

DÁIL ÉIREANN

AN COMHCHOISTE UM SHLÁINTE

JOINT COMMITTEE ON HEALTH

Dé Céadaoin, 21 Meán Fómhair 2016

Wednesday, 21 September 2016

The Joint Committee met at 2 p.m.

MEMBERS PRESENT:

Deputy Bernard J. Durkan,	Senator Colm Burke,
Deputy Billy Kelleher,	Senator John Dolan,
Deputy Margaret Murphy O'Mahony,	Senator Rónán Mullen.
Deputy Kate O'Connell,	
Deputy Louise O'Reilly,	

DEPUTY MICHAEL HARTY IN THE CHAIR.

Section 39 Agencies: Charities Regulatory Authority

Chairman: I thank the representatives of the charities regulator for coming before the committee. The purpose of this afternoon's meeting - it was to be tomorrow morning - is to engage with the Charities Regulatory Authority on the bodies funded by the HSE under section 39 of the Health Act 2004 falling under the charities regulator framework. On behalf of the committee, I welcome Mr. John Farrelly, chief executive officer of the Charities Regulatory Authority, who is accompanied by his colleagues, Mr. Rory Geraghty and Ms Ciara Cahill.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are 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. Any submission or opening statement submitted to the committee may be published on the committee website after the meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable. I ask Mr. Farrelly to make his opening statement.

Mr. John Farrelly: On behalf of the Charities Regulatory Authority, I thank the Oireachtas Joint Committee on Health for the invitation to attend and give our views on the topic of regulation and scrutiny of charities receiving grant aid by the HSE under section 39 of the Health Act 2004. I am joined today by my colleagues, Mr. Rory Geraghty and Ms Ciara Cahill. We are especially delighted to be here as it is the first time since my appointment on 16 May that the charities regulator has appeared before a committee of the Oireachtas. Prior to my current role, I worked as the deputy chief inspector of social services in HIQA, regulating designated centres for people with disabilities and older persons, a number of which receive some section 39 funding.

Over the past number of years, the actions of a small few people in a small few charitable organisations have undermined public trust and confidence in all charitable organisations. Good people doing good work and who respect the law should be acknowledged and assisted, not tarred by the wrongdoing of others. This is why I believe that targeted and proportionate regulation of the sector is essential. By ensuring that charities are well regulated, my office can ensure the accountability of charitable organisations to donors, beneficiaries and the public.

I will speak a little about the public register. A statutory requirement and strategic objective of the charities regulator is to ensure that the register of charities is complete and accurate as per the requirements set out in the Charities Act 2009. All charitable organisations must be in compliance with the Charities Act 2009 or face losing their charitable status. Currently, nearly 8,000 charitable organisations on the register were deemed to be registered for the purposes of the Act because immediately before the commencement of the register they had an entitlement to an exemption under section 207 or section 208 of the Taxes Consolidation Act 1997 and the Revenue Commissioners had issued each organisation with a number, commonly referred to as a CHY number.

The charities regulator is aware of 778 HSE-funded section 39 charitable organisations. These organisations are deemed registered by virtue of holding a charitable tax exemption or CHY number on 16 October 2014. At present, 530 are in compliance with the registration and reporting requirements under the Charities Act 2009. Of those not in compliance, 13% have engaged and are coming into compliance; while 19% have not engaged. If this remains the case, they will risk losing their charitable status.

I will also speak about working with other State bodies. I hold the view that the sharing of information by relevant State bodies is key to ensuring charities are well regulated while also ensuring the reduction of regulatory and administrative burden on the charities. Currently, it is possible that a section 39 organisation providing health services, for example, may be required to provide large amounts of information to the HSE to acquire funding, to the primary regulator of its services and also to the charities regulator. It may also be a fact that all of these State bodies could hold relevant information, which, if appropriately passed to any of the other bodies, could facilitate better decision making and risk assessment.

The duty of the charity regulator is to ensure compliance with charity law. If during this process we gain information that indicates non-compliance with the various health Acts, the Charities Act 2009 facilitates the sharing of this information with the relevant regulator. We also take the view that this information would need to be shared with the primary funder or commissioner of the services on behalf of the State, which in this case is the HSE.

As a regulator, I hold the view that any organisation that procures services on behalf of the State has both a legal and moral responsibility to ensure that these services are delivered to the highest standards. Public money is sacred and if there is any indication that there has been mismanagement or inappropriate spending, funding bodies must intervene and take the appropriate action. It is the policy of my office to encourage funders, particularly State organisations like the HSE, to be vigilant and regularly risk assess organisations to which they are providing substantial amounts of money. This is why staff in my office have met with representatives from the HSE to initiate a formal agreement and engage in ongoing discussions regarding the compliance of sections 38 and 39 bodies with the charities Acts.

In addition to meetings with the HSE, staff in my office have also met other State bodies such as the Revenue Commissioners, An Garda Síochána, the Office of the Director of Corporate Enforcement and the Companies Registration Office to develop and establish data sharing agreements. All of these meetings were initiated by my office and organisation because of the principles and approach that we believe are required. This process is ongoing and, when complete, these agreements should allow for a multi-agency approach to tackle any anomalies with registered charitable organisations, including fraud, poor corporate governance and financial mismanagement.

