formed as to whether it is unlikely that the relevant claims can be met by the MIBI before approving payments from the fund. I do not believe that the Accountant or the Court can be satisfied of that without having the issue judicially determined.

Arising out of that, since Thursday, 19 March 2015 I have been actively engaging with my legal advisers to progress the matter of having the issue judicially determined as soon as possible. The President of the High Court has indicated to me that this matter will get priority in terms of scheduling of hearings. It is hoped that it can be concluded by July 2015. On Thursday, 26 March 2015, my legal advisers wrote to the Minister for Transport, Tourism and Sport, the Minister for Finance, the Motor Insurers' Bureau of Ireland, and the Attorney General regarding the matter. The letter indicated that I, as the accountant of the Courts of Justice, would be making an application by way of a special summons to the High Court, pursuant to Order 3, Rule 22 of the Rules of the Superior Courts, for a trial of an issue of law to determine whether the Motor Insurers' Bureau of Ireland is liable for claims made under the Setanta policies. My legal advisers are currently finalising this application to the High Court and I expect it will be filed during the first week of the next law term, which is the week beginning Monday, 13 April 2015. As of this morning I have agreed the wording of the special summons, an affidavit with my legal advisers, and this will be filed very shortly with the central office in the High Court. That is a very brief overview of what is a large and complex matter. I am happy to take any questions from the members.

Chairman: As this is a very detailed issue, I ask Deputy Michael McGrath to limit his contribution to questions.

Deputy Michael McGrath: I welcome all the witnesses and thank them for their time and for their opening statements. It certainly is a complex issue. It is something of a mess at the moment and there is obviously quite a legal wrangle going on which is going to have an impact in terms of the liquidation and the way that claimants will be dealt with as part of this process.

First, I will go through some of the issues with the liquidator, Mr. Mercieca. The statement of affairs which the company prepared initially in April of last year showed a deficiency of about €17 million. If we go forward to page three of his statement, the picture seems to have changed considerably, with the outstanding claims reserve at €28 million. Does Mr. Mercieca have an estimate now, in terms of liabilities versus assets, of what the deficiency is likely to be compared to the estimate of €17 million almost a year ago?

Mr. Paul Mercieca: As I said in the report, the estimates outcome statement predicts a 30% maximum repayment to insurance creditors. That is based on the actuarial report from Towers Watson which took the claims reserve up to the figures I mentioned earlier. In terms of the actual claims we have today, I also mention the projection of a €25 million increase in claims estimate, based on the latest information available to me.

Deputy Michael McGrath: The information given to this committee, I believe by the Department or Central Bank in July 2014, was that there were in the region of 2,000 claimants, with claims amounting to €35 million. Does that €35 million now equate to the gross claim liability of €67.7 million?

Mr. Paul Mercieca: That €67 million is an estimate of the projected claims and development of those claims, based on an industry standard as prepared by Towers Watson. I am not sure what that figure mentioned by the Deputy is, but the current claims estimate is at €53 million. That is what the company is reserving today.

Deputy Michael McGrath: Fifty-three?

Mr. Paul Mercieca: Fifty-three million euro, which is the equivalent of the €28 million stated by the directors in their statement of affairs. In 11 months, as I explained, that has gone up by €25 million.

Deputy Michael McGrath: Can the witness reconcile that €53 million with the gross claim liability of €68 million?

Mr. Paul Mercieca: On Wednesday, 16 April 2014, when Setanta went into liquidation, the statement of affairs prepared by the company directors at the time had a claims reserve, including the initial €17 million, of €28 million. As of Tuesday, 24 March 2015, this has increased to €53 million, an increase of €25 million. Towers Watson reported to me in May 2014 that it projected it could go all the way up to €67.7 million, with a further €20 million or so in terms of further deterioration. However, we have not got to that figure; that is the projected figure.

Deputy Michael McGrath: Okay. But we must plan on the basis that this is a possibility-----

Mr. Paul Mercieca: One can see that in 11 months it has already increased by €25 million.

Deputy Michael McGrath: Yes, but the scale of the claims reserve increase could be from €28 million one year ago to a figure of potentially over €90 million, if Towers Watson's worst case scenario comes to pass.

Mr. Paul Mercieca: Exactly. I will be re-engaging Towers Watson to look at those figures again in April 2015, when I am obliged to prepare the statutory accounts, to see if that figure, in its opinion, could change either way. There will be an update on that figure as we go forward.

Deputy Michael McGrath: But it is fair to say that the picture has deteriorated consider-

ably since Mr. Mercieca's appointment?

Mr. Paul Mercieca: Yes.

Deputy Michael McGrath: The claims reserve may have gone up from €28 million to as high as €95.2 million, if Towers Watson is correct?

Mr. Paul Mercieca: It could reach that figure yes, if Towers Watson proves to be right.

Deputy Michael McGrath: Is it correct that the witness has 1,748 Irish claims on the books?

Mr. Paul Mercieca: Yes.

Deputy Michael McGrath: Have payments been made to any claimants so far?

Mr. Paul Mercieca: None at all.

Deputy Michael McGrath: None whatsoever? Mr. Mercieca estimates that 30% of the value of the outstanding claims will be met.

Mr. Paul Mercieca: Of the value, yes.

Deputy Michael McGrath: Does that hold true even if the total claims liability reaches €90 million?

Mr. Paul Mercieca: It is based on that figure.

Deputy Michael McGrath: What is preventing the witness from commencing the process of making payments in respect of claims which are agreed? Where a settlement is agreed, why can the 30% not be paid?

Mr. Paul Mercieca: By law I am not allowed to make payments until I know the full extent of my liabilities, which I do not know at this point in time, if for no other reason than that there are 600 court cases still in progress and cases are still developing. Until I know the full extent of my liabilities I am not permitted by law to make out any payments.

Deputy Michael McGrath: But Mr. Mercieca will not know the full extent of the liabilities until each and every case is concluded.

Mr. Paul Mercieca: Essentially, yes.

Deputy Michael McGrath: That could take years.

Mr. Paul Mercieca: That is why the resolution of the issue we talked about earlier today is fundamental to unlocking the claims situation. The situation today is that we cannot actually sit down with anybody and settle a claim. For argument's sake, if someone has a claim for €10,000 and if I sit down with him or her to say, "I do not know how much I am going to pay you and I do not know when I am going to pay you," then I believe the chances of reaching agreement are remote.

Deputy Michael McGrath: Can Mr. Mercieca clarify that if the legal issue surrounding the potential liability of the Motor Insurers' Bureau of Ireland is clarified, the liquidator will still be unable to make payments?

Mr. Paul Mercieca: If the fund is able to make payments up to 65% in the circumstances in which they can make payments, then we will be able to sit down with claimants and say that potentially they can get a certain amount from the fund and there is a balance of 30% or 35% of their claim due. There is more chance of unlocking the situation and reaching agreement.

Deputy Michael McGrath: Okay. I suppose what Mr. Mercieca is-----

Mr. Paul Mercieca: I apologise for interrupting, but this is fundamental in not letting the situation deteriorate further. The longer it takes, the more court cases there will be, and the higher the costs. It will not be in anyone's interests.

Deputy Michael McGrath: I can see that, and am coming to that issue among others, but I am unclear. A few moments ago, Mr. Mercieca stated that he could not make any payment until the full extent of the liability had been clarified. It will not be clarified until 1,619 cases have been concluded. Even if the Motor Insurers' Bureau of Ireland legal issue is concluded, is Mr. Mercieca saying that he is prohibited under Maltese law from making payments until he has complete clarity on the extent of-----

Mr. Paul Mercieca: Yes. It is a provision in the Companies Act.

Deputy Michael McGrath: In Malta.

Mr. Paul Mercieca: Yes. Dr. Bianchi might wish to expand on this point.

Dr. Matthew Bianchi: It is the nature of a liquidation process that everyone is paid the same percentage of his or her claim. One cannot give someone more than someone else in percentage terms. One must wait to identify the entire payment that must be made and then give everyone the same percentage.

Mr. Paul Mercieca: *Pro rata*.

Dr. Matthew Bianchi: Yes.

Deputy Michael McGrath: Will any claimant receive money from the liquidator, as opposed to the Insurance Compensation Fund, ICF, and the MIBI, until after all of the court cases have been concluded?

Mr. Paul Mercieca: No. The Deputy is correct.

Deputy Michael McGrath: Mr. Mercieca has no discretion in that matter.

Mr. Paul Mercieca: Absolutely none.

Deputy Michael McGrath: It is provided for in Maltese law.

Mr. Paul Mercieca: There is no discretion. That is the law. That is what one must stick to.

Deputy Michael McGrath: On the potential role of the MIBI, it is clear that the initial advice from the Attorney General sits alongside alternative advice that the accountant has received and at the very least puts a question mark over the Attorney General's advice. Having read the extract from the senior counsel's opinion that the Courts Service received and given the mandate within which Mr. Quigley must work, I accept that the service must exhaust the issue and get a final determination on the liability of the MIBI before it can make a payment. What are the consequences for the fund or its role if the MIBI is found in law to have a liability? How

would it relate to liability of the ICF, which is as much as 65%?

Mr. Seán Quigley: I must be careful about an issue that is to be determined by the courts. That may well be one of the issues that is determined by the courts, but if we operate on the basis that the ICF is a payer of last resort, then, if MIBI has a liability, the ICF could possibly not get involved. However, I have to be careful in what I say, because this matter will be before the courts shortly.

