

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM SHLÁINTE

## JOINT COMMITTEE ON HEALTH

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*Dé Céadaoin, 5 Bealtaine 2021*

*Wednesday, 5 May 2021*

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Tháinig an Comhchoiste le chéile ag 9.30 a.m.

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The Joint Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Colm Burke,	Frances Black,
Cathal Crowe,	Lorraine Clifford-Lee,
David Cullinane,	Martin Conway,
Bernard J. Durkan,	Annie Hoey,
Neasa Hourigan,	Seán Kyne.
Gino Kenny,	
John Lahart,	
Róisín Shortall.	

Teachta / Deputy Seán Crowe sa Chathaoir / in the Chair.

## **Whistleblower Allegations: Department of Health**

**Chairman:** I note that both the members of the committee and the witnesses appearing before us today are doing so virtually from within the precincts of Leinster House. I welcome Mr. Robert Watt, Secretary General of the Department of Health, and his officials: Dr. Kathleen Mac Lellan, assistant general secretary, social care division; Mr. Niall Redmond, principal officer, older persons policy development unit; and Ms Deirdre O’Gara, legal adviser.

Mr. Watt will address allegations made by Mr. Shane Corr as a whistleblower in the “RTÉ Investigates” programme broadcast on Thursday, 25 March. The committee met last week in private session with Mr. Corr to hear his evidence on the matter. In the “RTÉ Investigates” programme, it was alleged that dossiers, which apparently included sensitive medical and educational material on children involved in dormant court cases, were compiled and maintained over a number of years by the Department of Health, allegedly without the knowledge or consent of the parents of those children. The committee thanks Mr. Watt and his officials for the provision of briefing materials relating to this matter over the past few weeks. However, the committee is not entirely satisfied with some of the responses provided and the relevant issues will be raised again today.

I advise the witnesses that they are protected by absolute privilege in respect of the presentations they make to the committee. This means they have an absolute defence against any defamation action for anything they say at this meeting. However, they are expected not to abuse this privilege and it is my duty as Chair to ensure it is not abused. Therefore, if the witnesses’ statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction. Only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. These are normal parliamentary procedures that exist to ensure our proceedings today are conducted in a constructive and fair way. 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 also remind members that they too are expected to strictly adhere to the subject matter scheduled for discussion today. The committee cannot make adverse findings of fact against any individual and we will proceed accordingly.

I call Mr. Watt to make his opening remarks.

**Mr. Robert Watt:** It is good to be here this morning and I thank the committee for the invitation. This is the first time I have been before this committee since being appointed to my role. I am looking forward to working with the committee in the period ahead on the various challenges the health system faces, on which the members will be engaging with us. I am joined by a number of my colleagues this morning. I thank them for all the work they have done, particularly over the past two months, in responding to these allegations. A significant amount of time has been put in, by colleagues who are here with me and by others who are not, in responding to these allegations, during a period when the Department was very busy dealing with issues

relating to the pandemic and the variety of other issues with which we deal. As it is my first time here as Secretary General of the Department, I also thank my colleagues more widely in the Department for all their work over the past 16 or 17 months in dealing with the challenges we face due to Covid. The enormous contribution people have made and the enormous work and effort put in embodies what is great about the Civil Service and the public service.

I have been invited to discuss matters arising from allegations made in the “RTÉ Investigates” broadcast that has been mentioned. It is important to highlight the context in which these allegations were made. The Minister for Health is named from time to time as a defendant in litigation cases. This was the situation in a number of cases dating back to the early 1990s related to special educational needs taken against the State. In approximately 230 of these cases the Department of Health and the Department of Education are co-defendants, and 29 of these cases remain open. They could be active or dormant but they are open in that they have not been settled through mediation or court settlements. As is the practice, both Departments are jointly represented by the Chief State Solicitor’s office, under the co-ordination of the Office of the Attorney General. The long-standing approach of both the Department of Education and the Department of Health to students with special educational and health needs is to seek to ensure the provision of the appropriate services for those students as best they can. It is only where the suitability of such services is contested that litigation ensues. The Department always seeks, in the first instance, to resolve proceedings on appropriate terms where possible. The majority of concluded cases have been resolved by the parties involved through mediation and not by the courts. That is an important point to emphasise.

As members will be aware, the allegations previously brought to the Department of Health’s attention in February 2020 through a protected disclosure were subject to an independent review by senior counsel. This was completed in November 2020 and published on 21 April last. I have shared a copy of this review with the committee. The Chair and I spoke about this. The reason for the delay in sharing that with the committee was to ensure that the rights of the discloser were protected, that consent had been received and that we had gone through all the necessary processes to ensure that. The committee will be aware that this review assessed an allegation of gathering and sharing of information regarding special educational needs litigation related to correspondence and spreadsheets. It found that there was no basis for a reasonable belief of wrongdoing, as defined in the Protected Disclosures Act 2014. It also outlined that the information shared between the parties is consistent with, and typical of, the sort of information that arises in such litigation. The report is very detailed and goes through the types of information that were provided by the whistleblower to counsel. It sets out the context, conclusions and assessments on foot of the review.

Following the RTÉ broadcast and the allegations it contained, I set up a team in the Department to establish the facts surrounding specific allegations made in the programme and related articles on the RTÉ website. The team was supported by three independent barristers who acted as external documentary review counsel. This, in effect, involved going through files and establishing what was on them and the extent to which the allegations were made were true. This report was also published on 21 April and a copy has been made available to members of the committee.

I will set out some important facts that have been established based on this independent review. First, the Department of Health has never gathered sensitive medical or educational information on children involved in court cases in the manner portrayed by RTÉ. Second, there is no evidence the Department of Health was secretly compiling dossiers on children with autism

involved in special educational needs litigation, as alleged by the RTÉ programme. As a co-defendant in litigation cases, the Department of Health may have documents on file that form part of the proceedings. Such files contain information arising in the course of the proceedings, including the pleadings and correspondence received from all parties, including plaintiffs. Most of the information on file includes the information provided by plaintiffs in the course of their pleadings setting out the case they wish to make and the basis on which they are taking a case against the State. I think there has been some misunderstanding about the nature of the information that is held. Most of the information was provided by the plaintiffs or provided in pursuit of their action by their legal representatives. There is no evidence that the Department of Health is prying on families. I use the word “prying” because that was the term used in the RTÉ programme. I am not entirely sure what was meant by that but the word is generally meant in a pejorative way, suggesting something underhand or covert, and there is absolutely no evidence of that whatsoever. There is no evidence the Department of Health gathered information that was beyond instructions as part of the normal defence of a litigation case. Based on the review from the evidential barristers, this was confirmed in the original review by Conleth Bradley. The information held on file was of the type one would expect to see in cases such as these. I have had a chance to look through some of the summary information and it is of the type one would expect to see: the name of the plaintiff, his or her legal representative, the case he or she is making, the status of the case and so on, along with accompanying documentation, in the main, as I said, provided by the plaintiffs. There is no evidence the Department of Health sought updates or reports on plaintiffs directly from schools or the Department of Education. There is no evidence the Department of Health sought clinical reports on plaintiffs directly from clinicians.

There are data protection issues, which the various papers identify, and we welcome the inquiry by the Data Protection Commission, which is investigating data collection practices in this area. Of course, the Department is co-operating with the Data Protection Commissioner and will gladly take on board any recommendations the commission may have in respect of how we could do better in this area, if that is the conclusion and recommendations arising from the review.

I know the headlines generated by the programme have caused distress to some of the families concerned. Accordingly, the Department of Health appointed an independent support liaison officer to engage directly with the 29 families involved in these allegations. I have personally written to each of the families through their solicitors on file offering an opportunity to engage with him. I have also endeavoured to keep in touch with stakeholder organisations. On 1 April, I provided an update via open letter and further on 21 April, when the two reports were published, and I shared these with the organisations. I again underlined that their role representing many patients and families affected by autism is valued. I continue to be committed to engaging with them and informing them of updates on this issue as we go forward. The mission of the Department of Health, and the mission of me and my colleagues, is to improve the health and well-being of people in Ireland. The core priority of the Department over the past year has been the response to the Covid pandemic. The intense work in continuing to respond to the impact of the pandemic on our nation’s health and on the services we deliver will continue long after society has reopened and the last vaccine has been administered.

I look forward to our discussion today. I assure the committee of our commitment to delivering on the Department’s priorities. The health and well-being of the people who use the health service is at the centre of all the decisions we take within the Department. I am very happy to engage with any questions.

**Chairman:** Thank you very much, Mr. Watt. Our first questioner is Senator Conway.

**Senator Martin Conway:** I wish Mr. Watt all the very best in what is an extremely important job in the provision of Irish healthcare. It is to be hoped it will work out okay.

Did the Department have sight of the “Prime Time” programme before it aired on 25 March?

**Mr. Robert Watt:** No, we did not.

**Senator Martin Conway:** I understand Mr. Watt made a call to the director general of RTÉ on the day before the programme aired. He might enlighten us as to what the purpose of that call was.

**Mr. Robert Watt:** Obviously, the call was a private conversation. I am not in the practice of disclosing the contents of private conversations but I did note that the conversation was reported in the papers, which was a bit of a surprise. The context was that “Prime Time” had written to the Department several weeks before the programme was due to be broadcast to give a broad indication of some of the things it would say. It did not share the full details and did not give us an opportunity, as far as I am aware, to review the programme. We were, however, aware of the issues and were involved in correspondence with them, setting out our position, so we had some sense of the allegations that had been made. We were conscious of two things: first, that the allegations were extremely serious and would cause distress to families if they were made publicly and, second, that we did not believe the allegations were true. I wanted to ensure that the director general of RTÉ in her role understood the gravity of the allegations and that they were as serious as could be. It was suggested that officials of a Department were prying on citizens or engaged in covert operations, secret dossiers and so on. This type of language and these types of allegations are serious. First, I wanted to make sure that the director general understood the seriousness of the allegations, which after the conversation I think she did. Second, based on what I had seen and what had been brought to my attention, and based on the whistleblower’s report, which I had understood RTÉ had at that stage - elements of it if not all of it; the whistleblower himself had certainly briefed people on it - I wanted to say to the director general that we did not believe the allegations were correct, and I set out why we did not believe they were, and that I did not think it was appropriate for RTÉ to make such serious allegations. That was the basic sense of the conversation.

**Senator Martin Conway:** Post the broadcasting of the programme, has the Department had subsequent discussions with the director general or any other senior official in RTÉ?

**Mr. Robert Watt:** Not with the director general, but I have spoken to others. The week of the programme I had a few conversations with Jon Williams. I think Mr. Williams is head of news and current affairs. However, I have not spoken to anybody in RTÉ about the programme since about 22 April or 23 April. Our communications people in the Department of Health, however, have spoken to RTÉ since about it, and we are reflecting on what we will do now *vis-à-vis* the programme. We have not waived any of our rights to challenge the programme, to make a formal complaint against RTÉ or to take any other action, and all those things are still possibilities. We have not had time to consider them but we will in due course.