In terms of raising concerns, a primary function of the regulator is to increase public trust and confidence in the management and administration of charities. My experience to date points to the fact that while robust auditing, monitoring and governance checks are paramount, unsolicited information from staff and the public is one of the key mechanisms that enables regulators to point their attention to non-compliance and risk. The public are our eyes and ears. We rely on them to inform us of potential breaches of the law. This is why, within two weeks of commencing as CEO on 16 May, I put in place a dedicated concerns e-mail address and phone line, both of which are monitored on a constant basis. This is a direct line for the public to contact the regulator. We protect the identity of the person who raises a concern with our office and by processing all of the information given to us in confidence. Each concern raised goes

through a risk assessment procedure that allows our staff to identify what action, if any, is necessary. On some occasions this may involve handing material over to other law enforcement agencies. In other cases, it might mean actively engaging with a particular charity to resolve issues around corporate governance.

Part 4 of the Charities Act 2009 commenced on 5 September. It gives investigative and protective powers to the charities regulator and includes the capability to impose sanctions if a charity breaches certain obligations. The introduction of Part 4 of the Act is a positive and welcome step for charity regulation in Ireland. The powers it confers will allow us to take steps to ensure that charitable organisations are protected and well managed. Where breaches of the Act are suspected, the regulator can now work proactively to prevent and counter mismanagement and protect charitable organisations. These powers will be applied in a proportionate and fair manner, recognising that the majority of charities require support rather than enforcement. I know that many of the Deputies and Senators present, and in general, have queries on the registration of certain charities in their constituencies. We have established a dedicated e-mail address for Members of the Oireachtas.

In conclusion, I began my five-year term on 16 May 2016. I see the lifetime of my appointment as a long-term commitment to regulating a challenging and quite congested sector. I hope that throughout this challenge I will have the support and co-operation of all State bodies, especially those that fund charitable organisations with public moneys. I thank the committee for listening and look forward to working with everyone.

Chairman: I thank Mr. Farrelly.

Senator Colm Burke: I wish Mr. Farrelly every success in his new role. He was appointed on 16 May so he is only a short time in office.

As he stated, there is a very significant number of charities in the sector. I am interested in the number of registered charities that receive HSE funding. The HSE's annual report of 2015 states that 1,847 different groups receive €100,000 or less and when one adds up all of the groups, over 2,300 organisations get funding. As I read the details, I noticed that many of them appear to be charities. The list can be found in the schedule of the HSE's annual report.

Last year, the total funding provided by the HSE to the various organisations was €3.72 billion, which amounts to 25% of the health budget. In October 2013, I raised questions on this issue during a meeting of the Joint Committee on Health and Children before the issue was taken over the Committee of Public Accounts. I got a breakdown from the Joint Committee on Health and Children on the various categories. The groups were as follows: in receipt of over €100 million; in receipt of between €50 million and €100 million; in receipt of between €10 million and €50 million; in receipt of between €1 million and €10 million; and in receipt of between €100,000 and €1 million. In 2013, some 442 groups received between €100,000 and €1 million and 131 groups received between €1 million and €10 million. Those statistics prove that a huge amount of money was paid out.

Mr. Farrelly has identified that there are over 700 registered charitable organisations. Does he feel that he has adequate resources and staff numbers to deal with the task? It will be a slow process to get everyone on the register. It would be unfair to expect the HSE to have the manpower to manage every aspect of 2,300 organisations. It would also be incorrect for us to expect the charities regulator to inspect 2,300 organisations. He has been in office for a few months. Does he feel that he can deal with the matter and all of the issues that are arising? Does

he feel the Government should provide much more assistance to the authority?

Mr. John Farrelly: I am not convinced that the data is absolutely correct in triangulating across the sector about what is and is not a section 39 charity. I am fairly confident that 778 of the registered charities are HSE-funded section 39 organisations. Let us remember that health and social services is quite a diverse area and thousands of not-for-profit entities receive funding. For example, sports bodies and different entities are excluded and are not charities. I am fairly sure that there are 778 registered charities at the moment. Some of the rest of the group that receive HSE funding may be charities but we would have to establish that detail.

When the register moved from Revenue, many entities were deemed registered and granted a CHY number. We are working on reconciling that information and any anomalies in the register. Section 39 funding can help us to triangulate information. When I arrived in May, I found that the information, on those deemed registered, was not as robust as I would have liked it to be and we carried out a few exercises. When we profiled 1,000 companies, we found that 60% of them were intact and active but 20% were no longer companies and were dormant. Even though the latter were on the register, they did not exist in reality. That stems from the fact that originally charities were looked at through a tax lens and trust was given if one did not breach it, but now we have the Charities Regulatory Authority. One of my first tasks as CEO is to have a proper intact register that identifies the registered charitable organisations and, thus, people can have confidence in the data and approach. Critical to having such a register is working with other State bodies, including the HSE.

In terms of resources, when I started on 16 May my authority employed 16 staff but now we have 27 whole-time equivalent staff. The authority is being totally reviewed in terms of the human and financial resources needed to implement the Charities Act. I do not believe in big over-sized organisations. My sense of it is that the authority would probably need to have between 49 and 50 staff. I also want to recruit the right people with the right competencies. We are putting in place an IT system. Of critical importance will be the data that we collect. We will share data with other regulators and bodies in order that the appropriate law is applied. I am happy enough how things are going on the resources front and I envisage that we have reached halfway.

Deputy Billy Kelleher: I welcome Mr. Farrelly and wish him well in his appointment. As he said in his statement, it is about ensuring that the public trust the charitable sector and that moneys go to where they are meant to go. In that context, there have been some high profile cases that have done a lot of damage to the charity sector. It undermines the confidence of the public in the street donations to charities that are doing exceptional work, because there are questions and doubt in people's minds when they see high profile cases such as that of Con-sole and others. From that point of view, when the Charities Regulatory Authority is assessing whether an organisation complies with the Charities Act, does it carry out a forensic analysis of its operation or, in the case of section 39 organisations, does it depend on the HSE to carry out that analysis and then report to the authority? How does the authority do it?