Deputy Michael McGrath: If the finding is that the MIBI does not have a liability, can Mr. Quigley proceed with his application to the High Court and can the ICF pay out ahead of any payment from the liquidator to claimants?

Mr. Seán Quigley: Yes. If the ruling is that the MIBI does not have a liability, the process on which we were already working will be recommenced. We will proceed to make payments on eligible claims that are brought forward by the liquidator from the fund.

Deputy Michael McGrath: I will ask further questions in a minute.

Chairman: I have two questions to ask before moving on. Has Mr. Mercieca identified who the shareholders are and what their responsibilities are in the collapse? Who had supervisory responsibility? What supervision of Setanta Insurance was there? Mr. Mercieca might answer before I invite Deputy Regina Doherty to contribute.

Mr. Paul Mercieca: The answer to the first part of the question is that we have not yet established the beneficial shareholders.

Chairman: A year later?

Mr. Paul Mercieca: We have not yet established who they are. We have applied to the courts because most of the shareholdings are registered in the names of nominees and trustees. We have applied to the courts for those nominees and trustees and the Malta Financial Services Authority, MFSA, to divulge to us who the beneficial shareholders are.

Chairman: To which courts has Mr. Mercieca applied? The Irish courts?

Mr. Paul Mercieca: The Maltese courts.

Chairman: But most of the shareholders are supposedly domiciled in Ireland.

Mr. Paul Mercieca: I would not know.

Mr. Antoine Mac Donncha: It is a Maltese company.

Mr. Paul Mercieca: Yes. If one looks at-----

Chairman: We know nothing about the shareholders.

Mr. Ronan Hession: My recollection, which I can correct from my notes, is that the report from the Maltese regulator that was provided to the committee in July identified some of the key players involved, but a substantial amount of the shareholding was in the name of a company or trust of sorts. The net issue is who is behind that. This is the basis for the liquidator's application or legal work to get the courts to release those names.

On the second part of the Chairman's question, relating to who was responsible for super-

vising, the regulatory authority involved was the MFSA. The way that the regulatory system across Europe works is that firms can get authorised in one country by their home regulator and sell business on a passporting basis into other jurisdictions. Setanta Insurance was authorised in Malta. Therefore, the MFSA was its home regulator. The Central Bank was what is called a host regulator - that is, it dealt with conduct-of-business issues, the consumer interface, etc. As to the financial position, the lead supervisor was the MFSA.

Chairman: We will return to this issue.

Deputy Regina Doherty: It is a pity the lead regulator is not present to discuss the matter with us. The questions so far have kept coming back to that. I have two questions. I welcome our witnesses and thank them for attending, particularly the two gentlemen who have travelled. The directors who prepared the statement of means in April arising from the €28 million have all left. Were any of them shareholders?

Mr. Paul Mercieca: I cannot answer as to whether any of them was a shareholder, as I do not have a list of shareholders. To be technical, I have one shareholder. It is a holding company called Setanta Holdings Limited, but I am talking about knowing the shareholders in that. As to whether the directors are gone, their powers ceased upon the company being placed in liquidation. It is not a question of whether they are gone. Their involvement ceased on that date.

Deputy Regina Doherty: Their powers were well established before 16 April, unfortunately. I did not mean that they might continue to have power, but they have information that is relevant to Mr. Mercieca's work. He does not know whether they were shareholders even though they were directors. Does the regulator know whether they were shareholders?

Mr. Paul Mercieca: I believe the regulator has a list of shareholders.

Deputy Regina Doherty: But he has not shared that list with Mr. Mercieca?

Mr. Paul Mercieca: He is prohibited from doing so by law. That is why I have applied to the court to get it.

Deputy Regina Doherty: It seems bonkers. What changed between the original statement of €28 million in claims and the current estimate of up to €53 million or the potential €92 million? Did the directors give Mr. Mercieca false information in April 2014 or have other claims come out of the woodwork of which they were not aware at the time?

Mr. Paul Mercieca: It is a combination of things. There have been 79 new claims. There has been a deterioration in the claims that existed - in other words, developments in those claims. New circumstances have come to light, requiring new provisioning, reserving and costing. There are 200-odd new court cases, which require further provisioning. This is the reason for the increase to €53 million from €28 million.

Deputy Regina Doherty: What behaviour gave Mr. Mercieca concern enough to hire a body to investigate the actions that were taken before the liquidation?

Mr. Paul Mercieca: It is a liquidator's responsibility under any circumstance, particularly where a company is insolvent, to examine and understand what brought about that insolvency.

Deputy Regina Doherty: Mr. Mercieca is saying that it was not obvious from the statement of means in recent years what caused the company to go under.

Mr. Paul Mercieca: Not at this point. That is why this review is being undertaken.

Deputy Regina Doherty: I thank Mr. Mercieca.

Turning to Mr. Hession and Mr. Quigley, are two arms of the State arguing with each other about which is responsible for paying or whether both are responsible? Is this where the legal action is going? According to the Department of Finance, the Attorney General has stated that the MIBI is not responsible, whereas another arm of the State is suggesting that it is.

Mr. Ronan Hession: The Attorney General's advice is that MIBI, Motor Insurance Bureau of Ireland, might not have a role and that it might not be down to a State body but the insurers themselves as a private company. Its advice is that it is not responsible.

The recent development arises from approaches from the Law Society. It has advice raising a question over the issue. On foot of that, advice was sought by the Courts Service accountant that stated this needs to be resolved judicially.

Deputy Regina Doherty: The value of the insurance fund is €96 million. If the courts determine that the fund will not share the costs, is Mr. Quigley in a position to cover whatever the outstanding claims come to?

Mr. Seán Quigley: If the court determines that the insurance compensation fund, ICF, is the only payee, then it is not a question of whether the €96 million is sufficient because there could be other claims against that from any of the other parties and ones that we do not know about at this stage. If the fund has a liability and there are not sufficient funds available, the Minister, in consultation with the Central Bank, can put extra funds into it.

Deputy Regina Doherty: In a worst-case scenario, does Mr. Quigley envisage the fund will be able to fulfil the full value if the courts determine it to be the case?

Mr. Seán Quigley: Yes.

Deputy Pearse Doherty: This is sometimes a bit difficult to follow and a royal mess for those who have claims with Setanta Insurance. The last thing they wanted to see was this to end up in the courts which will delay payment further. I appreciate all involved are doing everything they can to resolve this, however.

Given their experience in this case, what do the delegations believe needs to be done to ensure a mess of this nature is not created again? I know it is a unique situation where an Irish company registered in Malta sold into the Irish market but went belly up. Are there any proposals to ensure we are not in the situation again?

Mr. Seán Quigley: I am probably the person who has least impact in this. Obviously, it is only through legislation that the courts, myself and the president, have a role. It is a matter for the Minister and the Oireachtas to legislate for these situations. I am probably least qualified to offer an observation on this.

Mr. Ronan Hession: There are several elements to this. How does one ensure firms are run right in the first place? How does one ensure regulators make sure they are run correctly? If there is a problem, how does one ensure they act early so one is not left with only 30% of the assets for the liquidation process? If things go wrong, how does one ensure the safety nets work and do what they are supposed to do?

Change will kick in from January next year with the solvency II directive, a major new directive in the insurance field. There will be a new basis for capital requirements which will be more consistent across Europe. These will be more risk-based and will be more robust, as everyone agrees. There will also be an emphasis on qualitative aspects such as governance, a key issue which has been addressed upfront in other parts of the financial sector and has now been given more emphasis in the insurance sector. There will be a greater emphasis on closer supervision across borders as there are many firms in the European market which sell insurance products across the continent or are based in one country but selling them in another. Group supervision will be much tighter and the level of overall co-operation between supervisors will be better.

I have been in this committee room several times over the past several years with the Minister for Finance discussing various regulatory reforms to enhance our own Central Bank's powers. We have had several historical cases in Ireland of insurance companies failing. Up to €6.5 billion of state aid has been put into European insurers over the past six years according to the European Commission. Ireland has the ICF and we have yet to find out what its role would be if any in this case. The payments have only gone through the initial assessment phase before actually going through any pay-out phase from the ICF.

Not every country has an insurance compensation fund. There are only 11 in Europe. In some of those, such as Germany and Poland, it is just for life assurance. Ireland is one of the few countries that has a compensation fund which has been in place for the past 50 years. This is a very difficult, complicated and unprecedented example which will test the ICF framework. The Minister has asked the Department to review the framework and to report back as to whether it needs to be strengthened. We will be doing this when there is greater clarity with the legal position concerning substantive insurance later this year.

Deputy Pearse Doherty: Mr. Hession spoke at length about the preventive arm of the framework to ensure that a company does not go belly up. While we may be one of the unique countries to have an insurance fund, it is of little comfort at this point to claimants with Setanta Insurance because they are not clear as to who will meet their claims. Maybe it is premature, given that legal clarity is required around certain issues, but we need to streamline the system to ensure if something happens like this in the future, we will not be in a situation into the second year where the courts have to decide on key issues which we were told were resolved last year.

Is it the understanding of the delegation that the MIBI got legal opinion itself on its own initiative to suggest that it should not be included in the scheme?

Mr. Seán Quigley: Yes, that is my understanding.