**Senator Martin Conway:** Is the Department aware of any subsequent programme RTÉ may have wished to air or possibly considered airing but decided not to air or decided to postpone?

**Mr. Robert Watt:** Not that I am aware of, no.

**Senator Martin Conway:** Has the Department had any contact from the Ombudsman for Children subsequent to the broadcasting of the programme? I believe he had some harsh things to say in the aftermath of the broadcast.

**Mr. Robert Watt:** When allegations of the type that were made are made, Departments are allowed, as I am being allowed today, the opportunity to respond to those allegations. I was disappointed that people basically assumed the allegations were correct without accepting the bona fides of the Department or reading the material that had been made available. I have not spoken to Niall Muldoon but I have corresponded with him: a fairly standard letter saying the allegations are not correct and that we do not accept them and setting out the context. I corresponded with him because I thought it was appropriate to do so.

**Senator Martin Conway:** I wish to refer to the representative bodies of the various clinicians in the context of the issue of ethics. I accept the fact that it is possible no laws were broken but there is certainly an ethical issue with which people are grappling. Has the Department had any engagement with the representative bodies of the various clinicians on the ethical framework around what has happened?

**Mr. Robert Watt:** I am unsure as to what particular ethical issues the Senator is referring. There might be many; I am not entirely sure. I do not think we have correspondence with the representative bodies. I am aware there has been some commentary but we have not written or spoken to them about it. I believe the bodies made an initial reaction based on media reports, which I do not think reflected the reality of the situation. I presume the Senator is referring in the main to the Medical Council of Ireland. When the Medical Council has had a chance to read and review the material and hear what we have said then we can have a conversation with it. Obviously, we welcome its views if it has ethical concerns based on what we have heard.

Of course, the main ethical concern was the allegation that we had gone to the clinicians without the consent of parents and had directly sought a clinician's report. There were various allegations that we had gone to private doctors and there were various other issues. That is not true. That was the main ethical concern. I presume the Medical Council will be reassured when we set out the findings for it. Obviously, that is for it to judge.

**Senator Martin Conway:** One of the key issues that Mr. Shane Corr had, which he outlined to us last week in a private meeting, is essentially that there appears to be some class of service level agreement, or certainly, established protocols between the Department of Health and the Department of Education in terms of sharing information. There are spreadsheets in existence and so on. What is Mr. Watt's view on that? Is it correct? Are such protocols in existence?

**Mr. Robert Watt:** As the Senator said, the fact is that when a case is taken against the State, there could be several co-defendants. For purposes of administrative efficiency more than anything else, the practice, which has been confirmed as the correct practice over a long period, has been for these various pieces of information to be collated and shared. It is really to ensure that in the main we can progress and settle the cases quickly or mediate quickly and get things run to the satisfaction of both parties, both the State and the plaintiffs. That is, therefore, a long-standing practice. It makes administrative sense and has been confirmed to be lawful. There are various issues around that but it is the only practical way that I can see us managing these cases effectively, or else----

**Senator Martin Conway:** One of the other issues about which Mr. Corr has serious concerns is that the Department is preparing, essentially, for the possible event that cases are taken



against it on a human rights basis. Essentially, the Department is gathering the information and has it ready to go if an action actually materialises. Mr. Corr more or less made the case that there is a serious ethical issue here. Of course, if that is happening, there is a serious ethical issue.

**Mr. Robert Watt:** I am not in a position, nor should I be, to respond to any further allegation the whistleblower made in a private session involving members. I was not invited to that private session nor was the public invited, by definition. If we had been invited to that session and I had heard what had been said then I would be in a position to help the Senator and respond to those questions. I do not think it is appropriate for me to be asked about further allegations that have been made in a private session when we were not privy to those.

**Senator Martin Conway:** I will put it to Mr. Watt another way. Is there a section within the Department that essentially manages risk and identifies if there is potential litigation that may arise down the track, and prepares and puts together a dossier of information on the basis that there is a potential legal risk to the Department?

**Mr. Robert Watt:** Absolutely not, Senator. I want to make the point to the Chair that I will not respond this morning to allegations that have been made at a private session to which I or my colleagues were not invited. It would be totally inappropriate and not consistent with anything approximating fair procedure. If the committee wanted us to be party to the discussion it had with the whistleblower last week, it should have invited us to the meeting and it did not. I am not criticising Senator Conway but I cannot be expected to respond to allegations.

**Senator Martin Conway:** With respect, I asked the question in a different way, to which I believe Mr. Watt responded. I asked if there is a section within his Department, or a package within the Department's computer system, that is storing and preparing information for potential legal challenges? Mr. Watt is quite clear that is not the case.

**Mr. Robert Watt:** No, it is not the case. I am not going to respond-----

**Senator Martin Conway:** I am conscious of my time.

**Mr. Robert Watt:** Absolutely, I am aware of that. I can confirm that the answer is "No". If, however, further allegations that were made last week are going to be repeated at this committee now, we need to see written evidence of those allegations before they are going to be repeated again. It would be absolutely and totally inappropriate. I am not going to respond to any allegations that are made or that were made last week.

**Senator Martin Conway:** Mr. Watt has said that three times. He only needed to say it once. The Chairman might give me a bit of latitude in my questions.

**Mr. Robert Watt:** Sorry, Senator, I just wanted to make that clear because it is a very important point.

**Senator Martin Conway:** Mr. Watt has said it three times now. He is not going to talk down the clock with me.

In terms of the liaison officer the Department has appointed for the 29 families, Mr. Watt might give us an update on how that work is proceeding. I know that person was appointed at the end of last month. Can Mr. Watt give us a quick initial update on how that person is getting on? Have the families responded positively to the engagement?

**Mr. Robert Watt:** I do not have all the details on that. I believe, however, that the liaison officer has made contact with families through their solicitor and that there is some engagement. There are various requests to look at the data we have and various engagements to explain the process and how we can help families to reassure them about the information we may have in respect of their cases. I can follow up with a more detailed note. I do not have all the details to hand. One of my colleagues might have more on that.

**Senator Martin Conway:** Before he goes, I am sure Mr. Watt can understand how horrified people with special needs in general, and people who have children with special educational needs, were in response to the broadcast of that programme. As somebody who had special educational needs as a child, I certainly would be very concerned at any breaches of what would be considered standard ethics in terms of the Department of Health and the Department of Education sharing information. Has Mr. Watt reviewed the manner in which the Department shares information in light of what was spoken about on that programme?

**Mr. Robert Watt:** We absolutely share the Senator's concerns fully and are as concerned as he or anybody else would be to hear those allegations and ethical issues. More than ethical issues were raised. Much more fundamental issues than that were raised but, of course, we are concerned about issues of an ethical nature. We will review our practices and how we share data, and our overall approach, in light of what was said. My colleague, Dr. MacLellan, wishes to come in to add to that.

**Dr. Kathleen MacLellan:** It might be useful to clarify that in the context of this litigation, the Department of Education is a co-defendant and it is normal practice with co-defendants that information would be shared. It is also important to clarify that the management of these litigation cases is supported through the Chief State Solicitor's office and directed through the Attorney General's office. Information provided through the Chief State Solicitor's office is, therefore, generally copied to the other co-defendant. That is how information regarding education would be on the files. It has been confirmed to us that there is no wrongdoing in this and that it is absolutely within the context of data protection and the general data protection regulation, GDPR, articles.

**Senator Martin Conway:** My final question is for Mr. Watt. Another concern is that many people had access to this information. Can Mr. Watt give us an idea of how many people within the Department have access to these sensitive files? Is it possible that a tech-savvy clerical officer in a different section would be able to dial in and review and read these sensitive files?

**Mr. Robert Watt:** There were 25 people in the security group who could access the files. Since these allegations were made last year, we have tightened up on our procedures. We have put in further protections with regard to the files, for instance, more password protection, more encryption and so on. Twenty-five was, I believe, the number of people who originally----

**Senator Martin Conway:** Prior to the Department putting in these new encryptions and passwords, was there the potential for many more people to have access to those files?

**Mr. Robert Watt:** No. As the Senator will know, no system is absolutely 100% secure. The people who had access to those files were part of a group of people who were given clearance and were aware of their obligations under data protection.

**Senator Martin Conway:** On foot of the programme, did the Department bring in an independent security firm to review its security systems within the computer operation that it



has, just to be sure that practically everyone in the Department did not have access? Did the Department get any independent advice on that?

**Mr. Robert Watt:** To clarify, not everybody in the Department could access the files. Only 25 people could access them. They were part of a secure group.

**Senator Martin Conway:** Why did the Department need to introduce extra encryptions and passwords, if that was the case?

**Mr. Robert Watt:** When the issues came to light, the Department reviewed it. There were further measures that could be taken and those measures were implemented.

**Senator Martin Conway:** But Mr. Watt-----

**Chairman:** Senator Conway has gone over time.

**Senator Martin Conway:** I will finish now, Chairman. My point is, if the system was as foolproof as Mr. Watt said it was, why did the Department need to introduce extra information technology, IT, security systems?

**Mr. Robert Watt:** I am sorry; I may have misspoke there. I said no system is foolproof. When these issues came to light last year as part of the review, the Department put in extra security features. The acting Secretary General of the Department at the time, Dr. Colm O'Reardon, emailed colleagues reminding them again about data protection issues, about their obligations not to access files unless they need to and about the need to be responsible. Those are guidelines and ways of working that people accept. In Departments, there can be sensitive information and people are very conscious that they should not access information they are not entitled to access, they should not share it etc.

It is a fair point though. There is always a need to review security around data management and that is something that we take seriously. On foot of this, the Data Protection Commissioner is in now doing a review. We are very happy to work with the Data Protection Commission, DPC, on that and look forward to any recommendations the commission has.

**Senator Martin Conway:** I thank the Chairman and Mr. Watt.

**Chairman:** Our next questioner is Deputy Cullinane.

**Deputy David Cullinane:** Thank you, Chairman. Can Mr. Watt hear me?

**Mr. Robert Watt:** Yes.

**Deputy David Cullinane:** I want to address the Cathaoirleach first. It is up to the committee and to the members of the committee to determine our business and to determine how we interact with witnesses. We sought legal advice in relation to our engagement with the whistleblower precisely because we wanted due process and I would say to the witness to be less defensive in relation to that. Also, we have no interest in whatever future complaints may or may not be made against RTÉ by the Department. They are not our business. Our business is to get down to the issues which were brought to our attention as a consequence of this programme. I say that to the Cathaoirleach, first of all, and not directly to Mr. Watt.

I want to get straight to Mr. Watt's opening statement, in which he stated that "the Department of Health has never gathered sensitive medical and educational information on children

involved in court cases in the manner portrayed by RTÉ”. First, what does Mr. Watt mean by “the manner portrayed by RTÉ”?

**Mr. Robert Watt:** The programme suggested that we were going out seeking information from clinicians, from medical practitioners, on people with needs without the consent of parents and that that was part of a covert campaign of secretly compiling dossiers and prying on individuals. That is what I mean.