In that context, governance is very important. To be honest, many charities involve volunteers coming together for good causes and they might not have the required capacity or skillsets. Does the authority envisage itself being proactive in informing the charities of their obligations and providing its support to ensure they comply with the best standards of corporate governance? What measures is the authority taking to ensure they comply, as opposed to just finding out if they do not?

Mr. John Farrelly: That is quite critical, depending on the size of the charity. There are different types of charities. In the case of some of the charities that have not yet complied, we believe one of the reasons is that they do not have the capacity to comply in terms of the annual report and other requirements. They might not have a large amount of money and they might not be engaged in the transaction of money. They might be engaged in the transaction of services at a local level. We have engaged Volunteer Ireland, which has 21 centres throughout the country. All of those small charities can go to Volunteer Ireland centres where they will be facilitated and brought through the process to register, step-by-step, so as to come into compliance.

A large amount of charities are now obsolete and redundant. With regard to bringing confidence to the sector, we will write to those non-compliant charities for the last time and then we will bring through a process of taking them off the register. To be honest, that will not affect anybody because they are no longer doing anything. They are not providing a charitable purpose so there is no risk to the community, and we wish to make sure of that. It will also give confidence to the community that there is a proper register in place.

The second action we are taking which will give confidence, rather than Part 4, relates to the registration and how we register charities at present. I was surprised, having come from the nursing home sector, at how many people wish to set up charities. It is a large number of people, and I have been in the North, Scotland and England. We anticipate that there could be 800 applications a year for charitable status. However, those people might not realise what they are applying for and that they might not necessarily have to be a charity to do a great deal of good for specific people. We want to work with them on that.

In terms of risk, we must get the structure in place to ascertain what the risk is with charities. One way of doing that is through the Charities Act 2009. A number of areas in that Act require regulations to be prescribed. No regulations have been prescribed as yet in the Charities Act, but there is room to put them in place. My preference is that we consult with the sector and the public before we regulate, because many people are afraid. They think regulation means enforcement, that we will close them down and so forth. For the majority of people, that is not the case. It is for the people who are non-compliant, because there is an issue when they breach regulations. I can give an example. We wish to conduct public consultation this quarter on fund-raising. We wish to issue guidance on fund-raising, because there is public unease around that. We want to advise the Department on regulations for fund-raising and the manner and conduct of fund-raisers. We will go to Cork, Galway and Dublin to consult on that, as well as on the web, so we can ensure that we have the pulse of what the public wants.

In that regard, there are also the accounting regulations on how charities account for their money. Many people tend to misunderstand and do not know the charities law very well. Even with some of the charities we are dealing with now where we are not satisfied with their compliance levels and we are acting on that, when one meets the people involved they tend to give a look when we tell them that it is our job to ensure that they are accountable to their donors, beneficiaries and the public. The public tends to be forgotten, even though it is in the law. There is an amount of work for us to do to provide good guidance on, for example, what a charity is and the responsibility of charity trustees, and then to monitor against that.

There is a job of work to put the structure in place. I am hoping we will put that structure in place and that we will create a balance and commitment in the sector, while at the same time having the powers, where we identify clear coherent risk and where there is reckless behaviour that is not acceptable, to get straight in and sort it out. That is why I wish to get the agreements

in place. However, that information will mainly come from the public in terms of concerns and ringing us. We then examine that information. That is it. We get the information, we risk assess it and we seek assurances from the entity. When it sends us something and we are not assured because it is opaque and not transparent, we will bring it up another level. We give plenty of chances to reassure us, but the entity must assure us and must be transparent. That is the approach. It works. It worked for the nursing homes, so hopefully it will apply in the charities sector.

Deputy Bernard J. Durkan: I congratulate Mr. Farrelly on his appointment and wish him well. We should all recognise the tremendous role undertaken by charities and the tremendous work they have done over the years. The principle of involving the public in a semi-statutory way has yielded huge results. It is equally important that the charities are operated above board and that the Charities Act is enforced. If it is not, as other speakers said, the danger is that public confidence in the system will be undermined, and it will not be possible to recover from a series of situations where questions were raised and left unanswered.

I have raised the number of charities that are registered so far on a number of occasions over the past number of years, particularly on the Order of Business. I saw a situation developing that I was not happy with. I cross checked this, and the means to cross check are not very readily available to a public representative or a member of the public. We all know there is a necessity to ensure that if somebody is raising money ostensibly for a charity, it must go to that charity. Otherwise, we have problems. I found that it was quite easy to run some of the charities, but some that I thought were registered were not registered at all. I worry about that.

Another issue, which Mr. Farrelly mentioned, is dormant charities that have fallen by the wayside. Do they have money in accounts? Are they dormant accounts? Did the funds fall to the Exchequer as dormant accounts or what happened to the money? Usually, there is a balance left somewhere. It might or might not be large but it is still money that was raised for a particular purpose.

Might it be preferable to speed up the process of registration and make it quite clear that failure to register is not acceptable and cannot be acceptable in the long or short term? It has the potential to damage all charities.

On the making of the regulations, I also raised a question about that previously. It is imperative that the regulations are made as quickly as possible and that they are broadly based, in order to protect legitimate charities, the public purse and the integrity of the charitable sector. If we delay unnecessarily, and I accept that this is a job for the Minister, it will cause questions and doubts to be raised about what is happening and what should be happening. We must be extremely careful about that.