Deputy Pearse Doherty: Then the Government asked the Attorney General for her opinion.

Mr. Seán Quigley: That is correct. As a public servant myself, I had no reason to question that advice. It was only when a third party, the Law Society, challenged that interpretation that we needed to get a senior counsel opinion. This will result in having the matter determined for once and for all in the High Court.

Deputy Pearse Doherty: Will Mr. Quigley explain to me the process as to how this is determined?

Mr. Seán Quigley: There is a special summons which will be the trigger mechanism. The

first action the courts have to take is to determine who the parties to the case will be. At this point, the Law Society has agreed that it will be bringing the argument concerning liability. It will be a matter for the court to determine the four other parties which we have identified - the Minister for Finance, the Minister for Transport, Tourism and Sport, the Attorney General and the MIBI - to decide how they will approach it. I will not be a party; I will simply trigger the mechanism.

Deputy Pearse Doherty: I presume the Department of Finance and the Department of Transport, Tourism and Sport can decide not to be a party to this. It would be financially beneficial to the State if the MIBI were subject to paying out on some of these claims.

Mr. Seán Quigley: That is a matter for the Department and other parties to decide.

Deputy Pearse Doherty: Obviously, it will reduce the liability on the State from the insurance compensation fund. Is that not so?

Mr. Antoine Mac Donncha: That is correct. The High Court will determine who the parties are to be. I anticipate that the MIBI will take the lead role in any argument or opposition to the application from the Law Society of Ireland because the MIBI ultimately is the one that has the most skin in that game. It may be that the High Court will direct that other potential parties should also be parties to it. Our role is likely to be much more limited than the one the MIBI is going to take in that event.

Mr. Ronan Hession: Any money the Minister, on behalf of the taxpayer, gives to the insurance compensation fund is repayable to him. Whatever the fund pays out, therefore, is ultimately recouped from insurers and goes back to the Minister. If the MIBI pays out, it is also the insurers that are paying. I want to clarify that it is not necessarily the case that the State is in or out of pocket. Ultimately, it is the insurance companies that are paying. Of course, if the fund pays out, it will impact on its ability to repay the Minister and the timeline because it will be paying out more. However, what the Minister gives to the insurance compensation fund is a repayable loan.

Deputy Pearse Doherty: Yes, but there are costs associated with it when one has to make big lump sum payments and it also affects borrowings in that one has to borrow the money if one does not have it lying around. Has there been a determination that the Minister will argue that the MIBI is not be liable for this payment? Has that decision been taken within the Department?

Mr. Ronan Hession: The court has to determine whether the Minister for Finance is a party. That has not yet been determined.

Deputy Pearse Doherty: Mr. Quigley can correct me if I am wrong, but he has said he did not have access to the detail of the Attorney General's legal opinion. Does that surprise him? I know that the legal opinion is only for the Government.

Mr. Seán Quigley: No, it did not surprise me, but I was provided with sufficient detail, in terms of the matters considered by the Attorney General, to be satisfied.

Deputy Pearse Doherty: Without straying into the case but on the generalities, if the MIBI is liable, it is not governed by the 65% rule in the payment for claims. Is that correct?

Mr. Antoine Mac Donncha: That is correct.

Deputy Pearse Doherty: As regards those who have claims with Setanta Insurance, if the courts decide that the MIBI is liable, they could have them paid in full.

Mr. Ronan Hession: As I do not want to hypothesise, let us leave Setanta Insurance aside and say ordinarily if the MIBI makes a payment, it is not subject to the figure of 65%. The Minister for Finance is not part of the agreement, but my understanding from the MIBI is that it is not subject to the 65% limit. I think its liability is for a third party, rather than a first party. As regards Setanta Insurance first party or third party claims, we do not know.

Deputy Pearse Doherty: As regards third party claims, for which the MIBI would be liable up to a level of 100%, with how many is the liquidator dealing?

Mr. Paul Mercieca: Of the 1,748 claims to which I referred, there are 304 first party and 1,444 third party claims.

Deputy Pearse Doherty: Therefore, the outcome of the court case for 1,444 claimants is really important. If the Minister is a party to this claim and wins, the claimants will only receive 65% from the insurance compensation fund, whereas if he loses and the MIBI is deemed liable, the claimants could receive up to 100% outside what the liquidator will then step in with. Is that correct?

Mr. Ronan Hession: The Deputy is asking me to go further than I can go in clarifying. Leaving aside Setanta Insurance, the MIBI is not subject to the same limits. It ordinarily pays for a third party and we do not know what its role will be. I am not sure if it is a case of winning or losing; it is a case of clarifying what the law states. It is a trial of law as opposed to people suing each other. As I am not a lawyer, I probably should not go beyond this. However, if the nub of the Deputy's question is that it does not involve a 65% cap, we will have to wait for the liquidation to take place.

Deputy Pearse Doherty: I appreciate that and that we cannot stray into legal matters, but this case could be of huge importance to 1,444 claimants. They could be paid extra as a result. We were talking about the insurance compensation fund, the MIBI being paid by its insurance policy holders and the State's share being recouped, but this is crunch time for claimants in terms of the payments that could be made. Is that correct?

Mr. Ronan Hession: Absolutely; it is very important.

Deputy Pearse Doherty: In relation to the benefit-----

Chairman: I am sorry, Deputy, but I am going to move on. I will come back to him later for his next question.

Deputy Kieran O'Donnell: I wish to check something with Mr. Quigley. The issue around the Motor Insurers Bureau of Ireland appears to be critical. When it first arose in August-September last year, was any counsel's opinion sought at the time? It appears to have arisen on the basis of the Law Society of Ireland getting on to the President of the High Court. Was any legal opinion sought at that stage?

Mr. Seán Quigley: No.

Deputy Kieran O'Donnell: At the time, what was the basis of the opinion that the MIBI would not be responsible for claims?

Mr. Seán Quigley: It was based on the Attorney General's advice to both the Minister for Finance and the Minister for Transport, Tourism and Sport.

Deputy Kieran O'Donnell: Therefore, Mr. Quigley followed up on the issue when the President of the High Court was requested to consider it by the Law Society of Ireland. Based on a senior counsel's opinion, I am assuming this issue categorically will be the subject of a court hearing. Is that correct?

Mr. Seán Quigley: It will be.

Deputy Kieran O'Donnell: Am I correct in saying there is no cap or limit on what the Motor Insurers Bureau of Ireland can claim?

Mr. Ronan Hession: That is my understanding.

Deputy Kieran O'Donnell: Unlike in the case of the insurance compensation fund in respect of which there is a cap of 65%.

Mr. Ronan Hession: That is correct. In the case of the insurance compensation fund there is a statutory fund. In respect of the MIBI, there is an agreement between the Minister for Transport, Tourism and Sport and the industry. From what we have reviewed of the agreement, there is no cap in play.

Deputy Kieran O'Donnell: Therefore, if it transpires at the court sitting - I am not prejudging it - that the MIBI is liable to pay, who will be deemed responsible in terms of the sequence of events involved? Assuming that the MIBI is liable to compensate, who will be the first party to pay out? Legally, will it be the MIBI or the insurance compensation fund?

Mr. Seán Quigley: I cannot speak for the Motor Insurers Bureau of Ireland.

Deputy Kieran O'Donnell: What view will be taken in terms of the insurance compensation fund? That obviously is the critical aspect.

Mr. Seán Quigley: If the MIBI is deemed to be liable.

Deputy Kieran O'Donnell: Yes.

Mr. Seán Quigley: My initial reaction would be that the insurance compensation fund would not then be in line to make payments.

Deputy Kieran O'Donnell: There could be a situation where, if the MIBI was liable, individuals could receive compensation to a figure of 100%, as distinct from there being a cap of 65%. The liquidator is saying compensation of around 30% could be provided on top of the figure of 65%.

Mr. Seán Quigley: As far as I know, there is a cap applying to the insurance compensation fund.

Deputy Kieran O'Donnell: A limit of 65%.

Mr. Seán Quigley: There is no equivalent figure for the MIBI, but I do not know what would happen if it was liable.

Deputy Kieran O'Donnell: I welcome the liquidator, Mr. Mercieca, to Ireland. Where

does he fall in the sequence of events? He thinks a claimant will receive up to a maximum of 30% of the value of whatever claim is outstanding. Is that correct?

Mr. Paul Mercieca: Based on the actuarial reports I have received which project the claims up to the figures I mentioned and on the estimates for the costs of the liquidation for the next three years - I keep repeating they are best estimates - ultimately, we will not be able to pay more than 30% of insurance claims.

Deputy Kieran O'Donnell: This company is in effect regulated by the Maltese regulator.

Mr. Paul Mercieca: Correct.

Deputy Kieran O'Donnell: Mr. Mercieca appears to have a difficulty in locating the beneficial owners of Setanta Insurance. Am I correct in saying that?

Mr. Paul Mercieca: Yes, a difficulty in terms of the nominees and trustees who hold the shares on behalf of the majority of the beneficial shareholders. They are not permitted to divulge that information unless ordered to do so by the courts and the regulator as well.

Deputy Kieran O'Donnell: Would they not have been required to do that as part of getting the licence from the Maltese regulator at the time?

Mr. Paul Mercieca: Yes. That is why the regulator has this information. That is public information.