**Deputy David Cullinane:** Let me get to some of those allegations. Then let me not put it to the test but just ascertain what information is held by the Department in relation to all of these cases.

Mr. Watt says in his opening statement that there were 230 cases where the Department of Health and the Department of Education are co-defendants. How many cases are there in total? Mr. Watt talks about this going back to the 1990s. Does Mr. Watt have the figure for the total, maybe where there were ones where the Department of Health was the only defendant? What is the total number, first of all?

**Mr. Robert Watt:** I think 230 is the total number of cases that were referred to.

**Deputy David Cullinane:** It is the total number. Okay, that is fine. When Mr. Watt says then that the Department was not gathering sensitive medical and educational information, was there any information from private doctor consultations in any of those 230 cases held on a file anywhere by the Department that was not provided by the plaintiff?

**Mr. Robert Watt:** From private doctors, not that we are aware of, no. Not based on the review that we have done, no.

**Deputy David Cullinane:** So there were no private doctor consultations or no information from any private doctor consultations in any of the cases.

**Mr. Robert Watt:** The information provided by the plaintiffs might involve consultations. Information that plaintiffs provide as part of their pleadings as part of their proceedings, and I guess there could be private doctors-----

**Deputy David Cullinane:** What Mr. Watt is telling the committee today is that there is no information that was provided through those private doctor consultations in any of these cases that was not provided by the plaintiffs. Mr. Watt is saying, “Absolutely not”.

**Mr. Robert Watt:** What I am saying is that there was no information sought from private consultations-----

**Deputy David Cullinane:** I am not asking about whether it was sought. I am asking whether the information is held and whether it was on any of these files. Whether the Department sought it directly or indirectly, it is whether the Department has the information. Again, I will ask the question directly. Forgive me Mr. Watt, but I am putting the question. What I asked Mr. Watt was not whether the Department sought it but whether it is being held and whether it was on file. Again, I will put the question very directly to Mr. Watt because we have our information as well. Was there any private doctor consultation or information flowing from any of those private doctor consultations in any cases that was held that did not come directly from the plaintiff? It is a yes-no answer.

**Mr. Robert Watt:** No. The information, in the main, came from reports that would come

from the plaintiffs. Deputy Cullinane says he has other information to dispute that. To what other information is the Deputy referring?

**Deputy David Cullinane:** I am talking about the information that we got from the whistle-blowers and the information that was in the “Prime Time” programmes. What I am saying is that we are putting this to the test. If Mr. Watt is saying that there was no case at all where there was information provided from private doctor consultations, I am just asking him the question. Mr. Watt has answered the question. Mr. Watt is saying there is not any information. That is fine.

**Mr. Robert Watt:** My colleague, Dr. MacLellan wants to come in.

**Deputy David Cullinane:** No. I am putting my questions to Mr. Watt. I have other questions as well. If Mr. Watt is saying that there is not any, then we will take it there is not any. I will move on to my next one.

The next one is in relation to-----

**Mr. Robert Watt:** Sorry, Deputy. One of my colleagues here wants to come in and add to what I have said. I think that is allowed, is it not?

**Chairman:** Let Dr. MacLellan in, please.

**Dr. Kathleen MacLellan:** It is important to clarify that three external independent documentary counsel went through the 29 files that have been held in relation to the Department - those open files that were referred to on the “Prime Time” programme. They went through the provenance of the information that was on those files. It is clear that there is medical information there but that medical information has been obtained through the plaintiff or provided as part of the pleadings from plaintiffs.

We did, as we have outlined in the Secretary General’s fact-finding report, find that there is one case - fairly recently, it has been publicised, obviously, on the “Prime Time” programme - where inadvertently some clinical information was provided by an individual clinician and that was held on a file.

Going back to files in the 1990s or approximately 30 years ago-----

**Deputy David Cullinane:** Can I stop Dr. MacLellan there? What Dr. MacLellan is telling me then is there is at least one case of where information from a private doctor consultation was held?

**Dr. Kathleen MacLellan:** I did not say it was from a private doctor. This was information that was provided through the HSE, who is a co-defendant in the case.

**Deputy David Cullinane:** Where did the HSE get the information?

**Dr. Kathleen MacLellan:** This is the email chain that has been referred to in the report.

**Deputy David Cullinane:** I am asking where the HSE got the information.

**Dr. Kathleen MacLellan:** We have outlined in the Secretary General’s report that an individual clinician got directly in touch with the Department and provided clinical information. This information was not information that the Department had sought and this clinician is a clinician in the HSE.

**Deputy David Cullinane:** This is not the question that I asked. I did not ask whether it was sought. I want to understand the process here. What Dr. MacLellan is saying is that an individual clinician gave the information to the HSE who then gave information to the Department.

**Dr. Kathleen MacLellan:** No, a HSE clinician. This is the HSE, who is a co-defendant in these cases. We have outlined this email chain within the fact-finding report that the Secretary General has.

**Deputy David Cullinane:** Can I ask Mr. Watt was there any sensitive medical or educational information on children in any of these files or in any way held by the Department?

**Mr. Robert Watt:** Yes. There is information that could be deemed sensitive; information provided by the plaintiff as part of their case.

**Deputy David Cullinane:** Would the parents of those children be aware of the exact nature of all of that sensitive information in all cases?

**Mr. Robert Watt:** The information was provided by the plaintiffs. In most of the cases that we have looked at, that is the position.

**Deputy David Cullinane:** I am talking about in all cases. The question I asked was not about most cases. I am asking Mr. Watt about all cases and whether the Department had on file, or however Mr. Watt might wish to characterise it, any sensitive medical or educational information that did not come from the plaintiffs and that the plaintiffs would not have been aware of.

**Mr. Robert Watt:** Apart from the one case, which Dr. MacLellan has mentioned and that is well documented in both reports, no. As I said, most of the information came from the plaintiffs or from service updates provided by the HSE manager or the manager-----

**Deputy David Cullinane:** This is what I am getting at, because those service updates came from the HSE. I am asking if any of those service updates contained sensitive medical and educational information?

**Mr. Robert Watt:** No. In the main, it provides an update and, if we have not done so already, I hope we can share examples of what it is. It is basically an update provided by the case manager in the HSE, which is providing the services, to say that a person is receiving this or that type of service and a view regarding the family's satisfaction or assessment concerning whether that service is in line with what it was agreed that person would receive. It is fairly factual information.

**Deputy David Cullinane:** Mr. Watt is telling me that in all cases all that information which came from service providers or through the HSE would have been information the plaintiffs would have been aware of. Therefore, there was no information of any sensitive nature, medical, educational or otherwise, on any of these files that the plaintiffs and their families would not have been aware of.

**Mr. Robert Watt:** No, I am not saying that. The service updates were information provided by the HSE case manager and that-----

**Deputy David Cullinane:** I understand and that is my point. I am saying that in that information-----

**Mr. Robert Watt:** That information is regularly updated with a view to settling and finalising the cases. That is where the email exchange mentioned by Dr. MacLellan-----

**Deputy David Cullinane:** That is the whole point Mr. Watt. The families have a perception that this was the State again pushing back against its weakest citizens and trying to force families into settling cases because of the nature of the information being compiled and stored. When Mr. Watt states that service updates were given, therefore, I am asking him whether in all the cases, including in cases where maybe information did not come directly from the plaintiffs, the families are aware of all the information that was held or stored by the Department, in respect of all that information. Was any of that sensitive information, whether medical, educational or otherwise, held by the Department, information that families would not have been aware of?

**Mr. Robert Watt:** There are several dimensions to the Deputy's question. He asked if people are forced; nobody is forced to settle a case. Every party has the opportunity to settle a case or to not settle a case. The service updates were an attempt to bring to finality cases that had not been closed and were dormant. The whole point of the service updates was for the co-defendants, namely, the HSE, the Department of Health and the Department of Education, to find an update on what was happening with the level of services being provided. The information is known by the parents and people involved.

**Deputy David Cullinane:** I understand all that. Mr. Watt made that point in his opening statement. Turning to school reports, where did they come from?

**Mr. Robert Watt:** Dr. MacLellan might wish to address that aspect.

**Dr. Kathleen MacLellan:** Any educational information on the files is information that has been provided or copied to the Department as part of the information that the Department of Education was providing through or from the Chief State Solicitor's office. In the review the documentary council did, the Department of Health did not contact schools or educational institutions regarding receipt of information. This is information that the Department of Education would either have sought or received as part of the cases.

**Deputy David Cullinane:** Returning to Mr. Watt, parents will be looking at the totality of this situation and the totality of information being held. Some of it may have come from the plaintiffs and some of it did not. That is why we need full and open disclosure and we must have a review of the policy here. I state that because Mr. Watt was talking about this being standard practice, and people are reasonably asking the question, whatever about the legality of it, if it is right that this is standard practice. They are also asking if it is right that, directly or indirectly, through services updates or otherwise, information of this nature, of a very sensitive nature in some cases, was part of that standard practice, including by the way, and I will address this question now as well, potentially confidential information that provided an insight into the mental state and well-being of the children and their families. There were also issues concerning very sensitive information on matters within the families. That obviously troubles and concerns people. The question then is whether there was full open disclosure in respect of the families involved. I am not satisfied that there was. As we speak, has any information being held on any of these families, in all of these cases, now been fully disclosed to the families?

**Mr. Robert Watt:** A number of families have put in data requests. We are complying with those requests and we are very happy to do that.



**Deputy David Cullinane:** Has that been done proactively? There is no need to wait. Has the Department contacted all the families, told them about the information it has on each family, the broad areas involved and that more information will be provided if the families want it? Surely there is an obligation on the Department to do that.

**Mr. Robert Watt:** We contacted the families through the liaison officer and we are engaging with them on that. There is a suggestion here, and I think this is the premise of the Deputy's question, that there is something untoward or underhand or inappropriate going on here. There is not, okay. There really is not.

**Deputy David Cullinane:** We can differ on that.

**Chairman:** Deputy Cullinane needs to finish up now.

**Deputy David Cullinane:** Mr. Watt can have his view. My view is that there is a difficulty here with some of the information on file. Some information of a very serious and sensitive medical and educational nature was being held on children, and that was being collected, in some instances without, in my view, the knowledge of the parents involved.

**Mr. Robert Watt:** I am sorry, and I do not want to get into an argument here, but the Deputy is now repeating once again allegations which are not true and which we have comprehensively addressed as being not true. We have set out more than 100 pages of documents that set out the position here, and what the Deputy has said is just not true, okay.

**Chairman:** I need to move on Deputy Cullinane.

**Deputy David Cullinane:** I will finish on this. I am not interested in nor have I sought to get into issues regarding data protection or even the legalities of all of this, because other people will make those judgments. I am looking here at the process and what Mr. Watt's Department has said was standard practice. I am also looking at the type of information which was held, some of which came through service providers. Some of the information was not known to the families involved. These were families, by the way, that were simply trying to get their children the resources and supports they need.