My last point relates to the total number of charities. It is very hard to control all of them to the extent that is desirable. We have to control them to the greatest extent possible. There is a huge number of them and it is very difficult to control their *modus operandi* because they straddle the voluntary and statutory sectors. In between those two areas, there is considerable room for manoeuvre and administrative difficulties. I strongly support the Charities Regulatory Authority and the work it is doing. The only rider I would apply is that there is a job to be done and it must be done for the benefit of all charities.

Mr. John Farrelly: I agree with the Deputy. Failure to register is an issue. I want to get an intact register in place and ensure that the information is publicly available. Carrying on the

business of a charity while not being registered is a prosecutable offence.

The Deputy made a very good point about charities that may no longer exist. There could be good people doing work in communities who have got older and who may not be aware of their obligations. In fairness, the commissioners for charitable oaths were in place before the regulatory authority came into being and solicitors throughout the country are quite cognisant of the fact that funds are given to us and we allocate them.

A number of bodies - including shops, for example - are potentially holding themselves up as charities. We have already been actively working in that area. Such bodies may have submitted applications for registration but in the interim have been carrying on their business. We very quickly escalated the process and they had to cease carrying on their business. We are holding their funds, assets and so forth and if they fail to register, we will distribute those to other charitable organisations. If they register, they can continue with their business. The general public does not necessarily understand what a charity is and it is our job to make that information available so that people know what is required. Unfortunately, within that loop, well-informed people who may not be well-intentioned can move into the voluntary service area and we are watching that.

This year, the focus is on consolidating the register and publicising the information and guidance for people. If we go to court in pursuit of a prosecution but the body or organisation involved can show that it was not properly informed about the process and system, which can be complex, we could lose the case. I agree with Deputy that this needs to be done speedily. Some staff are already *in situ* but we are awaiting the recruitment of more staff with very specific competencies.

Senator John Dolan: First I must declare an interest in that I am employed by a charity. I am chief executive of the Disability Federation of Ireland, which has over 100 organisations and charities affiliated to it.

My first question centres on the issue of balance. There are ten or 11 statutory functions listed for the authority, of which regulation and compliance constitute one. The provision of information, advice, support and so forth, is another function. I am anxious that the authority should achieve the right balance in the work it is doing. At the start of his presentation, Mr. Farrelly talked about the few and the many. There was huge attrition in the voluntary sector in the lead up to Christmas 2014 because of the actions of one or two organisations. How will the authority maintain a balance, on a day-to-day basis, between compliance and its broader functions? The latter includes issues such as good governance because that means far more than simply being compliant.

I wish the Charities Regulatory Authority all the best in its work. Towards the end of his presentation, Mr. Farrelly described the sector as challenging and congested. What does he mean by that? He also referred to people with appropriate skill sets. I ask him to elaborate on the three or four core skill sets he is seeking. My final question is one of those leaving certificate “discuss” type questions from the honours paper. Would we all have been better served if we had, instead of the Charities Act 2009, a public benefit Act 2009? The work is all about public benefit and Mr. Farrelly alluded to the fact that people do not always understand that. That horse has bolted but when one looks at the purpose of the Act, it is about public benefit. Should we redefine charity in terms of public benefit? Would we be better off pushing that concept to the fore?

Mr. John Farrelly: I will answer the questions in reverse order. The Charities Act is appropriate legislation which has a built-in review mechanism that comes into play after five years. Having worked in HIQA on the regulation of the disability and nursing home sectors, I know that there is always an immense amount of learning when regulation commences - by the people who are regulated, those regulating them and by the law makers - in terms of what is required. Public benefit is important but there is enough in the Charities Act to regulate the charity sector well.

The issue of balance is really important and I tried to make that clear in my presentation. As soon as one mentions regulation, people think of enforcement. The same is true of compliance but people will not be compliant unless they understand clearly what they must do. That is where the guidance comes in. In the voluntary sector, for example, there are very good fundraising principles in place. We will be looking at adjusting them - because they are built on knowledge within the sector - and formally approving them. We will be building on what is already there. The same is true for governance. There are a lot of good governance codes already in existence but without the regulator's imprimatur, people will not necessarily sign up to them.

On the issue of governance, it would be unfair for people to think that it is only relevant to the charity sector. In the health area, for example, HIQA issued a number of reports on governance in the statutory sector. We reported on governance, leadership issues and the lessons that should have been learned in certain circumstances. In the context of regulation and governance, we must remember that there are so many well-intentioned and well-informed people in the charity sector. There are more of those people than individuals who are not well-intentioned or well-informed. Our aim is to create a State structure to regulate the sector which allows the sector to maintain its softness and to continue to fill the gaps not filled by the State. Having worked in regulation for ten years, I am well aware that one can end up using a certain type of language, much as one tries to soften what one says. It is important to make people aware of that.

Under the Charities Act, it is the trustees of charities who are charged with ensuring that the sector is well governed. The regulatory authority must make sure that those trustees are supported and given enough information to know what is required of them. The Senator is spot on with his comments on the protective elements in the Act. The Title to the Act makes reference to both regulation and protection. We do a huge amount of protective work to which I have not referred today, particularly around section 39 organisations. We have looked after 282 transactions in the past year or so in areas such as pension schemes, fund allocations, appointment of trustees and so forth. All of that type of work goes on in the background. We need to become an efficient and effective organisation with a good corporate spine. From regulating disability issues in the health sector, I have learned that people queue up for bad news which sells plenty of newspapers. We need to strike a balance, however, by publicising all the good work being done. This will be a major challenge.

On my description of the sector as challenging and congested, I am not necessarily referring to charities because there are many actors involved, for example, strong legal and accountancy professions. Ireland has many charities. I live in Caragh, County Kildare where a charity competes with the GAA and political organisations at the church gate. It is important that fairness apply in the case of registered charities.