Deputy Kieran O'Donnell: Would the regulator not be obliged to provide that information directly to Mr. Mercieca?

Mr. Paul Mercieca: I made a request for the regulator to divulge information and they said they are not allowed to do that. They suggested that I get a court order and this is what we are doing.

Deputy Kieran O'Donnell: Do we have someone from the Maltese regulator here today?

Chairman: No.

Deputy Kieran O'Donnell: In terms of Mr. Mercieca's work, I was a Setanta mortgage policyholder through a broker so I know first-hand what happened at the time. Basically one's policy was renewed but there was no guarantee on how long it would last. This happened around the start of 2014 and then it ceased so that people had to go to other insurance companies, as I had to do. It seems extraordinary that a company of this size was regulated by the Maltese regulator. Mr. Paul Mercieca was appointed liquidator on 16 April 2014-----

Mr. Paul Mercieca: On 30 April.

Deputy Kieran O'Donnell: On 30 April. The statement of affairs posted at that stage showed a deficit of €17 million.

Mr. Paul Mercieca: Correct.

Deputy Kieran O'Donnell: What is that deficit now?

Mr. Paul Mercieca: I would have to draw up accounts as of now to answer the Deputy.

Deputy Kieran O'Donnell: The latest-----

Mr. Paul Mercieca: I have not drawn up accounts recently but I will be doing that, closing up on 16 April 2015, which is the anniversary of my appointment.

Deputy Kieran O'Donnell: Does Mr. Mercieca believe, looking back now - I do not want to prejudice anything - that the company was trading while insolvent for a period?

Mr. Paul Mercieca: This is an ongoing review and it is happening as we speak. As it is something we will be discussing at the first meeting next week, I would not like to speculate at this stage or prejudice the review which is ongoing at the moment.

Deputy Kieran O'Donnell: There were 75,000 policyholders. The company traded exclusively in Ireland.

Mr. Paul Mercieca: That is correct.

Deputy Kieran O'Donnell: The 75,000 holders were exclusively in Ireland. Is it correct to say that the company was given the licence by the Maltese regulator?

Mr. Paul Mercieca: Yes.

Deputy Kieran O'Donnell: By whom was it supervised? Was it supervised in terms of inspections on how the company operated? How did that happen?

Mr. Paul Mercieca: The responsible party was the MFSA.

Deputy Kieran O'Donnell: It seems extraordinary that we are in a situation where we do not know the beneficial owners. I assume when Mr. Mercieca locates the beneficial owners, and they have substantial assets, he will pursue those assets on behalf of Setanta mortgage holders.

Mr. Paul Mercieca: Again, that is premature because I have to conclude the review before I can-----

Deputy Kieran O'Donnell: But on the basis that there are assets, would Mr. Mercieca in his role as liquidator be required to pursue those assets on behalf of Setanta mortgage holders?

Mr. Paul Mercieca: I do not think I would be able to pursue the shareholders. It is a question for the people who are running the company. The shareholders as distinct-----

Deputy Kieran O'Donnell: They may be one and the same.

Mr. Paul Mercieca: Yes, but again I cannot reach that conclusion at this stage. It is something that is ongoing. It is something we are looking at. I am trying to establish if there was wrongdoing. I am not suggesting there was any wrongdoing, but I need to get a proper understanding of the circumstances as to why this happened.

Deputy Kieran O'Donnell: Will Mr. Mercieca ensure his review is expedited as quickly as possible? Will he pursue the beneficial owners of Setanta Insurance in the interests of the 75,000 policyholders in Ireland, many of whom had private motor insurance policies? Will he advance the proceedings as quickly as possible in terms of the High Court review in order that the claimants in the Setanta liquidation are paid their entitlements as quickly as possible? This issue has gone on for too long. We must ensure something like this never happens again. As a committee this is an issue we will be pursuing but in terms of regulation we have to look at the situation in terms of companies like Setanta Insurance which are in effect operating onshore but being regulated offshore. That is an issue to which we need to give careful consideration to

ensure this never happens again.

Chairman: Mr. Mercieca said in his opening statement that he had engaged with a lawyer to see whether, in his opinion, there were grounds for an action to be brought against those responsible for running the company. Has Mr. Mercieca suspicions that there may be concerns about how the company was run and that he may well need to pursue the directors or those responsible for running the company?

Mr. Paul Mercieca: As I said, it is expected of me in my responsibility as liquidator to get a good understanding. I would be failing in my duties if I did not have this understanding and reach my own conclusions. At this stage, it is premature to speculate whether there was wrongdoing of any sort. I am not suggesting that there was, I am just saying that the review I have commissioned is one that I have a responsibility to do. If I did not do it, I would be failing in my responsibilities. It is ongoing. I have not had any feedback yet. It is premature to speculate as to what that might be.

Chairman: The total number of claims as of the end of March 2015 is around 619, that is, approximately 1% of the 75,000 people who were insured with Setanta Insurance. As the cost of the claims could run to €90 million, the average cost of claim is running at €150,000. That appears high when compared with equivalent costs in other insurance companies. Mr. Hession said there has been €6.5 billion worth of insurance collapses in Europe? Is that correct?

Mr. Ronan Hession: In terms of state aid, the Commission has reported that from its annual report.

Chairman: Are we are responsible for €1.5 billion of that €6.5 billion?

Mr. Ronan Hession: Yes, €1.15 billion, I think.

Chairman: A quarter of all state aid towards collapsed insurance companies is paid out by Ireland and we are members of the European Union.

Mr. Ronan Hession: I do not have the exact breakdown but the Chairman is correct. The size of the Quinn intervention compared with the overall European expenditure gets across the extent of the seriousness of the Quinn failure in Ireland.

Chairman: Given the failure of Quinn failure and of this company as well, is there a problem with regulation? Should we be looking at our regulations in this area?

Mr. Ronan Hession: Broadly speaking, when one speaks about insurance, one is speaking about a European regulatory framework. As I outlined to Deputy Pearse Doherty, a complete overhaul is taking place. From January 2016, that will become effective and should make the system much stronger. We have also enhanced our domestic regulator, the Central Bank. The Central Bank has done its own review internally of its own procedures and is stepping up the management information it requires from insurers, especially looking at brokers and more on-site inspections of brokers.

The Central Bank tends to do risk-based supervision. Brokers, being quite small by comparison, up to now were possibly not as high-risk. They have tried to correct for that. Setanta was operating about 230 brokers, so it was a sizeable company in terms of the market. They are paying greater scrutiny in that respect.

There is a need to ensure the regulatory system is fully kitted out to deal with this type of

problem. It will still be a European system and will rely on good co-operation. The good co-operation exists and there is no reason to suggest there is a breakdown.

In this case, looking at how the problems at Setanta came to a head, it goes back to September 2013 when the Central Bank asked a straight question of the Maltese whether Setanta was solvent. The Maltese came back with the solvency certificate to say it was meeting its minimum requirements. The bank brought it a step further, did a sample of claims from the office in Blanchardstown and raised the question of the level of reserving. That was challenged by the Setanta directors at the time, and in fairness to the Maltese, they got Grant Thornton Malta, I think, the auditors of Setanta, to do a review. They came back and said it was a little bit short on reserving but not materially so. The bank pressed further and got an independent assessment, and at that stage, coming up to December 2013, a more serious question was emerging. There was a level of persistence from the Central Bank, and in spite of the objections from the directors, the Maltese and the Central Bank kept pressing to get the answer. It was from there that the first direction came in January, I think on 16 or 24 January, to stop writing new business. There was then a period of months where the Maltese were pressing the Setanta directors to raise capital. There were a couple of bidders in the frame who dropped out about 11 April, roughly a week before the company was liquidated.

It is always important to ensure there is connectivity around a system. The system in insurance is global so if there is not co-operation between supervisors, it cannot work. In this case, a quite detailed report was given to the committee last July from the Maltese regulator which sets out those steps and brings out the level of interaction that can happen in a case like this.

Chairman: This question is to Mr. Quigley. If the Motor Insurers' Bureau of Ireland, MIBI, is made liable, is 100% responsible and is involved in 1,400 of the 1,700 cases, does it have recourse to the liquidator for funding?

Mr. Seán Quigley: I can only comment on the insurance compensation fund. That is all I am responsible for.

Chairman: Can anyone comment on that? If it is made responsible for 1,400 of the cases, can it go back to the liquidator?

Mr. Antoine Mac Donncha: MIBI could also function as a compensation of last resort, in effect. To the extent that those claims could be met by the liquidator, MIBI could choose not to meet the claims in full and leave the balance to be met by the liquidator.

Chairman: The liquidator should pay out first and then the MIBI-----

Mr. Antoine Mac Donncha: Not necessarily.

Chairman: We could end up in a situation where anyone with a claim could be waiting a decade while we wait for the Statute of Limitations to run out and for claims to be settled.

Mr. Antoine Mac Donncha: There is provision in the MIBI agreement for the MIBI to pay out where a judgment is not met. I would guess that the MIBI would then be entitled under the agreement to try to recover that from the liquidator subsequently. The MIBI will have to deal with that on its own and reach its own conclusion on it. It is not necessarily for us to give any firm view on it here.

Chairman: It looks like it will go on for years.

Mr. Ronan Hession: We are hopeful that the forthcoming trial of law will tell everyone what the law means, who is responsible and to what extent. That should bring clarity one way or the other.