They should not have had to take the State to court at all. I see it as inappropriate in the first instance that people felt they had to go to court and then, regarding cases that were not settled, that information was coming from service providers and the HSE. There were a lot of semantics in Mr. Watt's opening statement as well in respect of stating that the Department did not directly seek information. Whether information was directly sought or not, the Department had the information and got it from third parties, service providers and from wherever it was received, and it was held on files. The families were not aware of that, and that troubles me.

**Chairman:** Deputy Cullinane needs to finish.

**Deputy David Cullinane:** It may not trouble Mr. Watt, but it troubles me.

**Mr. Robert Watt:** If the Deputy's characterisation of what was happening here was correct, it would trouble us. Of course it would. However, what the Deputy has characterised is again not correct. It is not correct. The Deputy stated he has other information. If he has other information, I ask the Deputy to please provide us with it. Dr. MacLellan wants to come in.

**Dr. Kathleen MacLellan:** It is important to say that the Department of Health's first role is to provide services, policy and legislation for the health system. We have provided €2.2 billion

for specialist disability services, an increase of €100 million this year. Nobody wants to see families taking cases in respect of access to services. Our role here is to try to build the capacity within the system so that the services that families require can be provided.

At the outset, and it is very clear in the documentation provided, the first principle for the Department of Education and the health system has been to provide services for these families. In the case where we cannot meet what families are asking for, we aim to work with them over the years to try to sort out and resolve the service issues. Second, the principle behind the legal approach was to try to settle these cases, and not to have them continuing. The Department is very sensitive regarding these families, where they are at and the services they are trying to provide. Our approach over several years within the Department has been to build the specialist disability services and to ensure they are in place for those families.

**Deputy David Cullinane:** If I can make one point, I do not doubt-----

**Chairman:** No, Deputy Cullinane is over time.

**Deputy David Cullinane:** -----that investments have been made. However, reading any of the statements which have come from all the advocacy groups representing parents and children with autism and special needs-----

**Chairman:** Deputy Cullinane is way over his time.

**Deputy David Cullinane:** -----they say differently in this regard. They state that there is a real challenge in accessing services in early intervention, and that in part, in the early 1990s and since, has led, unfortunately, to parents having to take the State to court. That should not be the case.

**Chairman:** The Deputy needs to finish.

**Deputy David Cullinane:** I am not satisfied with some of the answers I have received from Mr. Watt. Nor am I happy with some of the semantical-----

**Chairman:** The Deputy needs to finish.

**Deputy John Lahart:** I welcome the Secretary General and acknowledge his appointment. There is a heavy burden of responsibility on his shoulders. I also acknowledge his willingness to come before the committee from the start. I also acknowledge that he has been in the position of Secretary General at the Department of Health for two months and that what we are discussing did not happen during his tenure. That must be acknowledged. Mr. Watt was not given an awful lot of time to answer in the previous session and I ask him to agree that as my questions will not take more than a minute, I will have to put a limit of one minute on his answers because of the format.

What was the purpose of Mr. Watt calling RTÉ in respect of the “RTÉ Investigates” documentary, in what was perceived as a public intervention?

**Mr. Robert Watt:** I spoke about this in response to Senator Conway’s questions earlier. Basically there were two reasons, which were: to ensure that RTÉ understood the profound nature of the allegations and that the allegations that had been made were serious; and to confirm that they were not true, that the evidence and information we had was that these allegations were not backed up and that we did not think there was enough basis to go with the very serious allegations being made. Those are the two points that I made to Dee Forbes.

**Deputy John Lahart:** Was the Department of Health or any State agency offered an opportunity by RTÉ to appear on the documentary, or to rebut or offer-----

**Mr. Robert Watt:** No.

**Deputy John Lahart:** RTÉ did not offer the Department of Health, the HSE or any other State agency that might have been named or involved an opportunity on the “RTÉ Investigates” programme to offer either a counterbalance or a view.

**Mr. Robert Watt:** No.

**Deputy John Lahart:** This might clarify things. I will go through some of the points Mr. Watt made earlier. There is no evidence that the Department of Health is prying on families so I will leave that one out. Mr. Watt stated that there is no evidence the Department of Health gathered information that was beyond instructions as part of the normal defence of a litigation case. Is there any evidence that the State, through any of its agencies, did so?

**Mr. Robert Watt:** No.

**Deputy John Lahart:** Mr. Watt stated there is no evidence the Department of Health sought updates or reports on plaintiffs directly from schools or the Department of Education. Is there any evidence the State, through any of its agencies, did so?

**Mr. Robert Watt:** I believe Dr. MacLellan answered that question previously. The reports came from the plaintiffs in the main.

**Deputy John Lahart:** In the main, but is there any evidence the State, through any of its agencies, sought updates or reports on plaintiffs directly from schools or the Department of Education?

**Dr. Kathleen MacLellan:** I will come in on this. In the context of the Department of Health and the HSE, we have no evidence that we sought those updates from schools. I cannot answer for other Departments.

**Deputy John Lahart:** Mr. Watt stated that there is no evidence the Department sought clinical reports on plaintiffs directly from clinicians. Is there any evidence that the State or any of its agencies sought clinical reports on plaintiffs directly from clinicians?

**Mr. Robert Watt:** No.

**Deputy John Lahart:** In Mr. Watt’s experience as Secretary General, or in the experience of any of the other witnesses, is there a point where, having gathered evidence in respect of an ongoing case, the evidence coming in was so compelling on the plaintiff’s side that, as a result of the harvesting of information - I use the term “harvesting” loosely and not in the GDPR sense - the State decided it was time to put its hands up? Would there be circumstances where a case is so compelling, on the basis of the investigation entered into and the evidence sought from various agencies, that the State would have to concede?

**Mr. Robert Watt:** Yes.

**Deputy John Lahart:** Will Mr. Watt provide an example? Has this applied to special needs cases?

**Mr. Robert Watt:** Yes, I think so.

**Dr. Kathleen MacLellan:** It is not possible to talk about individual cases.

**Deputy John Lahart:** Sure.

**Dr. Kathleen MacLellan:** As has been outlined in the Secretary General's report, the overall strategy has been to settle cases where they can be settled and where it is appropriate to settle them. It states very clearly that the State has clearly been trying either to provide the educational or health services or to try to settle those cases so the families do not have to continue with litigation. This has been very clear from the outset. It has been the advice the Department and the Department of Education have received all along.

**Mr. Robert Watt:** To add to what Dr. MacLellan said, the overwhelming number of cases are settled through mediation and do not go to court. A very small number go to court. Of the total, two went to court. There are still some outstanding that we have been trying to settle over the past number of years. In effect, the State receives the pleadings, which, as the Deputy knows, are about service delivery, the adequacy of service delivery and the suitability of service delivery, and reaches a judgment as to the merits of the case. It tries, in the main, to improve the service, engage the family or settle the case. This is the reality in the vast majority of these. The process of the information from different sources being shared is with a view to settling these cases.

**Deputy John Lahart:** On the point made by Mr. Watt to the effect that there is no evidence the Department of Health sought updates or reports from plaintiffs directly, from schools or from the Department of Education, he answered my question in that regard as to whether there is evidence that the State or its agencies did so. The committee should note Mr. Watt's response. There may be other committees that may wish to invite other players to contribute on this. Mr. Watt has said that the vast majority of evidence was provided by plaintiffs. Will he give us a little insight into how that evidence was elicited and provided?

**Mr. Robert Watt:** I invite my colleagues to come in on this. The Chief State Solicitor's office is the overall agency of the State that manages litigation for the State. Individuals, through their legal representatives in the main, send in notification that they are suing the State in respect of the situation and that documentation will be provided or that documentation will be sought to support their pleadings. This information is provided. Most of the documents relate to information provided by the parties themselves.

**Deputy John Lahart:** I know this is outside his remit but is Mr. Watt aware of cases in which parents, as plaintiffs, went to their local school and said they needed all the reports on their child over the previous year, including school reports, exam reports, psychologists reports and speech and language therapist reports, to mount a case against the Department?

**Mr. Robert Watt:** Yes, I presume that would be-----

**Dr. Kathleen MacLellan:** I want to go back to the previous question about information on files. One of the allegations made was that the Department of Health was holding video recordings of children with disabilities. Very clearly, when the documentary counsel went through the 29 files, there was a single video recording but that had been provided by the plaintiff. It was not something the Department sought.

**Deputy John Lahart:** I thank Dr. MacLellan for that. My next question relates to the whistleblower. What protections are in place in the Department for the whistleblower? It must be quite an isolated position for the whistleblower to be in.

**Mr. Robert Watt:** They are the protections that are provided in the legislation, which are quite extensive and important. We take our responsibilities very seriously. I am sure the Deputy has had an opportunity to go through Conleth Bradley's report. When these allegations were brought to our attention, we went through the process as set out under the legislation and in the Civil Service guidelines. There are protections in place for the individual. That is the purpose of the protected disclosures legislation.

**Deputy John Lahart:** Before Mr. Watt's tenure, which is just two months old at this stage, there was a suggestion on the "RTÉ Investigates" programme that the whistleblower had brought this matter to the attention of the previous Secretary General. Is Mr. Watt satisfied that the steps taken by his predecessor pass muster and met all the standards? Were the relevant queries made and was the summation they came to one Mr. Watt would have come to? What would Mr. Watt say to all the parents of children with autism who have to fight tooth and nail for services?

**Mr. Robert Watt:** The process was professionally undertaken in the way it was set up and in the commissioning of an independent review. The review is very detailed and comprehensive. The steps that were taken in protecting the rights of the whistleblower and the disclosure were what one would expect from a Department and they were taken in an exemplary way. I would say to parents of people with autism and other needs that the Department is focused on doing all it can with the HSE, the Department of Education and other State bodies to provide the necessary supports to ensure that people have the supports to meet their potential as best they can. That is the main motivation of the Department. Many of my colleagues involved in this have spent much of their careers in this space; working with providers and families to try to provide the best possible services. As Dr. MacLellan mentioned earlier, significant resources and increases in resources have been devoted to this area. I would say to families that the system is doing all it can. There is always more to do because we will never be in a position where we have all the resources to meet all the-----

**Deputy John Lahart:** What would Mr. Watt say to RTÉ?

**Mr. Robert Watt:** I do not wish to get into the issue of RTÉ. RTÉ needs to reach its own conclusions on its report and to defend it based on the evidence that has been out there. Since we published these reports, I am not aware that RTÉ has made any comment and it has not produced any evidence to support its allegations, which are of the most serious nature. Of the seven allegations we have set out - and there are subsets to that - RTÉ has not provided any additional information that would corroborate or provide support for the serious allegations it made. The notion that officials at a Department are prying on families is serious. It is up to RTÉ to reflect on the programme when it has read the reports.

**Chairman:** Deputy Shortall is next. We are running out of time because every member so far has gone way over their time. That means that other members probably will not get in at the end. I ask Deputy Shortall and those following her to stick to their time and maybe even shorten it if they can.