Generic competencies are not enough. Specific competencies are required, including data analysis and a knowledge of what one is doing to ensure one does not create a regulatory burden. If the Charities Regulatory Authority is inefficient, charities will provide us with information we do not need. The authority's head of compliance worked previously with the Office

of the Comptroller and Auditor General. His accountancy skills add another dimension to the work being done by other staff.

Some of the charities on the register are large and wealthy, which means we need someone who has worked in a large wealth division. A mixture of specific skills is required and the authority must compete with the private sector to attract these skills. Ultimately, however, we need dedicated public servants who buy into the authority's mission and will be determined to implement the Charities Act impartially and fairly.

Chairman: Have all of the important sections of the Charities Act 2009 been commenced or is the Charities Regulatory Authority awaiting the commencement of some sections?

Mr. John Farrelly: The authority established a consultative panel on fund-raising to get a good sense of this issue before certain parts of the Act were commenced, specifically the regulations for fund-raising. Commencement decisions, however, are not in my gift.

We also wanted to think through certain parts of the Act as their implementation could have unintended outcomes for charities. One must not forget that charities compete with other not-for-profit entities also engaged in fund-raising. We wanted to get this right. The panel is chaired by a member of the authority's board and we expect it to produce a report next year. We will also move towards issuing and approving guidance on fund-raising to create confidence in this area. We will work with the Department on the regulations.

In general, we are pleased with what is in place. We must now ensure we get the prescriptive element underpinning the legislation right because if we get it wrong, we will impose an unnecessary burden. Our regulations should not deal with issues covered by other State bodies. Getting this right will, therefore, require us to do some thinking. While some may consider this to be a risky approach, I would prefer to adopt a step-by-step strategy that has been thought out because we need to get the register right. The compliance section wants members of the public to become our eyes and ears and to assure them that we will pursue any information they provide.

The Act has many good points. From speaking to departmental officials, it is clear the Department will respond if we believe further miscellaneous provisions are needed. For example, those who wish to become charity trustees are not subjected to probity or fitness tests, even on registration. All we can do is make proposals we believe would be useful and hope they are introduced in a miscellaneous provisions Bill. We accept, however, that many other issues are being addressed in legislation before the Dáil. The Act should be sufficient to get us to the starting line.

Chairman: Does the Charities Regulatory Authority face barriers or problems in sharing information with other entities? Is information flowing freely?

Mr. John Farrelly: We want to put in place clear agreements and memorandums of understanding to ensure people are accountable and information will flow properly in compliance with data protection regulations, etc. However, there are barriers to this. The Charities Regulatory Authority is a new organisation and there appears to be a general culture of not sharing. Given that the people involved are experienced, civic-minded individuals, they obviously have a reason for not sharing information. My experience during my professional career has been that appropriate sharing of information never harmed anyone.

Chairman: How are concerns about charities brought to the attention of the authority?

Mr. John Farrelly: We have a telephone line for the raising of concerns and refer to the number in our many public engagements. As the eyes and ears of the authority, members of the public telephone and e-mail us and we risk assess and layer each piece of information we receive. The process is conducted manually because our computer system is still being installed. The amount of information we are receiving means the position is tolerable.

It is a matter of trust and verification. Many people are confused about our role because rather than dealing with complaints, our role is to act on information received by verifying compliance with the Charities Act. When we receive information, we contact the relevant organisation which must assure us that the matter is within its scope. If it fails to provide such assurance, the matter is escalated. If we receive a significant amount of unsolicited information on a particular charity, we will examine patterns. We must also take a fair and balanced approach because the issue is one of verifying if the information provided is correct and ensuring the charity in question and its trustees have an opportunity to rectify the matter, depending on risk. We also receive information citing potential risk that may be welfare-related rather than related to the charities legislation. We ensure any such information is forwarded to the Garda, the Health Service Executive, Tusla, animal welfare organisations and so forth.

We must put robust processes in place. We are in the middle of procuring an information technology system, which is every public servant's nightmare. In doing so, we must drive out our processes.

Deputy Kate O'Connell: Mr. Farrelly covered many of the issues I had intended to raise. Given his experience and having listened to him, I have no doubt that the system will be efficient and effective. It may not be within his remit to discuss an issue that has come to my attention. I refer to charities which are competing with the private sector for State tenders. Do charities receive preferential treatment in this regard? If, for example, a private sector company and a charity bid to provide a service for the HSE, there does not appear to be a level playing field as the charitable sector appears to be given preferential treatment. The evidence is anecdotal and may not necessarily be based on fact. There is a view that when something is charitable, everybody is working almost for nothing, that one does not have a level playing field and that one may not, therefore, have the best service. Has Mr. Farrelly seen any evidence of this? Will the authority examine the issue?

Mr. John Farrelly: I have not seen any evidence of it, although I was only appointed on 16 May. Transparent processes should apply to the commissioning of services. Charities are entitled to make an income to serve their charitable purposes, provided they are in compliance with charities legislation. They work in a gap that has been there since the dawn of time and regulators should not prevent them from doing things that help them to serve a charitable purpose. I presume that commissioning, if and when it is introduced in Ireland, will involve ensuring everything is procured fairly. My office must procure everything through a Government framework and in a transparent and accountable manner. The criteria applied to procurement should include the type of entity involved. Decisions should be based on value for money and capability.

