

# DÁIL ÉIREANN

---

## AN COMHCHOISTE UM SHLÁINTE AGUS LEANAÍ

## JOINT COMMITTEE ON HEALTH AND CHILDREN

---

*Déardaoin, 8 Deireadh Fómhair 2015*

*Thursday, 8 October 2015*

---

The Joint Committee met at 9.30 a.m.

---

### MEMBERS PRESENT:

Deputy Catherine Byrne,	Senator Colm Burke,
Deputy Peter Fitzpatrick,	Senator Thomas Byrne,
Deputy Billy Kelleher,	Senator Jillian van Turnhout.
Deputy Sandra McLellan,	
Deputy Caoimhghín Ó Caoláin,	
Deputy Mary Mitchell O'Connor,	
Deputy Robert Troy,	

In attendance: Senator Averil Power..

DEPUTY JERRY BUTTIMER IN THE CHAIR.

*The joint committee met in private session until 9.45 a.m.*

### **Dental Regulation: Dental Council of Ireland**

**Chairman:** I remind members and witnesses their mobile telephones should be switched off. The joint committee's first meeting is with the Dental Council to discuss issues regarding dental regulation in Ireland. I welcome to the meeting from the Dental Council Dr. Eamon Croke, president, Dr. Barney Murphy, vice president, Mr. David O'Flynn, registrar, Professor June Nunn, chair of the auxiliary dental workers committee, Dr. Terry Farrelly, chair of the fitness to practice committee and Dr. Marielle Blake, chair of the education and training committee. They all are welcome and I thank them for their attendance. I also thank Dr. Croke for changing his diary around; he should not worry as we will have him out by 11 a.m. or 11.15 a.m.

In the past, the joint committee has raised a number of issues of concern with regard to dental regulation in Ireland and this meeting is an important opportunity for members of the joint committee to engage with the Dental Council and to identify areas in which further regulation may be needed or where actions may need to be or already have been taken. I again thank the witnesses for their attendance. In respect of witness privilege, I advise witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence in respect of a particular matter and they continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given. They are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity by name or in such a way as to make him or her identifiable. Members are reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the House or an official by name or in such a way as to make him or her identifiable.

I call on Dr. Croke to make his opening remarks.

**Dr. Eamon Croke:** I wish the Chairman and members of the committee a good morning. I thank the committee for the invitation to appear before it to discuss dental regulation. The Dental Council of Ireland has been in correspondence with the joint committee following a letter of 16 October 2014 from Mr. Paul Kelly, principal clerk. This letter resulted from the meeting of this committee with representatives of the Clinical Dental Technicians Association Ireland, CDTAI, on 1 October 2014 and I will return to the matter of that letter in the course of our submission.

First, I will outline the role of the Dental Council of Ireland. The council was established by the Dentists Act 1985. The primary function of the Dental Council of Ireland is to protect the public. It does so by promoting high standards of education, as well as professional, ethical behaviour for all its registrants. The council is composed of 19 members. There are three main committees of the council, namely, education and training, fitness to practice and auxiliary dental workers. The council's term of office is five years. There is mandatory registration for dentists and specialists, of which there are two recognised specialties - orthodontics and oral surgery. Mandatory registration is in place also for dental hygienists, clinical dental technicians and orthodontic therapists. The council has a voluntary register for dental nurses and is working very closely with dental technicians to establish a voluntary register.

The Dental Council of Ireland awaits a new dental Act. The council has been consistent in seeking new legislation that would permit effective, flexible regulation which is evidence-based, equitable and proportionate. The council acknowledges the progress made by the Department of Health in the lifetime of this Dáil but regrets the continuing delay in the enactment of new legislation. The council met with the representatives of the professional regulation unit of the Department of Health recently to discuss its summary of policy issues for inclusion in the new dental Bill, of which members have a copy.

I will introduce the major topics which arise from the summary of policy issues. Key policy issue No. 1 is fitness to practise. The council urges in the strongest terms that the wording in Part V of the Dentists Act 1985 on fitness to practise be retained and amended rather than introducing the very prescriptive provisions of both the Medical Practitioners Act 2007 and Nurses and Midwives Bill 2010. The council's experience of operating the provisions of Part V of the current Dentists Act is that the procedures work well for managing fitness to practise matters. The Dental Council of Ireland broadly supports the main provisions of both the Medical Practitioners Act 2007 and the Nurses and Midwives Bill 2010 in providing for a preliminary proceedings committee which is separate from the fitness to practise committee, the establishment of a health committee and for a wider range of sanctions. In the Dental Council of Ireland's view, the same range of sanctions that apply to practitioners should apply to all registrants and to the entity registering dental premises including, in the case of the latter, the power to temporarily or permanently close dental premises and to attach conditions to the ongoing registration of dental premises.