**Deputy Róisín Shortall:** I will not be shortening my time. I thank Mr. Watt and he is welcome. It is unsatisfactory that we have not got responses to requests for information from Mr. Watt and the Minister. There is a lot of information outstanding and it is likely that we will be asking Mr. Watt to return when we have in our possession that information and those responses.

**Mr. Robert Watt:** I want to come in on that. We have prepared a report that is about 40



pages long. That report was commissioned and we have another report-----

**Deputy Róisín Shortall:** My time is limited. I know what Mr. Watt has sent us and I also know there is a lot of outstanding information. I am making the point that the likelihood is that we will be asking Mr. Watt to return. I am leaving it at that.

**Mr. Robert Watt:** That is absolutely fine but you sent over a request on Thursday evening.

**Deputy Róisín Shortall:** I am not getting into the detail of that. I am just saying there is outstanding information and we will be returning to this. I will start with Mr Watt's opening statement. He makes seven categorical points. I am interested in points 6 and 7, where he states:

There is no evidence the Department of Health sought updates or reports on plaintiffs directly from schools or the Department of Education. There is no evidence the Department of Health sought clinical reports on plaintiffs directly from clinicians.

Would both of those statements be true if they said "directly or indirectly" instead of "directly"?

**Mr. Robert Watt:** Yes. They would be. We did not go to seek updates indirectly from clinicians. We did not, as part of the service updates, ask for somebody to get information which might indirectly be sought from clinicians. The allegation was fairly specific. It said we went directly to clinicians-----

**Deputy Róisín Shortall:** I am just asking Mr. Watt about his statement because people would not expect that the Department of Health would be going directly to a clinician asking for information. There are steps along the way from the HSE local area manager and so on. Is Mr. Watt saying that those two statements would be true if the word "indirectly" was in there as well?

**Mr. Robert Watt:** Yes, I think so. We did not seek clinical reports. We sought service updates from the HSE manager and there was no need for the HSE manager to then seek, directly or indirectly, clinical updates based on that.

**Mr. Niall Redmond:** I might clarify that if the Deputy looks at the report the Department published, on page 14 it sets out the nature of the updates requested.

**Deputy Róisín Shortall:** I am short of time and I want to ask-----

**Mr. Niall Redmond:** That answers the Deputy's question.

**Deputy Róisín Shortall:** -----if it is accurate to say that Mr. Watt did not seek information indirectly?

**Mr. Niall Redmond:** I believe, as I said, that report clarifies the position on that.

**Deputy Róisín Shortall:** I am asking Mr. Watt about the statement he made this morning. Is he saying it would be true to say he did not seek information indirectly?

**Mr. Robert Watt:** Yes, I think that is true.

**Deputy Róisín Shortall:** I refer to the allegations made on the programme. The whistleblower talked about an email seeking information and explaining to a doctor that the Department was involved in litigation with one of her patients and asking for information. We are told

that was part of a template letter that was issued to HSE doctors, which explicitly asked that neither the family or their solicitors would be contacted about the request. Is that true?

**Mr. Robert Watt:** The report is the report. It sets out the template on what information was sought.

**Deputy Róisín Shortall:** Why does the Department have a template letter going to doctors?

**Mr. Robert Watt:** It goes to HSE managers, not to doctors.

**Deputy Róisín Shortall:** The template letter explicitly asks that neither the family or the solicitors be contacted about the request.

**Mr. Robert Watt:** The letter could have been worded better than it is. We were not asking that the letter go to the plaintiffs or their clinicians but we were asking for an update from the manager. It is not as it was misinterpreted by RTE. It was not an attempt to seek information without the consent of parents. It was important to point out that service managers should not ask for the information. The letter says that if they need to ask for the information, they should not go there. The letter should be worded better, which we accept.

**Deputy Róisín Shortall:** The core of it is that the Department is asking a HSE manager for a service update, knowing that information will have to be requested from a doctor or therapist.

**Mr. Robert Watt:** No. That is not what the service update is seeking. It is seeking an update from the HSE case manager. We cannot share confidential files on individuals but maybe when we have a chance to share the types of information involved, we might be able to show the Deputy a template of exactly what is included in that service update, which is basically saying that these are the types of services that the individual is receiving and so on. It is not as has been suggested by others. This is clear and I have had a chance to look at it. It is a service update, which is factual information about the types of service-----

**Deputy Róisín Shortall:** I would like more information on that because it is hard to know how a case manager would have access to that information without contacting a therapist or doctor directly.

I am concerned about the dormant cases and a lot of the points Mr. Watt makes are valid about cases that are live. Why is it that Mr. Watt was putting all this time and energy into cases that were dormant? Many of them had not had any movement on them since 2005. Why is it that there was a flurry of activity in recent years on these dormant cases? What was the purpose of that?

**Mr. Robert Watt:** The purpose was to try to reach a situation where we could close the cases and settle, to have a situation wherein the parties were satisfied and to bring the matter to an end. The motivation was-----

**Deputy Róisín Shortall:** And what was-----

**Chairman:** Thank you, Deputy.

**Mr. Robert Watt:** It was motivated by the best intentions to try to bring these matters to a conclusion.

**Deputy Róisín Shortall:** Others will decide that. What was the intention?

**Mr. Robert Watt:** Sorry, I do not understand-----

**Deputy Róisín Shortall:** I am just saying that others will decide that and will make up our own minds, as will the public. The point-----

**Mr. Robert Watt:** What other conclusion could the Deputy draw from the-----

**Deputy Róisín Shortall:** My question is this: what was the intention of the Department in relation to costs?

**Mr. Robert Watt:** Sorry, in relation to costs in respect of what?

**Deputy Róisín Shortall:** In respect of dormant cases.

**Mr. Robert Watt:** Is the Deputy asking who would bear the cost of the cases?

**Deputy Róisín Shortall:** Yes.

**Mr. Robert Watt:** Is she asking about the legal costs involved?

**Deputy Róisín Shortall:** Yes.

**Mr. Robert Watt:** I do not know. There are settlements which involve monetary settlement. I am sure they encompass costs.

**Deputy Róisín Shortall:** Is Mr. Watt talking about dormant cases?

**Chairman:** The Deputy is over her time limit. I need to move on.

**Mr. Robert Watt:** I do not have the details, but I am sure that in the case of settlements, matters of cost will be addressed normally when cases are settled.

**Deputy Róisín Shortall:** But it was not with the intention of settling, was it?

**Chairman:** Thank you, Deputy.

**Deputy Róisín Shortall:** The intention was to close the case.

**Mr. Robert Watt:** The intention was to close the case through settlement, to mediate a conclusion to the case. That was the motivation behind activating the case that had been dormant.

**Deputy Róisín Shortall:** We will have to return-----

**Chairman:** Thank you, Deputy. Deputy Hourigan is next.

**Deputy Neasa Hourigan:** I will try my best to keep within the time limit.

**Chairman:** I thank the Deputy.

**Deputy Neasa Hourigan:** Many points have been covered by other Deputies. I want to concentrate on the due diligence that the Department would have undertaken around the legality of this. We have talked about RTÉ, but obviously this was a conversation that was happening within the Department itself. I am trying to understand how it got to the stage of commissioning the senior counsel's report. Was it the case that internal and external advice was sought and then the report was commissioned? I ask Mr. Watt to provide the committee with a quick timeline of events.

**Mr. Robert Watt:** Under the protected disclosures legislation, if there is sufficient evidence to justify a review, then a review is commissioned by the Department. That will be an external review. There are different stages to go through. The Department concluded last year that many serious allegations had been made and it would be best if an independent senior counsel was asked to come in to conduct a review. That was in line with-----

**Deputy Neasa Hourigan:** Were the questions raised by that review significant enough to necessitate a senior counsel's report?

**Mr. Robert Watt:** Yes. Given the nature of protected disclosures, if the Department considers that a review is warranted and there is evidence, a review is undertaken. The previous Secretary General and others concluded that a review was warranted. I believe that was the right conclusion. That report, which is very detailed, was commissioned and went through all the allegations and found that there was no basis behind the allegations and there was no evidence of wrongdoing in respect of any of the allegations, of which there were many.

**Deputy Neasa Hourigan:** Did the Department ever seek the legal advice of an expert in data collection or seek a senior counsel who had expertise in that area?

**Mr. Robert Watt:** Is the Deputy asking about last year, when the report was being compiled?

**Deputy Neasa Hourigan:** Yes.

**Mr. Robert Watt:** The senior counsel has knowledge of this area. He was asked to do the job based on his expertise and knowledge. Obviously, he has a knowledge of the law, including data protection law. I do not know if Dr. MacLellan wishes to-----

**Deputy Neasa Hourigan:** I do not want to go through the resumé of the senior counsel. That is unfair because he is not here. I have actually done that myself and data protection law is not listed as one of his areas of expertise.

**Dr. Kathleen MacLellan:** It might be useful to say that all of these cases are guided by the Chief State Solicitor's Office and the Office of the Attorney General, and at particular points in time, legal advice is provided to the Department. As was raised in the senior counsel report, there was one recommendation that the Department check that particular legal advice had been sought in relation to data protection. The Department looked at that and found the advice that was provided by the Office of the Attorney General. It confirmed that the Department could rely on the legal advice that it had received in relation to data protection.

**Deputy Neasa Hourigan:** That touches on my next question. Was the advice sought from the Office of the Attorney General on one occasion? Did the Office of the Attorney General conduct one review for the Department, or was it an ongoing dialogue?

**Dr. Kathleen MacLellan:** The advices that come from the Chief State Solicitor's Office and the Office of the Attorney General are continuous in relation to these cases, because the solicitor for the State is managing these cases on behalf of the Department.

**Deputy Neasa Hourigan:** It has been said today that there has been no wrongdoing, that completely correct practice was followed and that it is a long-standing practice, which I must say is different from it being a correct practice. Therefore, the Department has stressed that it has broken no laws and finds no wrongdoing. Based on that, is it fair to assume that the prac-

tice, as outlined, continues to be employed by the Department?

**Mr. Robert Watt:** We are not saying that there is nothing we can learn. Of course, we can learn about the sharing and management of data and other issues that have been raised by the members. There is never any situation involving complex policy or legal questions in which there is absolute certainty. There are always difficulties, grey areas and trade-offs. We are not suggesting that mistakes have not been made and that we do everything properly. However, what I am very clearly saying, and I hope there is no doubt about it, is that the substantive allegations made against officials in the Department by “Prime Time” have no basis. There is no basis for the notion that there was a covert campaign to compile secret dossiers, pry on families, directly seek reports from clinicians, undertake private investigations and so on. It is very clear from the questioning from the members and from the-----

**Deputy Neasa Hourigan:** If Mr. Watt does not mind, I probably only have one minute left.-----

**Mr. Robert Watt:** I am not suggesting-----

**Deputy Neasa Hourigan:** I am speaking to what Mr. Watt is speaking to. Mr. Watt has made that point several times today, and has also said things like there is an implication here that something untoward was happening and it is absolutely not the case. With the greatest respect, until the Data Protection Commissioner decides that, Mr. Watt cannot possibly know that.