Senator Rónán Mullen: I apologise for not being here for the start of the meeting. I welcome Mr. Farrelly and wish him the very best in his important work. We are involved with charities in one way or another, whether it is shaking a bucket at the weekend or visiting a local charity that we want to try to assist in whatever way we can. We are all hearing the impact of the wrongdoing of the few. We hear of charities' budgets and how their take from fund-raising has suffered in recent times. Mr. Farrelly is in a very key role in terms of building back confi-

dence through good scrutiny and regulation. I wish Mr. Farrelly all the best with that.

My question may already have been covered during my absence I would not ask the witness to go over old ground so he should disregard it if that is the case. Mr. Farrelly referred to a prosecutable offence where a charity is not regulated. What is the Rubicon that is crossed to establish that an organisation which is not registered as a charity is operating as a charity? We know that one can have different levels of activity such as people doing things for others and sometimes raising money on the back of it. What is the proof point? Is it that they are holding themselves out as a charity and not being registered? Is that then an offence? If Mr. Farrelly could assist me with that information, I would be grateful.

With regard to political activity, the position seems to have changed over the years in that organisations with a charity number or registered charities can be involved in political advocacy around changes in legislation or public policy. Will Mr. Farrelly, very briefly, bring the committee up to speed on where things are on that front? Should a problem ever arise in that zone, what is Mr. Farrelly's remit to do anything about it or does he have any capacity to respond in that situation? That is it. The witness has covered everything else in his answers. Thank you.

Mr. John Farrelly: With regard to the prosecutable offence, I shall to defer to my colleague Ms Cahill. However, we have to have our review clearly formed. There are well-intentioned but uninformed people out there. Then there are badly intentioned and well-informed people out there. We have to be able to zone in at a very human level and be able to assess that type of risk. We have written to the Garda Commissioner looking to set up an agreement. Gardaí in general, in their communities, are very watchful and vigilant and understand the law well. They can collect evidence and can prosecute certain arrestable offences potentially in the Charities Act. We are very interested in what that line is but, generally, if we write to someone, very often people will come back to us and we can tell straight away that they had no clue at all that they had crossed the line. There are other people, including those who are going for registration, and there can be issues around private benefit and how the charity is set up. When we give them what we believe are quite reasonable facts, their response may not make sense even though they can be very well informed. It is about forming views on this.

One of the differences about charities regulation is that we should not be afraid to contest a certain space in the law, even if we are to lose, and put it out there in terms of transparency. We are doing a number of things. We are conducting some reviews at the moment which will put something out, transparently, into that space. We may lose but that is okay.

Ms Ciara Cahill: Under section 41 of the Charities Act 2009 it is an offence for an un-registered charitable organisation to carry out activities such as fund-raising. We are confined by what the legislation states. With regard to where the line is crossed, I believe it very much depends on a case-by-case basis. Certainly, at this time we would not be able to say generally what that situation would be. It would depend very much on the case at hand.

Senator Rónán Mullen: Just to give a case in point, I have a friend who has done good work in Haiti and he came back recently and is trying to fund-raise to send out a few quid for them. I would maybe send out an e-mail to the world at large or to anybody who is remotely connected with me and I would let them know of a golf classic on such a date, but if my contacts wanted to send me a few quid, payable to the people in Haiti, I would get it to them. Of course, invariably one might ask people to send a cheque but sometimes they will send €50 in the post, however much one might discourage it. Am I engaging in a charitable activity in a way that would conflict with the law by getting involved in soliciting donations which I, in good faith,

am going to pass on to what may or may not be a registered charity? It could be something quite informal going out, such as a missionary doing some work or whatever.

Ms Ciara Cahill: I will say it is something that we are examining at the moment so it is hard to give a complete guideline on it.

Senator Rónán Mullen: I am sorry to put Ms Cahill on the spot, but sometimes it makes a-----

Ms Ciara Cahill: I can write to the Chairman in due course on that point to give the Senator clarity.

Mr. John Farrelly: We will bring out guidance on such matters. For example, is a local cycling club the charity when it is doing a charity run to earn €5,000, or can one define the charity? The guiding principle is that the charities are the registered charities and people can fund-raise for them. We need to think about that. My inclination would be that people can fund-raise for charities but there is an oversight and governance on behalf of the charities to make sure they have streams for that. We need to effect proper guidance in this regard. There are other examples such as when people often get involved in collections and fund-raising for others in their community which is not necessarily of public benefit. It may be of benefit to a young man or woman or child, or it may be a small amount. We need to get that clarity for people. There are many good things that go on that are not necessarily for a charity, and that is important.

The point made about political advocacy is interesting. In the main, political action is precluded but there are a number of organisations that engage in certain activities to further their charitable purpose and objectives. It is about the balance of that. We will be forming a view on that, but if someone goes into a contested space, the regulator has to form a view. It depends on the risk. We must be careful because charities go into these gaps also and they are not the State sector. In Ireland we might have a way of running things, but the charities are not the State sector. They are charities and people are going into that political space. This is one of the things that must be evolved and a view formed on it. If it is deliberately and obviously a political activity, we will intervene and we have intervened already since 16 May and asked some trustees how they came to the view a particular activity as correct.

Senator Rónán Mullen: If I may, I will ask a supplementary question on that. If an organisation is set up, is doing a normal activity and then weighs in heavily in a political way on a very political issue, does the regulator have a role in accepting and looking into complaints from the public and are there-----

Mr. John Farrelly: We do not do complaints. There is no provision for complaints in the Charities Act and, believe it or not, that is a good thing. The sector is well capable of doing that and there are some really good people who have complaints processes. It is part of the regulations to make sure those processes are in place. However, we do take on concerns as unsolicited information. If we believe a registered charity is in non-compliant with the Charities Act, we will start pulling that thread and making sure it comes back into compliance. It is a contested space and I am happy it is such because that is democracy.