Key policy issue No. 5 is the regulation of the allied dental health professions. The Dental Council of Ireland strongly disagrees with the provision in the summary of policy issues that only those allied dental health professions who work independently will be registered. The Dental Council of Ireland believes this proposal to be regressive and potentially harmful to patient safety and the development of the dental team. To ensure it has the capacity to fulfil valid regulatory function, to enhance patient-centred safer, better health care, the Dental Council of Ireland requires the new dental Act to provide mandatory registration for all members of the dental team, including dental technicians.

The issue of registration and regulation is at the core of illegal practice, which the Clinical Dental Technicians Association Ireland, CDTAI, brought to this committee's attention. In that meeting the representatives alleged "that there are significant numbers of people illegally practising as dental technicians in Ireland" and further alleged "there has been a complete failure on the part of the Dental Council of Ireland to regulate the profession". The registrar of the Dental Council of Ireland repudiated the false allegations made against the council in his letter to Mr. Kelly of 23 October 2014. The Dental Council of Ireland, under the Dentists Act 1985, has no power to inspect or close illegal practice. The limitations imposed on the Dental Council of Ireland by the present Act to deal with alleged illegal practice are widely recognised and were noted in the Competition Authority's report on dentistry in 2007. The inability of the Dental Council of Ireland to directly intervene in illegal practice is known to the CDTAI, as clinical dental technicians have representation on the council's auxiliary dental workers committee. Many hours have been given to the CDTAI representatives, within Dental Council of Ireland and in informal meetings, to explore their concerns. They are fully aware of the limitations of the Dental Council of Ireland's power and the CDTAI has misrepresented the council's powers to the committee.

The issue of illegal denturist practice highlights a quintessential issue to any discussion on

dental regulation. Without registration, can regulation be effective, transparent or consistent? How is accountability enforced? It is the stated desire of all organisations representing those who work legally within dentistry that mandatory registration should be provided by the new dental Act for all dental health care professionals.

Key policy issue No. 7 is the board. The proposal that a new dental Act would limit the council size to a maximum of 12 members will irrefutably change the successful operational traits of the Dental Council of Ireland. While the council appreciates that one of the main aims of having a non-dental majority is to minimise the perception of professionals protecting professionals when considering fitness to practise cases, it is important to understand that most of the work the council undertakes relates to dental education and general practice. To operate effectively, it is vitally important that the voice of dental educators and specialists, as well as members of the general practice dental team, are represented at council. The Dental Council of Ireland advises that regulatory impact analysis specifically assesses the necessity and effectiveness of the proposed changes in light of the council's day-to-day workload and international best practice.

Key policy issue No. 9 is the regulation and inspection of dental practices. The Dental Council of Ireland welcomes the provision made in the summary of policy issues that new legislation will provide for the regulation and inspection of dental practices and premises and that it will also provide that regulation and inspection powers will be held by the Dental Council of Ireland. The Dental Council of Ireland believes it is best positioned to oversee the registration and inspection process because of the expertise it has developed over years of regulating dental practitioners. Legally and administratively, it makes sense for one body to regulate both dental practitioners and dental practices and for that body to have an inspectorate. Most important, it is probable that serious breaches of regulations concerning dental premises will also uncover matters which may form the grounds of a complaint against one or more dental health care professionals. In order to deal with such matters expeditiously it is necessary to have both regulatory functions under the direction of one organisation.

The Dental Council of Ireland would wish to see the new dental Act contain provisions giving it the power to enter and inspect a place where it is reasonably suspected that dentistry is being practised. That power is essential to the ability of an inspectorate to investigate reports of illegal practice and would address the issues highlighted to this committee of illegal work undertaken by some dental technicians. The Dental Council of Ireland is of the view that registered dental premises need not be owned or controlled by dentists but must be regulated. The council proposes that the entity registering a dental premises must be accountable to the Dental Council of Ireland for ensuring compliance with the new Dental Act. The framework set out in the Pharmacy Act 2007 allows the Pharmaceutical Society of Ireland to register and inspect pharmacies as well as to regulate retail pharmacy businesses and could be adopted for inclusion in the new dental Act.

Key policy issue No. 10 relates to the principal dentist and registered owner representatives in dental practices. The Dental Council of Ireland welcomes the provision made in the summary of policy issues that new legislation will provide for the appointment of principal dentists and registered owner representatives in dental practices and that this provision will also apply to any independent allied dental health practice established. The council recommends that the proposed new dental Act allow the council to take criminal prosecutions in a manner similar to the provisions under the Pharmacy Act 2007 and the Food Safety Authority of Ireland Act 1998.

Key policy issue No. 12 relates to staggered term of office board appointments. It is the

strong view of the Dental Council of Ireland that corporate memory primarily rests with the staff of the Dental Council of Ireland who have acquired an understanding of the day-to-day functions of any council and the relevant legislation. The Dental Council of Ireland is unaware of any evidence to indicate that staggering the terms of council members will improve the effectiveness or consistency of the council's functions.