Deputy Michael McGrath: What I have heard so far, and please correct me if I am wrong, is that of the 1,748 claims, no claimant has received a cent since the company was put into liquidation, no one can say with any certainty when any money will be paid out to a claimant, and no one can rule out the possibility that claimants will suffer a loss at the end of this. Is there anything inaccurate in any of that?

Mr. Paul Mercieca: No.

Deputy Michael McGrath: What level of communication is ongoing with claimants?

Mr. Paul Mercieca: There is a degree of communication because there are still staff employed by the company who are dealing with claims, correspondence and queries as they come in. To the extent that-----

Deputy Michael McGrath: Are claimants being proactively contacted and given updates or is the onus on them to check in with the liquidator?

Mr. Paul Mercieca: The updates are being posted on the company's website as and when we think it necessary to do so.

Deputy Michael McGrath: Some time ago I saw a letter issued by a solicitor acting on behalf of the liquidator warning a former Setanta policyholder that he may be personally liable in the event that a third party injury claim succeeds and there is insufficient money to settle the claim. The letter went on to say that such a successful third party claim could result in a judgment being registered against the former policyholder. Is that the case?

Mr. Paul Mercieca: I cannot comment on that. That is a question of Irish law which I am certainly not competent to get into, I am afraid.

Deputy Michael McGrath: Is it the case that the liquidator has not instructed lawyers to issue such letters that Mr. Mercieca is aware of?

Mr. Paul Mercieca: I would have communicated. The lawyers would have told me at the time but I cannot go into the legal arguments behind that.

Deputy Michael McGrath: Does Mr. Quigley know what led to the intervention of the Law Society regarding the role of the bureau?

Mr. Seán Quigley: Once the Law Society approached the President of the High Court, it emerged that the Law Society had been in correspondence with the Minister for Transport, Tourism and Sport over the MIBI liability. We would not have been aware of that so it was only from the point at which the Law Society raised it with the President that we decided we needed to get clarity of the issue and get senior counsel opinion.

Deputy Michael McGrath: The insurance compensation fund, ICF, can only apply to the court for permission to make a payout every six months in the case of a foreign company that has been liquidated, so it has to bundle the cases. It has not gone yet because of the outstanding court cases. Is that the position?

Mr. Seán Quigley: That is correct.

Deputy Michael McGrath: My next question is for the liquidator again. Can he give the broad categories of the 483 claims that are not eligible for payment from the compensation fund? Do they involve companies and so forth?

Mr. Paul Mercieca: They would be claims which do not meet the criteria of the fund. There are a number of issues. Probably they would be corporate. I do not have the breakdown of the 483.

Deputy Michael McGrath: Regarding the company law in Malta that governs a liquidation process, is the hierarchy or ranking of creditors who get paid in the scenario similar to Irish law or are there differences between Maltese and Irish law in terms of the distribution of resources?

Mr. Paul Mercieca: The advice I have is that it is very similar to Irish company law but I am not an expert on Irish company law.

Mr. Antoine Mac Donncha: Just to clarify that, as I understand it, under the Maltese law, the assets of Setanta are all technical provisions, so those assets will be available to claims in respect of policies in priority to any other claimant.

Deputy Michael McGrath: Deputy Doherty teased out the issue of the bureau and that, depending on the outcome of the case in the court, the bureau may be 100% liable. That is a matter of speculation. If it is not, the insurance compensation fund, ICF, liability is capped at 65% and the liquidator cannot make any payments to claimants until all the cases have been concluded and there is absolute certainty about the total liability.

Mr. Paul Mercieca: That is correct.

Deputy Michael McGrath: How long, typically, does a liquidation of this nature take? There have been liquidations in Europe.

Mr. Paul Mercieca: These liquidations, particularly of this nature, tend to be complicated. As we have just discussed, there are many legal issues surrounding them so it is impossible to speculate on how long it will take. All I can do is repeat what I have said. To me, this is fundamental in resolving this issue. If this process takes too long, it will increase costs and make finance settlements more difficult. The resolution of this issue is fundamental to unlocking the claims position, as I have indicated. I cannot tell the Deputy how long that will take.

Deputy Michael McGrath: I know. We all need to remember that behind this story there are many victims of accidents and crashes. There are people who suffered very serious injury. One Deputy mentioned that a fatality was involved in one accident. I do not know the detail. People are out of pocket and people's livelihoods have been destroyed in some cases. These are ordinary tradesmen. There are major consequences. If we can do anything as a committee or Parliament to help the liquidator's work in bringing this to a conclusion, it should let us know. Perhaps we can raise matters with the Government and the appropriate Minister, or there may be legislative matters. The witnesses would find willing support here.

Mr. Seán Quigley: The President of the High Court is giving this the highest priority as he is very aware of and sensitive to the issues mentioned by the Deputy.

Deputy Michael McGrath: Yes.

Mr. Seán Quigley: We expect the legal issue to be resolved quite quickly.

Chairman: Average claims are €150,000 so there are serious litigation issues within the €90 million.

Deputy Michael McGrath: Where is the Chairman getting that figure?

Chairman: I am dividing the €90 million among the 700 cases.

Deputy Michael McGrath: There are approximately 1,700 cases.

Chairman: Yes, I apologise.

Deputy Michael McGrath: There are 1,748 cases.

Chairman: My figures are wrong.

Deputy Michael McGrath: The average would be approximately €54,000.

Chairman: It still significant, although some would be very small.

Mr. Paul Mercieca: On that point, I stated that the €90 million is a projection of what the claims could be. It does not necessarily mean there will be 1,748 claims. There could be many more claims to reach that €90 million. The 1,748 claims we have today equate to the €53 million we are providing. The projection from actuaries is that the €53 million could be €90 million. In the same way, claim numbers could go up from 1,700.

Chairman: That is useful.

Deputy Pearse Doherty: We appreciate the clarification. Without divulging any confidential information, what are the highest third-party claims? What is the ball park figure?

Mr. Paul Mercieca: There is one claim in excess of €1 million. I do not have any other breakdown of figures with me. That is the largest single claim that exists.

Deputy Pearse Doherty: It is in excess of €1 million. If the insurance compensation fund paid out for that case, that party would be at least €350,000 short of the claim, depending on other factors.

There was a bit of discussion regarding shareholders, and the liquidator is going to the courts to find out who is the beneficial owner of the company. I examined the company records for 2013 and 2012, which mentions two holding companies. The witness mentioned that he is aware of one, Setanta Holdings Limited.

Mr. Paul Mercieca: That owns the shares of Setanta Insurance.

Deputy Pearse Doherty: In 2013, it owned 11,049,195 shares. The second shareholder was GANADO Trustees, which owned one share. From the witness's experience, is that type of structure usual? Would there be two trustees and holding companies, one with 11 million shares and the other with one share?

Mr. Paul Mercieca: I cannot comment on that.

Chairman: There is a vote in the Dáil so we might finish the session when the Deputy concludes his questioning.

Deputy Pearse Doherty: Both of these shareholders are registered at the same address, 171 Old Bakery Street, Valletta. Is this a familiar place?

Mr. Paul Mercieca: To comment on what the Deputy has said, there is a requirement under Maltese law that there must be two shareholders in any company. There cannot be just one shareholder. It is very common to have one shareholder holding 99.9% and another holding 0.1% of a company. The one share is probably that arrangement. The shareholdings have now changed to new shareholders. The nominees quoted by the Deputy were subsequently changed.

Deputy Pearse Doherty: That was changed after 2013.

Mr. Paul Mercieca: Yes. The register of companies today indicates a different nominee trustee company in place.

Deputy Pearse Doherty: Company accounts indicate directors from Foxrock and Dundrum. We have their names and addresses. Have the directors given any information about the owners of the company?

Mr. Paul Mercieca: No. I have not asked the question.

Deputy Pearse Doherty: Setanta continued to sell after January 2014. I wrote to the financial regulator in Malta last year and I am thankful that I received a response. It stated very clearly that the Maltese financial regulator at the time directed Setanta to cease with immediate effect in carrying out any new or renewal of contracts of insurance, as of close of business of 24 January 2014. Following inquiry with the company as to the number of live policies in its book and expiry dates of these policies, it transpired that a number of live policies from Setanta extended to March 2014. This, in effect, means the company continued to renew insurance policies after 24 January 2014. Is there any possibility that those policyholders will be able to claim under the liquidation process?

Mr. Paul Mercieca: I have not discussed that possibility. I do not know the answer.

Chairman: If members wish to submit more questions to the witnesses, would the witnesses answer them and return to the secretariat?

Mr. Paul Mercieca: Yes, to the extent that we can.

Chairman: Unfortunately, we must suspend the session as there is a vote in the Dáil.

Deputy Pearse Doherty: I have a final question on the MIBI. Under the conditions it has entered into with the 2009 agreement with the Department, anyone paid by the MIBI would have the potential for the MIBI to reclaim the amount from a future insurance policy. If the individual mentioned by Mr. Mercieca were paid €1 million as a third-party claimant, the MIBI could recover that amount by a levy on a new policy. Are the witnesses aware of this or concerned by it? The policyholders who may be paid by the MIBI, depending on the court judgment, could see all the payments recovered by the MIBI.