Senator Rónán Mullen: I do not know what is meant by the term “contested space”. Are there different views as to how it should-----

Mr. John Farrelly: I am sure people might not agree with everything the regulator does. In my life as a regulator, one very rarely has a time when everyone agrees with everything one

does. With regard to the area of “contested space”, the world is evolving and we have certain charitable purposes set out in the Act within which there are about ten or 11 quite broad definitions. I believe that is good because it allows charities to press on and not get hemmed in. When I say “contested space” I mean that if we believe something is happening which may undermine trust and confidence in the charitable sector as a whole, we will act.

Chairman: I thank Mr. Farrelly and I call Deputy O’Reilly.

Deputy Louise O’Reilly: I wish to expand on a point made by Senator Mullen and I may use a more concrete example such as a suicide prevention charity which is established, regulated and everyone in it is doing what they are supposed to do. They are all good people and are all in compliance but they weigh in on a debate about fishing rights off the west coast. This would not be an area which directly concerns that charity’s work but for whatever reason it forms an opinion about the matter. In Mr. Farrelly’s opinion, would that put the charity outside of the scope of regulation?

Mr. John Farrelly: It may. We ask a number of questions. An organisation has a given charitable purpose. The trustees are accountable to donors, beneficiaries and the public. They give the trustees money. The question we ask is whether the trustees are spending that money on the charitable purpose.

Deputy Louise O’Reilly: I presume then the authority would investigate whether a body has complied with its internal regulations as well.

Mr. John Farrelly: Exactly. We would seek assurances from it first of all. It comes back to us with information. If it does not assure us, then we escalate the matter. The investigative powers are strong and I would not propose to use them lightly. We can go in forensically to carry out an investigation. It is a trust-and-verify model. What can happen is that someone in an organisation can be doing something, but no one knows until someone in the public or the media says something about it. We have to give the trustees a fair chance. In fact, many people forget that while the volunteers, the public and the beneficiaries are all stakeholders, the trustees are probably the people putting their necks on the line above all. We have to be fair to them and practical. I would certainly be looking at the type of example suggested by Deputy O’Reilly.

Deputy Louise O’Reilly: I am keen to expand on the point. My question relates to trustees. In my previous life as a union organiser I had many dealings with people acting as pensions trustees. It became harder to get anyone interested to put their hands up to become trustees. As Mr. Farrelly has just described, they took the view that their necks were on the block in the event of questions being asked. In the charities sector there are vast organisations that have good funding and which are able to support their trustees. However, there are smaller organisations in which, perhaps, the trustees do not feel as supported. However, both are equally liable. Does Mr. Farrelly have any thoughts about the training or supports that are available? Could more be done? I know the pensions sector is not the same, but we had terrible trouble trying to encourage people to put their hands up to be trustees. It is really important that the best trustees are those who feel supported enough to come forward.

Mr. John Farrelly: I think it is critical, and I am not sure that the necessary training and support is in place. At the very least, we can put in place some measures. I met my Northern Ireland, English and Scottish counterparts. One of the things we suggested was a board pack specifically to allow people to fill in the dots. This is part of the idea of leveraging this sector and the private sector to produce ideas which we can then examine and decide whether to en-

dorse or roll out. Certainly, in the case of trustees, we have no wish to scare people off. This will only ever be solved by having decent people of integrity who are not afraid to make the right call. There could be really good people who simply do not get that they have to make a given call. Supporting them is critical, as is co-ordinating the exercise. It is a question of balance. One of the functions we have is supporting trustees in that regard.

Senator Colm Burke: It is a question of trying to encourage people to become involved. In many areas there are good ideas. In the health sector many services are now being provided that would not be provided only for people putting their necks on the block, pushing the boat out and developing those services. These are dedicated and committed people. We seem to have stepped away from that. How can we encourage people back? In particular, we are looking for the people Deputy O'Reilly referred to, those with the necessary skills, including simple things like people management, accounting or legal skills. There seems to be a certain reluctance. How can we work on that?

Another thing I wanted to touch on and go back over is the sharing of information. All public representatives are coming up against this now. People quote the Data Protection Act to us. Is the authority finding this to be a difficulty at the moment? Does Mr. Farrelly believe there could be far more sharing of information to assist the authority? I realise Mr. Farrelly has covered the point somewhat but could we tease the point out in a better way?

Mr. John Farrelly: When I refer to data protection, I am not talking about sharing personal information or data. We do get the line quoted a good deal. I think there is something there somewhere. The people involved are usually credible, professional and astute people. I am unsure whether it is a cultural thing. Why would someone put something out there? What is going to happen only for people to have found that they have breached this, that or the other?

I look on it differently. I believe the sharing of information in the public interest is as important as other things. In our Act there are obligations on trustees to share. They are given some protection. In our Act, if there is a potential criminal act or if something happened along those lines, those responsible have to report it to certain entities. It comes back to governance. Sometimes I wonder whether people understand what governance is about. It is not simply about running a board. It is about understanding the duties and obligations and ensuring they are carried out. I do not in any way or at any level buy in to the idea that we cannot share information in a republic with laws all around it. Perhaps I am a little naive but that is the route I will be going down and sticking to. We will do it in compliance with the Act. Let us suppose people are donating to something and I have information that can save that money or allow it to go somewhere else. I would pass on that information and I would be happy to see what happens afterwards. We will consider it, but that point is important. I think there is a fear and there is a culture around that. In my mind it is a terrible shame that information gets to the media before it gets to the regulator. That is not appropriate.