**Mr. Robert Watt:** Of course, there could be issues in relation to data protection. There absolutely could be.

**Deputy Neasa Hourigan:** Those are legal issues. Data protection is also a legal issue.

**Mr. Robert Watt:** Of course, it could be. Absolutely. The Data Protection Commission is doing the review and we are working with it on that. There are issues. The legal advice we have, and have had consistently, is that our approach to sharing data between co-defendants in legal cases is lawful. Of course, if it is the case that the Data Protection Commission finds that there are issues, we will put our hands up and say that we will have to do better. I wish to clarify a point that goes to the heart of the concerns of parents and the allegations which have undermined people’s confidence in Government Departments, such as the Department of Health. The “Prime Time” programme did not just allege that there might have been breaches of data protection law; it made much more serious allegations than that. That is the point I am making this morning. It is very clear, based on all the work we have done over the last two months, that that is not the case.

**Deputy Neasa Hourigan:** As Deputy Shortall asked, does the Department make any differentiation between live or imminent cases and dormant cases in its approach to data collection?

**Mr. Robert Watt:** No, I do not think there is a differentiation. Cases are cases, and data and information are shared on cases. When we are trying to settle a case, there might be an attempt to seek a service update to settle, as we have done since 2017. However, I do not think there is a substantive difference.

**Deputy Neasa Hourigan:** So there is no cut-off point, for example after five or ten years, after which it is decided that a case is not going to be pursued. The Department continues to gather information.



**Dr. Kathleen MacLellan:** Our legal advice is that according to the Irish legislation, once a case is open, it is open. The term “dormant” is not actually a legal term. It just means that there has been no activity on a particular file for a period of time. We have been advised that in order to be able to case-manage these cases, service updates and information are required, and all of that is required-----

**Deputy Neasa Hourigan:** Even when a child ages out, the Department continues to gather information.

**Dr. Kathleen MacLellan:** We have been advised that these files need to continue to be case-managed until we can work towards a settlement or a conclusion of those cases.

**Chairman:** I ask the Deputy to finish.

**Deputy Neasa Hourigan:** I am finished.

**Chairman:** I call on Deputy Gino Kenny.

**Deputy Gino Kenny:** Most people who watched the “Prime Time” programme would have been quite uneasy in respect of what they saw. I think the findings of the programme were wholly unsatisfactory, whether Mr. Watt agrees or not. Nobody has ever said that the practice that was going on in the Department of Health was illegal. Was it ethically correct? Families are bringing the State to court for the provision of basic special education needs. Nobody can defend that. Trust and confidence are paramount. Was there a breach of that trust and confidence with these practices going on in the Department of Health?

**Mr. Robert Watt:** I thank the Deputy for the question. We were as uneasy and as appalled as anybody else when we saw the programme. Officials in the Department were as upset about what was said and the distress that it may cause families, as well as the fact that the allegations were untrue. I absolutely agree with the Deputy in that if it is established, which it might be subsequently, that there is no validity behind these allegations, which will be up to others to decide, the damage, unfortunately, still will have been done. People may not necessarily look back at what the final outcome to this is. They will have watched the programme or heard the discussion about it. Unfortunately, no matter what the outcome is, trust can be eroded. The Deputy is correct that no matter what happens, that is a regrettable outcome of this. Where responsibility lies for that is for others to decide.

On the question about cases taken, I will reiterate the point that the majority of cases do not go to court. Only two of the 230 cases had actually gone to court. Most of these are settled.

There is a wider issue, which I guess is the kernel of the Deputy’s question and which is a policy question, about people taking cases against the State in order to improve access to services. There is a question about the State’s position about whether it should contest or accept them. As we said in response to earlier questions, in many cases the evidence presented by the plaintiffs is such that the State will accept, settle quickly and will not contest the case.

There is a wider policy question, however. Citizens have rights and have the right to have those rights vindicated legally through the courts. That is how our Constitution and our legal system works. I do not think there is ever going to be a situation where we find that families are 100% satisfied with the service they receive. There is never going to be a situation where everybody will be satisfied all the time. That is the nature of it. It is a contested and challenging space. We would like a situation where it never came to people taking cases. We would like a

situation where the services provided were met to the satisfaction of all the families all the time. Sometimes, however, people do not believe that and they want more and better. They have a right to challenge that.

From the State's perspective, which gets to the absolute essence of the discussion, the question is what is the role of the State in this regard. Should the State not contest the cases? If the State did not contest cases, services would be provided not on the basis of laws passed in the Oireachtas and then the administration of those laws by Departments. Instead, the prioritisation of service provision would be on the basis of who has access to the legal system and solicitors. If Departments did not challenge or accepted the case whenever a service was deemed to be inadequate, in effect the system would be gummed up forever with legal challenges. The basis upon which we actually administer schemes would fall down. It would not be on the basis of need but who has access to legal representation. Nobody believes such a course of action would be desirable.

**Deputy Gino Kenny:** I understand the dimensions around this. However, there was a fundamental breach of trust in this regard in respect of families. Does this practice still continue in the Departments of Health and Education?

Shane Corr stated last week that Ministers and Deputies should know that databases containing representations made to them by the public were searched across Departments. What practice was he referring to? Alarms bell started ringing when he stated that. Was this a culture within the Department of Health regarding Deputies making representations on behalf of their constituents and families needing to access special education?

**Mr. Robert Watt:** I am not going to comment on further allegations that were made in a session where we were not invited to participate. I am not in a position to do that.

Obviously, representations are made by Deputies all the time on behalf of their constituents on a variety of issues. We respond to those as best we can. That is a legitimate part of the system, which we all respect. That has value and that is how the system works. Nobody in the Department of Health has an issue with that. We respond to thousands of representations every month on a whole variety of different issues. That is part and parcel of what we do.

I am not going to comment on the allegations because I do not really understand exactly what is being said and I do not think it is appropriate.

On the question about breach of trust, I hope by the time that the families have an opportunity to engage with us in the process and review the practices, that they will not feel any trust has been broken. Based on what I have seen, I do not think the allegations are valid. On that basis, if their trust is broken, based on a belief of what was contained the "Prime Time" programme, then I do not think there is a basis for that trust to be breached.

I absolutely appreciate people's concerns. We have reached out to families and representatives to try to address their concerns. I hope at the end of this process that families will be in a better place when it comes to how the State acted properly in terms of settling cases and doing so in a fair and proper manner. That is obviously for families to decide ultimately at the end of this process. I hope that is an outcome that we get.

**Deputy Bernard J. Durkan:** The Secretary General contacted RTÉ after the broadcast. Did he warn RTÉ as to the consequences in the event of there being further development of the statements made on the programme?

**Mr. Robert Watt:** No, I did not warn RTÉ because it is not for me to issue warnings. As I said in response to earlier questions, I set out our concerns that the allegations were extremely serious, that we took them seriously, that we did not believe that the allegations had merit and that there was not sufficient evidence to justify them being broadcasted.

I regret now that we were not more forceful in responding to RTÉ before the programme. Colleagues probably share that too. We should have been more forceful with RTÉ because I do not believe the programme can stand up. Obviously, we are concerned about the impact it has had with trust and the implications of that, as raised in Deputy Gino Kenny's earlier question on trust.

There were no warnings given. I set out, which I think was reasonable to do on behalf of the Department of Health, that we did not believe the allegations and that the information we had to hand did not support what was being argued.

**Deputy Bernard J. Durkan:** Did RTÉ stand over its position or did it resile from that during the course of the conversation?

**Mr. Robert Watt:** No, but I do not want to get into the private conversation. The conclusion was that the director-general, while she was not the producer of the programme, committed to talking to the people involved.

**Deputy Bernard J. Durkan:** In the event of there being a legal action in respect of the programme at a later stage, would Mr. Watt disclose the nature of that private conversation?

**Mr. Robert Watt:** It was a private conversation. Basically, from my recollection, I made two points to the director-general, namely, the allegations were fairly serious and we did not believe they were valid. That is my recollection of the two points I made to the director-general. It was a friendly enough conversation. It was not aggressive. I said it was very serious and I wanted to make sure Dee Forbes heard from me directly that we were disturbed by what was being proposed and what the programme would say.

**Deputy Bernard J. Durkan:** Mr. Watt acknowledged there were issues around data protection in his earlier replies. Did he feel those issues were sufficient to require a change of policy?

**Mr. Robert Watt:** When the review took place last year, the issues around data access came up, so we put further safeguards in place and we reminded staff of their obligations regarding data protection and so on. That is set out in the report. The acting Secretary General, Dr. Colm O'Reardon, then took steps to remind staff about data protection and we put in place extra procedures, which Deputy Durkan mentioned, regarding putting passwords on documents and ensuring we put in extra safeguards. We are mindful of that and, as I said earlier, no system is 100% secure and we are always looking at this. We will continue to have conversations with the Data Protection Commissioner about what other protections we can put in place. I am mindful of that.

**Deputy Bernard J. Durkan:** I note the position regarding dormant cases, ongoing cases and so on. Some 29 cases are still open and for legal action. How long are they open? How long have they been in place?

**Mr. Robert Watt:** They vary in longevity. Do we have data on that? Dr. MacLellan might come in.

**Dr. Kathleen MacLellan:** Obviously, we cannot talk about individual cases. They vary in terms of time but go back to the 1990s, so nearly 30 years.

**Deputy Bernard J. Durkan:** Does Dr. MacLellan think it is a good policy to have cases outstanding for that length of time? I dealt with many cases during that period, in the 1980s and 1990s, and prior to that. If cases are unresolved, there is a dispute between the authorities and the individual citizen. What efforts were made, are being made or are likely to be made to bring such matters to a conclusion at an earlier date, for obvious reasons, for all concerned?

**Mr. Robert Watt:** We share Deputy Durkan's concern and the objective is to try to close and settle these cases and move on. I absolutely agree with Deputy Durkan that it is not satisfactory that they remain there. That was the motivation, particularly from 2017, when service updates were carried out in an attempt to find out what the latest position was and to try to settle based on the updated position on people's satisfaction or otherwise with the service they were receiving. That was the motivation and it is regrettable that motivation has been twisted in a way to suggest something untoward was being done by officials, when they were trying to close cases which have gone on for too long and in which it was in the interest of all parties that they be closed.

**Senator Annie Hoey:** The allegations that were made on "RTÉ Investigates" were quite extraordinary. The public, either those who watched that programme or are watching this public session, will be struggling to marry how these allegations could have been made without any basis in truth, as Mr. Watt has said. He has said there was no basis for those allegations, that they were untrue and had no validity behind them.