Mr. Ronan Hession: I am not familiar with the clause referred to by the Deputy. My understanding was that there might be a payment on third-party claims. For example, if people do not hold insurance then they are not insured and they hit somebody else, a claim may be paid to the third party and the party may be entitled to pursue the uninsured first party to recover costs. That was my understanding of the way one might pursue somebody. In response to what has been described by the Deputy, I was unaware of that interpretation but we will reflect on the

matter. If the committee has a question on the matter we are happy to consult the Department of Transport, Tourism and Sport and provide whatever clarification we can.

Chairman: We must suspend the meeting due to a vote. On behalf of the joint committee, I thank all of the witnesses for attending here today, particularly Mr. Mercieca who travelled all the way from Malta. We appreciate and thank him for his forthright answers. The same applies to the officials from the Department of Finance and the Courts Service.

Sitting suspended at 4.01 p.m. and resumed at 4.15 p.m.

Freedom of Information Act 2014: Motions

Chairman: The purpose of today's meeting is to consider the following motions:

That Dáil Éireann approves the following Order in draft:

Freedom of Information Act 2014 (Effective Date for Certain Bodies) Order 2015,

copies of which Order in draft were laid before Dáil Éireann on 10th March, 2015."

That Dáil Éireann approves the following Order in draft:

Freedom of Information Act 2014 (Exempted Public Bodies) Order 2015,

copies of which Order in draft were laid before Dáil Éireann on 12th March, 2015."

The joint committee also received an order of the Seanad regarding these motions on 31 March. The order of referral requires the joint committee, when we have completed our consideration, to send a message to that effect to the Dáil and the Seanad. The message must be sent not later than 2 April.

I welcome the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, together with his officials. I thank them all for attending and assisting our consideration of the motions. Briefing notes were provided by the Department. The Minister will address the committee, after which we will open the debate to members for questions and comments. Is that agreed? Agreed. I call on the Minister to commence.

Minister for Public Expenditure and Reform (Deputy Brendan Howlin): I thank the Chairman for facilitating a debate on two orders under the Freedom of Information Act 2014 - a new Act that we debated at some length.

One order provides for a different effective date for certain bodies under freedom of information, as I indicated would happen. The second order provides for exemptions from FOI in whole or in part for certain bodies. Both of these orders are to be made under section 6 of the Freedom of Information Act and require a positive resolution of both Houses before they are made. That is the reason I am here today. I shall deal first with the effective date order.

In the context of FOI, effective date means the retrospective date back to which records are available once an FOI body becomes subject to FOI. It is about how far back one looks. Section 2 of the Freedom of Information Act 2014 provides that in the case of a body that was not subject to FOI legislation under the 1997 Act but is subject to it under the new Act, the effective

date is 21 April 2008, unless provision is made to the contrary by order under this subsection. We debated that issue for some time. My Department received a number of applications from public bodies requesting that I set a later effective date for the application of FOI legislation to their organisations. I considered these applications very carefully. It was always my intention that any change in the standard provisions in relation to a retrospective date would be agreed in respect of only a small number of bodies where there was a clear justification for having an exceptional date. Therefore, the only applications I agreed to and that I propose the Oireachtas agree to are in respect of the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal, for which I propose an effective date of 14 October 2014, the date of enactment of the legislation, and the Private Residential Tenancies Board, for which I propose an effective date of 21 April 2012 to coincide with the time when that body moved to electronic operation.

I want to explain the rationale for those decisions. These organisations hold large volumes of information, the bulk of which is personal in nature. Where records created before the effective date relate to personal information on the person seeking access to them, the effective date does not apply. When a person is looking for information on himself or herself, the effective date does not apply as he or she is entitled to access such records back to whatever date on which they were created. My agreement to an effective date of 21 April 2012 in respect of the Private Residential Tenancies Board and 14 October 2014 in respect of the Refugee Applications Commissioner and the Refugee Appeals Tribunal does not, therefore, affect this provision. The bulk of non-personal FOI requests these organisations expect to receive relate to third party requests for access to personal information. Given the nature and sensitivity of the personal information involved in respect of the commissioner and the tribunal, we must give these matters very careful consideration. It is difficult to envisage circumstances where there would be a compelling public interest in the release of such records to third parties. However, if the records were to remain subject to release under FOI legislation, each individual record would be subject to review, giving rise to a substantial administrative burden on the organisations concerned. That is why I have given the effective dates as set out.

I move on to the bodies I propose be exempt in whole or in part. As the committee is aware, a generic definition of what constitutes a public body was included in the 2014 Act. This enables FOI legislation to apply to the widest possible definition of public body. Instead of making orders to apply FOI legislation to bodies as happened under the 1997 Act, the new approach means that an order is needed if a body is to be exempt. The default position now is that a body is in, unless by order of the Houses it is out. The old order was that every body was out until it was put in. My Department has received a number of applications for exemptions from FOI legislation and they have been considered very carefully. I have only approved exemptions where it is clear that the application of FOI legislation to these bodies in whole or in part would affect their ability to perform their core functions or affect the security or financial interests of the State. The exemptions I am proposing to the committee and, subsequently to the Dáil and the Seanad cover six bodies. I am only proposing a full exemption from FOI legislation for two of these bodies. I am proposing to exempt only certain records of another three. A technical change is being proposed to the exemption already included in the Act in respect of schools to reflect the original policy I set out when the legislation was going through the Houses.

I will first deal with full exemptions. The bodies for which I am proposing a full exemption from FOI legislation are the Irish Red Cross and the Shannon Group. The Irish Red Cross conforms to the generic definition of a public body because it was established under enactment and would be automatically due to come under FOI legislation in mid-April. I accepted the

case made by the Department of Defence that the inclusion of the society for FOI purposes represented an anomaly in that it had to be established under legislation to ensure, in accordance with the Geneva Convention, only one Red Cross society could exist in the State. It is a charitable organisation operating in an environment where both Exchequer resources and charitable donations have been reducing in recent years. The application of FOI legislation would represent a cost for the body which would require a diversion of resources. The application of FOI legislation to bodies in receipt of Exchequer funding, including the Irish Red Cross, will be considered in the context of section 7 of the Act once the application of the Act to this round of public bodies has bedded down. Members will recall that we debated this issue at some length during the passage of the Act. In this way I would not be imposing an administrative burden on the Irish Red Cross as compared to other national and international independent charitable and humanitarian bodies based in this country that are not included as public bodies for the purposes of the Act. I hope that is not too convoluted a way to put it. In other words, charitable bodies in general will be looked at under section 7. The Irish Red Cross is an anomaly because of its unique nature. It is deemed to be a public body having been created under statute as required under the Geneva Convention.

I turn to the other exempt body. The State Airports (Shannon Group) Act 2014 provided for the establishment of the Shannon Group as a commercial company under the Companies Acts and the subsequent transfer of both the Shannon Airport Authority and the restructured Shannon Development which was renamed Shannon Commercial Enterprises to the group. Consistent with the broader policy approach which we debated at some length and which I have been consistent in supporting, commercial State bodies such as the Shannon Group should not be subject to FOI requirements because of the uneven competitive playing field this would create as compared to privately owned competitors which are not subject to FOI legislation. Given the very important responsibilities assigned by the Government to the Shannon Group in terms of regional development of the mid-west region, it is critical to ensure the organisation is able to operate without commercial disadvantage.

I will now deal with exemptions in part. I am proposing an exemption from FOI legislation for the newly established Strategic Banking Corporation of Ireland, SBCI, in respect of certain specific classes of sensitive records because of the very high standard of banking confidentiality expected by market counterparts in respect of such an organisation. I have been advised by the Minister for Finance that if such an exemption was not provided, there would be a real risk that potential funders, on-lenders and clients of the SBCI would not engage with it and that its capacity to perform its functions would be severely curtailed.

I am proposing two exemptions in respect of records of the NTMA, reflecting recent legislative developments of which it was not possible to take account up to now. The NTMA (Amendment) Act 2014 conferred new legal cost claims management functions on the NTMA in considering and adjudicating on bills for costs presented for payment by third parties awarded their costs by the Mahon and Moriarty tribunals. These functions were previously carried out by the Office of the Chief State Solicitor and attracted an exemption from FOI legislation. It is necessary for an identical exemption to be granted to the NTMA in respect of records associated with these functions in view of the fact that they are performed by the NTMA on behalf of the Attorney General.

The NTMA also has functions in relation to the Strategic Banking Corporation of Ireland. I have set out the case for putting in place certain specific exemptions for the Strategic Banking Corporation of Ireland to meet market requirements applying to banking confidentiality. The

NTMA has been conferred with certain functions under the Strategic Banking Corporation of Ireland Act 2014. For the same reasons, these records need to be protected when held by the NTMA in the performance of its functions under the Act. The exemption I am proposing for the NTMA in this regard is a mirror image of the exemption for the Strategic Banking Corporation of Ireland.

The third exemption relates to Oifig Choimisinéir na dTeangacha Oifigiúla. Exemptions from FOI legislation are proposed for Oifig Choimisinéir na dTeangacha Oifigiúla in respect of records relating to the monitoring of compliance by public bodies and investigations under the Official Languages Act 2003 in order that the office is treated for FOI purposes in a way that is consistent with the approach applied to other ombudsman's offices. Oifig Choimisinéir na dTeangacha Oifigiúla operates as an ombudsman in respect of the provision of services through Irish by public bodies.