The point about trustees is that it is not only about the skills, it is about the competencies as well. Not everyone goes to college or is an accountant or a solicitor. However, there are people of the highest integrity involved. It is about the competencies we are looking for in reaching out for people. It is also a question of people who can differentiate between certain terms in governance. We are working with some groups on this. The questions that arise include the nature of private benefit and conflict and how to go down a safe path. Let us consider some of the issues that have happened over the years. They have involved a small number of people. The questions have been about private benefit versus public interest. Only a small number of charities have been involved. There is a great deal going on that is right. How do we support

that transition in order that everyone joins the cause?

Another thing we are trying to do involves chairpersons. They have specific roles. It becomes more affordable if we get down to a given pool. Let us suppose there are 10,000 charities and 3,000 are schools. Schools are usually well supported in that many people are interested. Let us suppose we are left with 8,000 charities, including small ones. If we could reach out to the chairpersons in the first instance and support them, the benefits would be significant. I am prepared to do anything to leverage the various sectors, including the private sector, the state sector and the not-for-profit sector to support people.

Chairman: I have one final question, if there are no other comments. Does anyone else wish to make a comment or ask a question?

Deputy Bernard J. Durkan: A question has occurred to me. All charities have charitable tax status, I presume. Does that tax status extend beyond charities?

Mr. John Farrelly: We do not have the gift in terms of charitable status. That is a Revenue issue. All the relevant entities were registered by Revenue and given charitable tax exemption. There are several schemes. One is for gifts but there are different schemes. This area is not as transparent for the public as I would like it to be. I am keen for things to be transparent. People should be able to understand it. One should not need to be a solicitor or an accountant to understand what is going on in a charity. These are the things we will be pushing. Since 16 May we have registered 43 charities through the lens of the Charities Act. We have an agreement with Revenue that we are going through certain procedures such that it could trust us that these entities fit its criteria. I am not totally satisfied with that. We are renegotiating the memorandum of understanding with Revenue because I want to push charity to the fore. It is not fair for a small local charity where the 70 year olds are feeding the 90 year olds and which does not want a charitable tax exemption. We need to work that out. We would like transparency on the tax law because it looks as if over time that is an important component of being a charity in many ways, bigger than the little gifts.

Chairman: For many charities the greatest expense is salaries, some of which take up over 90% of their revenue. Does a red light come on when salaries take up almost the entire spend of the charity?

Mr. John Farrelly: Not necessarily. It depends on the charitable purpose. In a service-driven charity one would expect that to be the case. This is where we need to bring in the reporting regulations. There is a statement of recommended practice, SORP, for transparency in the UK and in Northern Ireland. The public should be able to look and form its own view because members of the public might say they do not want to support one type of charity but they do want to support another. However, they need the data and information. I do not automatically buy into the idea that because someone is paid there is a problem. Some charitable purposes need very specialist activity. That said, we would look at how much a charity earns, how much is spent on particular salaries and if that is value for money. We also would ask the trustees whether they believe that is a reasonable use of the money given to them as a gift by benefactors. We will push away and see what people come up with. Overall a red light would not come on just yet about the ratios that people use, but that may change.

Senator John Dolan: Activity reporting needs to be developed because there should be an activity report. That could be a bit like my first class composition, "I got up. I washed my face. I did this ...", but activity reporting where the governors make an honest effort to give a

sense of the value for the funding and resources deployed could be a very potent instrument to get people and organisations to focus on the value and give them a different way to look at their work.

It all comes back to public benefit. In that sense the charity sector in a republic is very closely related to public service. That needs to be thought about more. It will be very interesting to think about how they are not involved in the political space in a democracy if they are involved in public benefit. That is a philosophical comment. Does Mr. Farrelly think the activity report is necessary?

Mr. John Farrelly: What people report is key. The public benefit issue comes out of common law because charitable actions have been happening for a long time. Certain principles in the 2009 Act come out of common law and the earlier Acts. Another one that may need to go in is independence. That was one of the key common law principles in forming a view on charities. It is not in our Act yet. It is worth considering what a charity is. Someone might say that it does not make any sense for the HSE, for example, to be registered as such by virtue of the CHY number. That is why I am talking about the reconciliation of the register, to give people a sense of trust and confidence.

Senator Rónán Mullen: What is the regulator's role in getting new charities off the ground?

Mr. John Farrelly: They cannot carry out their activities unless they are registered by us. They need to put in a completed application and we need to register it. We are getting swifter at that. There is an international issue because charities can be looked after by different organisations within the State. Some go for a charitable regulator some go within Revenue, while others are within gambling and gaming. Generally speaking, it takes three to four months for an entity to be registered. If we get our systems right and if the application process is right and very clear - we have found this in the disability and nursing home sector - we can expedite it through charitable status in days rather than months. That is down the line.

Senator Rónán Mullen: What is the order? They incorporate and they go to the regulator. Do they still have to go to the Revenue Commissioners in the old way?

Mr. John Farrelly: They come to us first. When we register them, that gives them more credibility with Revenue. We are renegotiating that with Revenue.

Chairman: That concludes our deliberations. I thank Mr. Farrelly and his colleagues, Mr. Rory Geraghty and Ms Ciara Cahill, for their attendance at the committee to outline the role of the charities regulator.

As we have concluded our public business, I propose we go into private session for a few minutes to look after some housekeeping matters. We will suspend for a few moments to allow our guests depart.

Sitting suspended at 3.17 p.m and resumed in private session at 3.18 p.m.

The joint committee adjourned at 3.40 p.m. until 9 a.m. on Thursday, 29 September 2016.