People are really struggling to marry those two things and there is an enormous responsibility, if these allegations are untrue, to comprehensively prove so, because the reputational damage being done is immense. The reason this struck a chord is that no matter what way one slices this, there are, have been and continue to be vulnerable children who have been forced to take action against the State in order to get their basic educational needs met. Notwithstanding that the allegations are possibly not valid, in the words of Mr. Watt, there is a larger issue at stake that vulnerable families and children have been mucked about under the watch of the Department of Health.

Mr. Watt said this has been a long-standing practice and I know a couple of people have alluded as to whether that is still a correct practice. Would Mr. Watt say that is an ethical practice? I am not a lawyer and the law has to do what it has to do, but this struck a chord with people for a reason. One of the reasons is the ethics behind it. Is it an ethical thing to have done?

Mr. Watt has said these practices will continue to take place. He mentioned these cases often end in mediation. Surely, the answer should be that these cases end in the families and vulnerable children getting what they are entitled to, which is access to an education. We are talking about cases being outstanding and what is going to be done. Truly, based on the public response and the feeling in this, the answer should be that no one should have to do this in the first place.

**Mr. Robert Watt:** I agree with Senator Hoey that the allegations are extraordinary and people will find it difficult to marry the programme with the documentary evidence that we have published and prepared. That is for others to decide. It has done reputational damage and we are trying to address that, as best we can, but it is hard to address that fully.

Of course, the practices that are alleged are not ethical and they did not take place, as I have set out. Clearly, our prying on families and having secret dossiers would be inappropriate but that did not take place. I know Senator Hoey is not talking about those ethical practices, she is referring to whether sharing information and challenging the cases is ethical.

On the sharing of the information, it is seen as an efficient way for co-defendants to try to manage the cases efficiently and resolve, mediate and settle the cases. It is based on administrative efficiency rather than having one part of the case in one part of the system and so on, because the Department of Education, the HSE or the Department of Health could be involved. It makes sense for the information to be shared so that we have one file on all the different elements relevant to the case and its potential settlement.

In terms of sharing the information, we are satisfied of the administrative necessity and legality. Can we share that better and be more secure about it? Yes, of course. We are looking at that and accept we can always do better.

The other ethical question is about service access and that is the key question here. We are trying to improve services. It is about, all the time, trying to improve services so that families do not have to take cases, the system provides the best possible services and, where possible, families are happy or content but, at least, accept more is being done or they are getting the supports they can. Ultimately, that is the objective and what we are about in the Department.

There have been significant improvements in recent years. Significant investment has taken place and enhanced services have been provided for people with special educational needs right across the area. Of course, we all know we can do better and that is the objective.

On the wider ethical question about contesting cases, I have nothing further to add to what I said to Deputy Kenny, in that there is a fundamental public policy question about whether we want services to be allocated based on people's ability to access the law or administrative practice based on laws passed by the Oireachtas. This is a fundamental question which goes way beyond our discussions this morning but it is absolutely central to how one manages areas such as this which are contested. Many areas in public policy are contested. People have rights and can seek to have those rights vindicated in the courts. That is the way things work.

**Senator Frances Black:** I thank the witnesses for coming in today. I will try to keep it as short as I possibly can. According to *The Irish Times*, the internal review looked at 29 cases that are still under way but not at the more than 200 completed cases taken against the State in which the Minister for Health was named as a defendant, including those around special needs. Why did the Department not increase the scope of the review and investigation to include all cases taken against the State where the Minister for Health was named as a defendant? Is it possible the allegations could be found in these cases?

**Mr. Robert Watt:** The disclosure report and the disclosures by the whistleblower related to those cases. That is where allegations were made that, in effect, the issues raised related to those cases. That is why the focus of the review was on those cases to be addressed, based on the report and the "RTÉ Investigates" programme - it related to those subset of cases.

The amount of work to review those cases was substantial. To go through the reports and compile the report we did was a substantial undertaking. We basically concluded the work up to that point because they were the cases that were subject to the whistleblower's allegations. We do not believe from what we found or did not find there is justification for doing further re-



views. We do not think that has merit. We do not think the cost and the time involved would be justified given that at this stage there is no *prima facie* evidence of practices that we believe to be inappropriate, as portrayed by RTÉ. Clearly, if we had found the practices were widespread in those cases, that would be a different issue and we would have to look at other cases, but since we did not find practices that were consistent with the nature of the allegations made, we have concluded the process of those cases.

**Senator Frances Black:** Does Mr. Watt regret how the Department handed communications since the programme was broadcast? While the Department made contact with RTÉ to stop the broadcast, there was no letter to notify the families in advance. There is a sense the Department has not really shown any empathy or understanding or tried to meaningfully reach out since the crisis began. What will the Department do to restore the trust of the autism community?

**Mr. Robert Watt:** First, I did not try to stop the broadcast. That was not my intention. I do not decide what RTÉ publishes or does not publish. Second, we did reach out to the families. The programme was broadcast on 23 March. On 1 April, a week afterwards, we had written to the legal representative of the families. We had written to stakeholders and had appointed an independent liaison officer. We had been very proactive in responding. It could be said we should have been faster in doing so or more proactive. I accept that but I think we were fairly speedy. Our first concern was to establish the facts and to try to reassure the families. That is what we were trying to do and we did do that fairly speedily after the programme came out. One could argue we should have done better but I think we did our best to try to address the concerns people have.

**Senator Frances Black:** Would Mr. Watt welcome an independent investigation to look at the issue as a whole? Does he consider that might restore public confidence and would be a way of acting legally without fear?

**Mr. Robert Watt:** No I do not think there is any *prima facie* basis for an independent inquiry. However, that is not for me to judge, that is a matter for others. If a Dáil committee wants to investigate, that is its business. However, based on evidence we have – if others have other evidence they want to bring to bear, that might change it - and what I have seen, I do not see the basis for it under the various statutes in place. I think it has to be at a certain threshold but that is not for me to decide. Dr. MacLellan wants to come in on that?

**Dr. Kathleen MacLellan:** It might be worth mentioning the Data Protection Commissioner is conducting an inquiry, which we have welcomed and with which we will be fully co-operating. We will obviously welcome any recommendations the Data Protection Commissioner makes. We will seek to implement any recommendations or actions that come from that. That is a statutory inquiry that is currently in process.

**Mr. Niall Redmond:** I would add that there was the senior counsel's report. An independent senior counsel was brought in to have a look at the allegations in the first instance. That was an external person who had a look through all the allegations and documentation. That was presented to that person by the discloser. That independent eye has already been cast to a degree. That report and the Data Protection Commissioner's inquiry provide a level of external assurance that external bodies are having a look at this issue.

**Senator Frances Black:** Thank you.

**Chairman:** The next speaker is Deputy Colm Burke.

**Deputy Colm Burke:** I thank the witnesses for attending this morning. I come from a background where I would have been involved in litigation against the Department of Health in a legal capacity and, therefore, I would be very much familiar with what is involved. Regarding the discovery of documents, where there are a number of Government agencies, including the HSE and the Department of Health and the Department of Education, what is the rule regarding legal representation? Is there one set of legal representatives or would there be a number of sets of legal representatives?

**Mr. Robert Watt:** In terms of the plaintiff's side, it tends to be one.

**Deputy Colm Burke:** On the defendant's side, which would be the Department of Education, the Department of Health and the HSE?

**Mr. Robert Watt:** The Chief State Solicitor's office in effect is the legal representative for the Departments.

**Deputy Colm Burke:** At what stage in the gathering of documentation for a case would a decision be taken as to which body or Department would be in the front line for getting all the documentation together? Would a decision be taken on that?

**Mr. Robert Watt:** I will let Dr. MacLellan come in on that question.

**Dr. Kathleen MacLellan:** The litigation is directed through the Chief State Solicitor's office. The Departments of Education and Health tend to be jointly represented by the Chief State Solicitor's office in these cases. The full documentation is maintained by the Chief State Solicitor's office but the Departments of Health and Education would retain documentation relating to the litigation cases, as advised.

**Deputy Colm Burke:** Would there be co-ordination between the Departments and, say, the HSE and would one Department try to co-ordinate that or would it be left to the Chief State Solicitor's office?

**Dr. Kathleen MacLellan:** Where the HSE would be involved the Department would be co-ordinating with the HSE and there are arrangements to co-ordinate with the HSE regarding litigation in legal cases that are taken.

**Deputy Colm Burke:** Where discovery of documents is made, Dr. MacLellan might explain the extent of that discovery involve? What documents would have to be made available on discovery?

**Dr. Kathleen MacLellan:** Our legal adviser might be able to advise on that but I would assume we would have to process anything that is sought regarding that discovery.

**Mr. Robert Watt:** The normal practice would be that information that is sought would have to be provided as part of discovery in a case. I am not an expert, and we can come back to it if there are exemptions, but in the main the documents would have to be made available.

**Deputy Colm Burke:** Can we get an idea of what documents would have to be discovered? Would it go back three, five, ten or 15 years? What would be the norm?

**Mr. Robert Watt:** It would depend on the nature of the case. The documents could go back

over a period. Information would be provided by the plaintiffs in the main. They would have access to that and any assessment that would have been done.

**Deputy Colm Burke:** When Mr. Corr was in with us he more or less indicated the Department officials were very worried about discovery and about getting documents - all its ducks in a row, as it were - regarding files. Why would there be such worry by Department officials about the discovery issue?

**Mr. Robert Watt:** I will not comment on what the whistleblower said in a private session. It would not be fair for me to comment on that because I do not know the basis for it. Officials are always concerned a file is kept in good order and if discoveries are made, the information is provided, but I do not wish to go into it after that. Does Dr. MacLellan want to come in?

**Dr. Kathleen MacLellan:** It is fair to say that across all areas of the Department discovery is made. Depending on the order of discovery the Department will always co-operate with that order of discovery, regardless of whether it is these litigation files or other files in regard to discovery.

**Chairman:** This is the Deputy's last question.

**Deputy Colm Burke:** Is it a case that when proceedings start the State solicitor would advise the Department it should take it for granted that an order for discovery will be made at some stage in this case and, therefore, it would need to be prepared at all times for such an order of discovery? Therefore, the Department would have to be prepared at all times for such a discovery.

**Mr. Robert Watt:** I do not know, but I presume there was always that possibility and files would be prepared with the possibility that the information would have to be given to the plaintiffs. As the Deputy knows, it is not unusual for that to happen in legal cases.

**Deputy Colm Burke:** Has it----

**Chairman:** The Deputy has gone over his time limit.

**Deputy Colm Burke:** Has it arisen that the Department has been reprimanded for not producing all the documents of discovery?

**Mr. Robert Watt:** No, not that I am aware of.

**Chairman:** I am moving on to Senator Clifford-Lee.

**Senator Lorraine Clifford-Lee:** I thank the witnesses for coming before us and answering the questions posed by my colleagues.