Consistent with the broader policy approach adopted under the FOI Act, schools with boards of management are already exempt from FOI legislation under the 2014 Act. I am proposing a technical change to the exemption in the draft order to ensure all schools, other than education and training board schools, will remain exempt from FOI legislation.

I am satisfied that the orders I am proposing are limited, modest and necessary for the reasons I have outlined. They are also consistent with the line I have taken throughout the significant debate we have had on completely remodelling the FOI Act to restore many provisions of the 1997 Act and strengthen it even beyond this. The committee will appreciate that, while previously FOI legislation only applied to bodies explicitly scheduled, every body is now in unless it is out. The relevant Ministers have given their consent to the provisions of both orders and most of them, in fact, sought the changes. I look forward to hearing comments members have to make and replying to questions that might arise.

Deputy Sean Fleming: I am shocked that we are here after the trumpeting of the introduction of freedom of information legislation. We are proceeding to unravel freedom of information legislation. We are introducing new exemptions and changing effective dates. It is a serious rowing back, a U-turn on the promise to reform and expand freedom of information legislation. This raft of changes introduces secrecy in a range of areas that were intended to come under the freedom of information legislation when it was announced. It excludes the performance of the new Strategic Banking Corporation of Ireland, certain aspects of the National Treasury Management Agency, the entire Shannon Group, the Irish Red Cross and investigations by An Coimisinéir Teanga. It also restricts the effective date for the Private Residential Tenancies Board and the effective date for making information available from the Refugee Applications Commissioner and the Refugee Appeals Tribunal. It amounts to eight restrictions being introduced today. I had hoped the Minister would expand freedom of information legislation, not curtail it. This is a serious change in approach and I cannot contemplate how we can support it in the Dáil tomorrow.

We received a briefing note on the effective date. I heard what the Minister had to say about the effective date and retrospective requests for information. He is changing the effective date in respect of the Refugee Applications Commissioner and the Refugee Appeals Tribunal to last October. The briefing note we received from the Department in the context of the motion to be taken in the Dáil contained a paragraph which was left out by the Minister today. The note states, "In the case of the refugee bodies an additional concern communicated by the Department of Justice and Equality is that third party FOI requests would have the potential to delay judicial reviews of the organisations' decision making, giving rise to significant additional

cost and direct provision". That is the real reason for the change, but the Minister studiously dropped that sentence from his statement today. Some will agree with him, but I did not think he was in the position where he wanted to send people home earlier and not allow them the full protection of the law applying in Ireland.

On potential judicial delays, I understand third parties who might request this information are probably the legal teams acting on behalf of the individuals concerned, rather than the persons themselves. The legal adviser would be seeking information on other cases and how matters were dealt with in the past. As that information might have helped them with the judicial reviews, it seems the Minister is bringing forward this change to help the Department to defeat applicants in cases of judicial review. He really let the cat out of the bag in the briefing note from the Department of Justice and Equality, which shows that his aim was to reduce the significant costs associated with direct provision, meaning we can send people home earlier. There is a market for that action, but I did not think it was the Labour Party's. New parties around town might agree with it, but I did not think the Minister was in that camp and I am shocked that he is going down the road of reducing direct provision system costs and reducing people's ability to seek a judicial review.

There is also a change to the retrospective date for the Private Residential Tenancies Board. Again, we received a note from the Department on the matter. It stated the organisation would be too busy handling the new deposit scheme which involved a significant amount of additional work. It also stated something which was left out of the Minister's statement today, namely, that the Private Residential Tenancies Board was in the process of taking on significant additional responsibilities in taking security deposits. These will come to approximately €1,000 per tenancy and relate to 300,000 tenancies. The board will be dealing with the regulation of approved housing bodies, approximating to 28,000 households, and there is a concern that the resource implications of full retrospection of FOI legislation to 2008 may encompass large numbers of files which would have the potential to impact adversely on the organisation's ability to successfully discharge these roles. The briefing note stated the body would be very busy in dealing with all of the new deposits and setting up the new system and that it could not possibly be expected to deal with FOI requests. I do not think the board has started to take deposits yet and do not think the legislation has even been finalised yet.

The Minister could have taken another option. A couple of weeks ago he pushed the effective date for EirGrid back from April 2015 to the end of October and that would have been a more honourable way of doing it. If the Private Residential Tenancies Board would have had an administrative problem for six months, the right thing to have done would have been to give it an extra six months. I do not know for how many other bodies the Minister did this. I only came across the information because EirGrid was a big issue in my constituency and I received it by way of a parliamentary question.

On the Irish Red Cross, the Minister might have a point. I do not know, but I understand that organisation is in some turmoil. That is probably the real reason for this and if it is, we would be happier if the Minister said that. I am aware that several senior positions have not been filled but the Minister said he intends bringing this in under freedom of information, FOI, legislation in due course. I do not understand why we are taking it out now only to bring it back in later.

I have an issue with exempting the State Claims Agency from this process because nothing can be disclosed. Adjudicating on bills and costs is essentially an administrative function. There are no legal implications here. It has nothing to do with the substance of the cases before the various tribunals. My view is that if there is an area where there should be more transpar-

ency it should be with regard to considering how bills and costs presented for payment by third parties awarded costs by tribunals are being adjudicated on. It is shocking that the Minister wants to put a veil of secrecy over an area that should come under this proposal, even though they are working for the Attorney General. That is an administrative area that should be subject to FOI.

There might be a valid case to be made regarding the Strategic Banking Corporation of Ireland in terms of who will lend money, who it will lend money onto and market confidentiality. Various ombudsman offices are already subject to the Freedom of Information Act. The Minister said he is making Oifig Choimisinéir na dTeangacha Oifigiúla consistent with that. He might explain where it is currently inconsistent and how it will be made consistent with the other ombudsman offices.

The Minister might have a point on the School Exemptions Board. Generally, however, I am very disappointed that he, as a Labour Party Minister in government, is bringing forward some of these proposals to prevent people in the asylum process getting information that could help them with their judicial review. There is also the underlying issue of the cost of direct provision, and the issue of the Private Residential Tenancies Board. We would be better off giving them another six months to get their houses in order internally rather than changing the effective date, which will apply from now on.

I have asked for some clarification on one or two points but it is not a question and answer session. I have read the briefing note but I disagree with the approach being taken.

Deputy Mary Lou McDonald: I broadly share the concerns expressed by Deputy Fleming. I appreciate that the new regime differs in as much as bodies have to be exempted. That is the right approach. However, I am not convinced by the Minister's proposals before us. Above all, I am alarmed in terms of the change of effective date, particularly in respect of refugee bodies. My position on the issue of direct provision is that I want to see it abolished. I want to see cases dealt with appropriately and lawfully and an end to the practice where people spend years in these centres. Children spend their entire school careers coming and going in these centres. The abuses of people's rights, and I put it as strongly as that, are very well documented and it is a scandal that has slowly built and unfolded under our eyes. The system in this State knows it is happening yet it is allowed to continue. It is scandalous. I acknowledge that there is a working group working on this area. I hope that working group manages to abolish direct provision sooner rather than later.

The reason I am deeply alarmed by any limitation being put on access to information in respect of these bodies is because if ever there were a process and a system that is veiled in secrecy and a lack of clarity, it is the process of refuge and asylum in this State. We have an archaic and opaque system that leaves people who find themselves in the midst of that system utterly at sea, often with virtually no support, and in many cases very little information. The Minister might respond by saying that individuals will still have access to their own files. I accept that, but the oversight of third party bodies in respect of this system in particular is essential, and it is wrong for the Minister to introduce this change in terms of effective date. I do not doubt that the line Department in question made the request. That does not surprise me one little bit, but I believe the Minister is making a big mistake in agreeing to it, and it is certainly something I could not countenance supporting. It is simply wrong, and I put it to the Minister in those strong terms. However, I do not believe it is an effort by the Minister or the line Minister to necessarily deny people their legal rights, which is a concern of Deputy Fleming's. I believe it is more that the system is so banjaxed that there has been, and the track record reflects this,

a strategy of information containment and keeping things in the dark, and what the Minister is proposing here today adds to that trend. That is most worrying and disappointing, and I ask him to take that particular proposal off the table. Of any issue the Minister has come to committee looking for our assent, this is the most worrying of all of them.

In respect of the Private Residential Tenancies Board, I will tell the Minister my experience of that organisation. It is a miracle if they answer the telephone. They are horribly under-resourced and anybody who has to interact with them can tell the Minister that at first hand. I do not know if other Deputies have had that experience. When one eventually gets through to them I find them helpful, professional and courteous, in fairness to their staff, but it is very clear that they are under-resourced. I do not accept that they should have this limitation in respect of FOI afforded to them. It is a fact, and I accept that they need more staff and more resources, but I am sure all of us in our various constituencies can confirm that, increasingly, there is a huge volume of people presenting in respect of disputes with landlords. It may be most acute in the city of Dublin where property prices are increasing, and rents have increased approximately 9% in the last period. The problem is very acute. This is a body that as we speak is difficult to get in contact with. People report it is difficult to get interactions with its staff. I believe that is a resource issue. Others might have a different view but given the sensitivity of this whole area now I see no argument in policy terms or good practice to limit access to information through this body. On the contrary, we should be looking to resource it more effectively and to make information flow more easily.