I wish to move off this topic briefly and touch upon something else. I am seeking a clarification from Mr. Watt on women travelling for abortion services in the UK. Are these services considered to be urgent medical services under the Covid-19 travel regulations? I ask this question because the abortion service network-----

**Chairman:** The Senator is moving off the subject matter under discussion. Perhaps Mr. Watt can take the question.

**Senator Lorraine Clifford-Lee:** I ask him to clarify whether this is the case. I am sure it is something that he has come across because a number of queries have been submitted to the

Department on the issue. Could Mr. Watt confirm whether these services are considered to be urgent medical services? That is my only question.

**Mr. Robert Watt:** When I return to the office, I will communicate with the Senator's office on the issue.

**Senator Lorraine Clifford-Lee:** Can Mr. Watt provide a "Yes" or "No" answer to the question?

**Mr. Robert Watt:** I will come back to the Senator on the issue.

**Chairman:** It is inappropriate. We are moving off the subject at hand. The Senator can submit a parliamentary question and put it to the Minister.

**Senator Lorraine Clifford-Lee:** It is a very urgent question. I thought with Mr. Watt before us, he could answer "Yes" or "No" to the question of whether they are essential services, and if women have to provide a negative PCR test result..

**Mr. Robert Watt:** I do not want to give any incorrect information to the Senator, so I will check and get back to her.

**Chairman:** Senator Kyne is next.

**Senator Seán Kyne:** I welcome the Secretary General to the meeting and congratulate him on his new post.

I have a few questions. Deputy Shorthall touched upon the contents of his opening statement. I am intrigued at the choice of phraseology in point 2 of page three, where it is stated that: "There is no evidence...". Mr. Watt does not state that the Department "has not" or "is" or whatever - he states that: "There is no evidence that the Department of Health was secretly compiling dossiers..." He does not state that the Department was not compiling dossiers. Can he explain that? Was that wording used following legal advice? I am intrigued by it.

**Mr. Robert Watt:** No, it is just the way it was written.

**Deputy Seán Kyne:** So, there was no legal advice to phrase it that way?

**Mr. Robert Watt:** I do not think so.

**Deputy Seán Kyne:** It is also in the report that was commissioned in the Department. The phrase: "There is no evidence..." is used again. I find it strange that rather than denying something or saying that it did not happen, that turn of phrase was used.

**Mr. Robert Watt:** Instead of saying that it did not happen?

**Deputy Seán Kyne:** Yes.

**Mr. Robert Watt:** We want to be very clear. Senior counsel did a review, then we did a review with the help of further counsel, namely, evidential barristers, who found no evidence. On seeing the programme, we did not believe that those practices took place. It was our firm view that we reached on seeing the programme. The pieces of information that comprise the disclosure to Conor Brady contain elements which led the whistleblower and RTÉ broadcasting to reach a certain conclusion, but the independent counsel does not believe that those conclusions are valid, nor do we, based on the further work that we have done. If someone is making

an allegation, they must have evidence to support it, particularly if it is of a serious nature and is a matter of public interest. We are saying clearly that there is no evidence to back up the allegations. The language is not necessarily legalistic; it is about trying to set out our belief that there is no evidence to support the allegations based on what we have looked at.

**Deputy Seán Kyne:** In Mr. Watt's previous role as Secretary General of the Department of Public Expenditure and Reform, I am sure the he would have met with, discussed or liaised with officials from the Departments of Health and Education and Skills and other Secretaries General regarding legal cases. The disclosure, as outlined by senior counsel, Mr. Bradley, in his report, stated that one of the bundles of cases was estimated to have liabilities of up to €7 billion. Unless that is a misprint, it is an astounding amount of money. Would Mr. Watt have been aware of that in his previous role? I imagine he would, as a guardian of the Exchequer finances, as it were. Would Mr. Watt have discussed such cases with Department officials?

**Mr. Robert Watt:** I am not aware that there are a liability of €7 billion outstanding in respect of the cases.

**Deputy Seán Kyne:** It is outlined in Mr. Bradley's report. Unless it is a misprint. I found it to be an astounding amount of money.

**Mr. Robert Watt:** I will just check, if I can find the exact reference. Is this in relation to supposed liabilities?

**Deputy Seán Kyne:** Yes.

**Mr. Robert Watt:** This is based on what the discloser alleged. That contention was not supported by the report. I am trying to find the-----

**Deputy Seán Kyne:** Is it clarified? I have not seen clarification of it. Does it relate to a dropped case?

**Mr. Robert Watt:** I will check.

According to the report:

The discloser stated that most of these bundles involved the most vulnerable and needy people of the State, and the object was to keep those people, the Government, and the Dáil, as well as the systems for accountability, in the dark. The discloser stated that of these bundles, one was estimated to have liabilities of up to €7 billion.

I guess "bundles" refers to legal cases. I do not think there was any information which supported that allegation. The senior counsel, in his conclusions, did not state that there was evidence purporting to support that.

**Deputy Seán Kyne:** It goes back to the issue of evidence. Does Mr. Watt have a value on possible liabilities of the Department? I can see from the point of view of the State that those would be important issues. In his previous and present roles, does Mr. Watt have an estimate of liabilities?

**Mr. Robert Watt:** The State claims agency. Most of the cases taken against the State have involved significant liabilities relating to medical negligence. The State Claims Agency manages them on behalf of the State. We are getting into an area that is not covered by today's proceedings, but the cost of this per year is about €400 million. The outstanding liability - the net present value, as it were, of likely liabilities - bases on the settlement of cases. The normal



settlement or costs go into billions. I think a number is produced in the finance accounts of the Department of Finance every year of the contingent liability associated with those cases. I am trying to remember, but I think it is around €3 billion or €4 billion. I could be mistaken but it is that type of number. However, these cases are a small subset and the types of settlements are very different. Obviously, we are talking about clinical and serious negligence cases, and settlements might run into millions. There is a liability figure that is included in the finance accounts. I do not have it, but will revert back to the Senator with it. I think it is of the order of €3 billion to €4 billion.

**Chairman:** I ask the Senator to finish.

**Deputy Seán Kyne:** From Mr. Watt's experience in his previous role, are there changes that he will propose are made in respect of these cases going into the future in terms of protecting the Exchequer, but also in his new role as Secretary General of the Department of Health? Are there changes that he will be envisioning?

**Mr. Robert Watt:** The cases we are discussing today are not covered by the State Claims Agency, but there is a wider issue about medical negligence and cases taken against the State which involve a whole range of issues around patient safety and care and clinical pathways, and how we establish harm, fault, negligence and damages and all those various issues. We are getting into an area that is not covered this morning, but the Meenan report has set out a variety of recommendations and the Department is looking at those with our colleagues in the Department of Justice and elsewhere. There are certainly measures which, over time, we hope to take to reduce the number of cases and to improve how we manage those cases to reduce the liability for the taxpayer. It is a very significant cost. The cost of the State Claims Agency is going up every year. Ten years ago, it would have been €200 million per year and now it is more than €400 million per year. The costs of these cases are mounting and it is a big challenge for the State.

**Chairman:** I need to bring in Deputy Cathal Crowe for a couple of minutes. We have run out of time.

**Deputy Cathal Crowe:** I thank Mr. Watt and wish him well in his new role. I will ask a number of quick questions. I have read Mr. Watt's opening statement, in which he takes up this whole issue of his correspondence with RTÉ after the programme aired. What contact did the Department of Health have with the investigation unit of RTÉ, and with Ms Dee Forbes, in advance of this programme going to air? Mr. Watt's opening statement has five or six bullet points that absolutely refute what was aired and shown to the whole nation. It seems incredible that these points were not all put to RTÉ before the programme actually went to air, however.

I will bundle my questions together if that is okay. Obviously, 29 court cases are pending but many more in a backlog have now been dealt with. I am sure Mr. Watt has been overwhelmed by freedom of information, FOI, requests since this programme went to air. On foot of this, do the Department's data protection or freedom of information officers have percentages as to what extent or how much of the files they had to redact when FOI data was issued to people?

Finally, when we bring all this down and get beyond the lofty levels of litigation and the Department of Health defending itself and setting out its stall, at the hub of it all we have children with special educational needs and their families. As the final contributor today, I will conclude by speaking on this. I was a teacher for 16 years before entering the Dáil. The fact remains that there are still many unmet needs for children and teenagers with special needs.

I ask that in taking on this role as Secretary General in the Department, Mr. Watt will look at one of the huge anomalies. We have special educational needs organisers and child and adolescent mental health services, CAMHS, on the Department of Health side. There are many disparities and things not adding up. The reality is that over the past 14 months of Covid-19, many of the supports laid on by the Department of Health, such as CAMHS, have not been fully up and running. They have not met virtually. They have not met the needs of children during this period. That also needs to be looked at. It is not all about litigation.

**Mr. Robert Watt:** I agree absolutely with those sentiments. That focus is to improve services. As the Deputy said, there are many gaps. The situation has been difficult for many people over the last 16 months or so, and particularly challenging for people in dealing with Covid-19 and all the restrictions. I absolutely agree with the Deputy that the key point here is not about litigation or “Prime Time Investigates”. It is about the ability of the system to use and get more resources and to galvanise supports to help people. That is absolutely the focus of the Department of Health. Colleagues who are with me today spend much of their time and careers on these issues. Their focus is to improve services. That is definitely my motivation and that of my colleagues in the Department. That is what we are about and it is the absolute priority of the Minister, Deputy Stephen Donnelly, the Taoiseach and the Government.

Regarding the other points mentioned by the Deputy, we had correspondence with RTÉ. I believe we have published the letters. If we have not, we can make those available to the Dáil. We can make available the correspondence between us and RTÉ in advance of the programme, if we have not already.

An awful lot of FOI requests are coming in. Obviously, the information is personal in the main. It is not given out generally. Of course, regarding the later requests from the families or their representatives, as I mentioned earlier, the Department is doing all it can to assure the families in respect of the allegations that were made. We are working on that. Significant work is, however, ongoing now in terms of trying to support families and work with them on foot of the concerns they have.

**Chairman:** I thank Mr. Watt and his colleagues.

**Deputy Cathal Crowe:** To conclude, the FOI officer should be able to quantify the percentage that has been redacted.

**Mr. Robert Watt:** Apologies. Again, it can be a little bit subjective on the percentage but we can look at that. It depends on the nature of the FOI request and what that is. Obviously, the FOI would recover personal information unless, of course, it was from the individual concerned.

**Deputy Cathal Crowe:** A percentage from somebody would be good.

**Mr. Robert Watt:** We will have a look to see. I understand the point. I am sorry about that.

**Chairman:** It has been a long morning. I thank Mr. Watt and his colleagues for their answers this morning. I believe he is right when he said that confidence has been undermined. He made the point that citizens have rights and, unfortunately, many citizens feel they are forced to go to the courts to get supports. I am aware of cases where people have been waiting for more than two and a half years for an assessment and then possibly have to wait another two and a half years for supports. Unfortunately, those are some of the reasons why people feel they have to go to the courts. I thank Mr. Watt for his answers this morning. It has helped the committee

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in its deliberation. That concludes our business for today.

The joint committee adjourned at 11.36 p.m. until 9.30 a.m. on Wednesday, 12 May 2021.