I take the Minister's point in respect of the exemption of some of the public bodies. With the exception of the Oifig Choimisinéir na dTeangacha Oifigiúla, I would have thought there are already sufficient checks and balances within the legislation in respect of information that might be deemed to be commercially sensitive. The Minister might recall that during the passage of the legislation we had endless debates on what was and was not commercial sensitivity. It strikes me that those provisions protect those legitimately sensitive areas the Minister identifies. The Commissioner might be a different kettle of fish. I accept the Shannon Group is in line with the Minister's thinking in respect of other commercial semi-State entities. We had that debate here. I see the logic of where the Minister is coming from in that instance. I am not sure about the Irish Red Cross. My concern relates mainly to the National Treasury Management Agency, the Strategic Banking Corporation of Ireland and the State Claims Agency. I do not accept that the Minister has presented a conclusive argument for the action he is taking. The change that alarms me most is the changing of the effective dates, particularly as they pertain to the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal. It is a mistake to do that. If the Minister listens to nothing else I have said today, I ask him to take that point on board and withdraw that particular proposal. It is simply wrong and will make what is a bad situation a whole lot worse.

Deputy Pat Rabbitte: I have one question which may not, however, be within the Minister's remit. Does he have any information, in so far as it relates to the Oireachtas, as to whether there has been increased usage of the Act since it was enhanced? If so, has it been for the purposes of establishing complex and substantive policy issues, or what has been the nature of it?

Chairman: I invite the Minister to respond.

Deputy Brendan Howlin: I thank members for their contributions. It speaks volumes as to how we are in a whole new regime in that the freedom of information provisions now apply to everybody unless this committee discusses exceptions and both Houses agree to them. That has transformed the system. I do my best not to be discordant but it is difficult to listen to lectures

from Deputy Fleming on broadening the application of freedom of information. I am confident that the 2014 Act we enacted as an Oireachtas last year will stand the test of time. It is already regarded as one of the best internationally, unlike the 2003 Act which eviscerated the good work done in 1997. As I outlined, the changes I am proposing fall into two categories. I am changing the retrospective date applying to a couple of organisations for very practical reasons. One of the points we made right through the debate on freedom of information was that we must avoid, within reason, creating burdens that are just too much for any organisation. These are modest changes involving a couple of organisations out of the many hundreds of bodies that are now subject to FOI.

Deputies Fleming and McDonald focused on the slight movement of the date for the retrospective application of FOI to the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal, and there was a suggestion that I did not convey the full briefing note in this regard. That note is as comprehensive as we can make it given that I have been asked by the clerk to confine my comments to ten minutes. One has to do some editing in such circumstances. Either I restrict the quantum of information I give in a briefing note or I exceed the instructions as to the time allocated. I cannot do both and it is important to give members as much information as I can. Of course I have an absolute focus on ensuring the refugee bodies deal with applications as expeditiously as possible. I am obliged to heed them and their parent Department when they say that if there is too much backdating and we divert personnel to the processing of FOI rather than the processing of applications, then there will be a negative impact for asylum seekers who need to have their case heard and, where there is a coherent case to be made, need to have their applications approved so they can get on with their life rather than being caught in direct provision.

I share Deputy McDonald's concern regarding the direct provision system. As she knows, the Government has established a review group and the Minister of State at the Department of Justice and Equality, Deputy Aodhán Ó Ríordáin, will report on that matter very shortly. The Office of the Refugee Applications Commissioner estimates that the number of records it holds amounts to 4 million, including paper files and databases, both live and archived. We are going back to 2012 in all of this but any individual who has a concern about his or her own records will not be affected by the change. All individuals will be able access their own records. Likewise, a lawyer acting on behalf of an individual will not be debarred from accessing that person's records.

I am conscious that staff have been squeezed both in the refugee area and in the Private Residential Tenancies Board. All such public bodies have been subject to recruitment embargoes in recent times. We have had to deploy staff more effectively in an effort to save money and reduce the public sector pay bill, as people were advocating for. The burden we place on personnel must be very carefully measured in the public interest.

Deputy Mary Lou McDonald: That is a disingenuous thing to say as regards the refugee process. I do not accept the Minister is so ignorant of the problems in the system as to make that argument. It is outrageous.

Chairman: The Deputy should let the Minister finish his contribution.

Deputy Mary Lou McDonald: Pardon me, Chairman.

Deputy Brendan Howlin: There were no interjections until a journalist arrived.

Deputy Mary Lou McDonald: It has got damn all to do with a journalist entering the room. The Minister should appreciate that, given the publication for which the particular journalist writes.

Chairman: I will have to ask the journalist in question to leave the room if there is going to be a row.

Deputy Brendan Howlin: I want to be clear on this. The outworking of this legislation on FOI, which is, by international acknowledgment, ground-breaking and world class, will change the whole way in which bodies become subject to FOI such that they will be automatically included as opposed to being automatically excluded unless specifically included. However, we do have to have some discernment as to what is practical in terms of bringing in this whole raft of new bodies for the first time. As I said, in the case of the Office of the Refugee Applications Commissioner we are talking about 4 million files. Individuals will have access to their own records without let or hindrance, but we must apply a commencement date in respect of any third party looking for any file if we are to avoid placing an undue burden on the organisation. It is just disingenuous and wrong for people to claim this in any way impacts negatively on the processing of applications. Any individual will have access to his or her records, as will a lawyer acting on his or her behalf. That is the point.

Deputy Mary Lou McDonald: It is not the point.

Deputy Brendan Howlin: If we were to allow a raft of third-party people to make applications, that might delay the processing of applications and would not be in the interest of applicants. All of these things are fully encompassed in this comprehensive legislation.

On the Private Residential Tenancies Board, I am, again, applying an effective date of 2012. I picked that date and not 2011 or 2013, for instance, because it is the year in which the board began to gather data electronically. Before that, it operated a paper-based system, processing some 1.2 million paper-based records annually. The workload of the PRTB is heavy and intensive, with 300,000 registrations per annum, 150,000 individual landlords to deal with and 635,000 tenants. Despite Deputy McDonald's difficulty in getting through, I am advised that the board dealt with 54,000 telephone calls in 2013. Clearly, somebody's calls are being answered. One must take a practical decision as to whether it is reasonable to say that the date from which the board began gathering data electronically should be the effective date, or if one should put a burden on the board such that it would have to search 1.2 million paper-based files manually for each year prior to that date. The answer is if it is the person's own file then he or she will have to do that, but not for a third party. That is a reasonable position. I have argued throughout the debate that I want to be as comprehensive as I can be, but the approach must be tempered by some semblance of reasonableness in order that we do not kill off organisations by putting a burden on them that simply stops them from functioning effectively.

To be clear on the position in response to the question posed by Deputy McDonald on An Coiminiséir Teanga, the coiminiséir has exactly the same status as any other ombudsman. The effect of the motion will put the office in exactly the same position as other ombudsman offices. In other words, the administrative files relating to the office will be subject to FOI but how it deals with individual cases is not. Have I been too long, Chairman?

Chairman: No, but we have a vote and I propose that we suspend and come back after the vote.

Deputy Sean Fleming: I have said all I have to say.

Deputy Mary Lou McDonald: I wish to make one brief point.

Chairman: The Deputy should make it quickly before we go.

Deputy Mary Lou McDonald: The Minister has set the commencement date for the Refugee Appeals Tribunal at October 2014.

Deputy Brendan Howlin: It was last year.

Deputy Mary Lou McDonald: That is a big mistake. It adds further to the opaque nature of the process and the lack of surveillance of the entire process in which people find themselves trapped for years, and of which direct provision is a part. The Minister knows that as surely as I do. Could he indicate whether it was the Minister for Justice and Equality who sought the measure?

Deputy Pat Rabbitte: The Minister might be kind enough not to interrupt Deputy McDonald, and to send the committee a note on the question I raised. I am curious to know the answer.

Deputy Brendan Howlin: Yes.

Deputy Mary Lou McDonald: The Minister might also answer which Minister made the request.

Chairman: Could I finish please? I thank the Minister and his officials for attending. We have now completed our consideration of the motions. Under Standing Order 86(2) the message is deemed to be the report of the committee.

Messages to Dáil and Seanad

Chairman: In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Joint Committee on Finance, Public Expenditure and Reform has completed its consideration of the following motions:

That Dáil Éireann approves the following Order in draft:

Freedom of Information Act 2014 (Effective Date for Certain Bodies) Order 2015,

copies of which Order in draft were laid before Dáil Éireann on 10th March, 2015."

That Dáil Éireann approves the following Order in draft:

Freedom of Information Act 2014 (Exempted Public Bodies) Order 2015,

copies of which Order in draft were laid before Dáil Éireann on 12th March, 2015."

In accordance with Standing Order 72, the following message will be sent to the Seanad:

The Joint Committee on Finance, Public Expenditure and Reform has completed its

consideration of the following motion:

That Seanad Éireann approves the following Order in draft:

Freedom of Information Act 2014 (Effective Date for Certain Bodies) Order 2015,

copies of which Order in draft were laid before Seanad Éireann on 10th March, 2015."

That Seanad Éireann approves the following Order in draft:

Freedom of Information Act 2014 (Exempted Public Bodies) Order 2015,

copies of which Order in draft were laid before Seanad Éireann on 12th March, 2015."

The joint committee adjourned at 5.02 p.m. until noon on Wednesday, 15 April 2015.