Key policy issues Nos. 18 and 19 relate to continued professional development for dentists and allied dental health professionals. The Dental Council of Ireland welcomes the provision in the summary of policy issues that will require dentists and allied dental health professionals to maintain their own professional competence and that the Dental Council of Ireland can require them to demonstrate competence to its satisfaction in accordance with a professional competence scheme. However, it questions how it is possible to do this when the proposals will effectively deregulate most allied dental health professionals. If one has no register, how can one enforce a mandatory code of continuing professional development?

It is the council's intention that all registered allied dental health professionals will be accountable to the council with regard to continuing competence. The Act should allow the council to refer issues concerning non-compliance to the preliminary proceedings committee under the fitness to practise provisions of the new Act.

The council has made previous submissions to the Department at its request. There are two outstanding matters related to standards in patients safety which the summary of policy issues has not addressed.

The Dental Council of Ireland is very disappointed that foundation training is absent from the summary of policy issues. The council aspires to the introduction of a mandatory foundation training scheme as it considers it not only an elemental part of continuing professional development but also an essential part of the development of any young dental professional. Foundation training is a period of training following initial qualification and registration that builds on the achievements in the undergraduate curriculum and aims to produce a competent, caring, reflective practitioner. This is generally achieved through treating patients under supervision and in taking part in structured and unstructured clinical review and learning. The Dental Council of Ireland acknowledges that the current economic climate might make the introduction of a scheme challenging in the short term. The council seeks a provision in the proposed dental Bill that would allow for the introduction of such a scheme by way of statutory rule.

Finally, the Dental Council of Ireland is concerned that professional indemnity is not addressed in the summary of policy issues. Professional indemnity is an indispensable element of patient protection. The Dental Council of Ireland is of the view that any registered member of the allied dental health professionals team who can perform intra-oral procedures for his or her patients must have appropriate professional indemnity cover. The proposed Bill should allow the council make regulations in relation to indemnity.

I thank the committee for taking the time to consider this oral submission. My colleagues and I would welcome the discussion of these and any other matters that the committee may wish us to address under dental regulation.

**Chairman:** I thank Dr. Croke for a very informative presentation. I now call on Deputy Ó Caoláin.

**Deputy Caoimhghín Ó Caoláin:** I thought Deputy Kelleher would be getting the first slot.

I join the Chairman in welcoming the representatives from the Dental Council of Ireland and I thank Dr. Croke for his comprehensive address to the committee. I am encouraged by much of what Dr. Croke stated in terms of the importance of registration across the entire dental or dental-related team. That is vital.

I will not go down the cul-de-sac of previous engagements that this committee has had with other voices from within the dental profession. There is no benefit to that. Dr. Croke will have his view and others will have theirs and our role here as legislators is to inform the Minister and inform the elected representatives of the people of the importance of given measures in the public interest, and it is on the public interest that we are primarily focused.

I have a number of issues. The proposed dental Bill is long awaited. There is a frustration in this that no doubt is shared among us all. I note the position heretofore, as Dr. Croke's stated in his opening remarks that the primary function of the Dental Council of Ireland is to protect the public and ensure ethical behaviour for all its registrants. That is the critical point here, that the behaviour of those who are not registrants but who are presenting themselves as duly approved practitioners creates a situation where, apparently, the Dental Council of Ireland does not have a role in terms of enforcement. How do we address the situation where persons are not entitled to advertise the services that they offer and are neither properly qualified nor legally entitled to direct their services to the public? There are examples of this, some of which are high profile. Some have names with which we have become familiar in terms of an individual practising dentistry who is not registered with the Dental Council of Ireland and thereby is not an approved practitioner in this jurisdiction and, I understand certainly in one or more cases, not entitled to practise in any jurisdiction. It is a matter of how we bridge all of these issues in the intervening period.

Has the Dental Council of Ireland confidence that the proposed legislation will properly provide and does it see, as I read from what Dr. Croke stated here this morning, that the council should have enhanced powers of enforcement, oversight, etc., and that it would cover the critical areas, including dentists, orthodontists, hygienists, dental nurses, clinical dental technicians and dental technicians? It is critically important that all of these are properly registered. Registration is the key issue. Initially, one is talking in terms of dental technicians, of voluntary registration which would lead on the enactment of the proposed legislation to mandatory registration. That would be a pathway to overcome some of the existing dichotomies.

There have been instances of dental technicians dealing with the public. How, in the absence of the legislation, do we deal with the fact that there is evidence even of advertising by dental technicians who have no entitlement to so advertise their work? Their engagement and their direct line management is through properly qualified dental practitioners. They have no entitlement to engage with or service directly the public. How does the Dental Council of Ireland see that weakness being dealt with in the absence of legislation? Has it confidence that the proposed legislation will see that matter put to bed once and for all?

As matters stand in terms of the Dental Council of Ireland's powers, apparently over those only who are registered with it, how does it see the matter of those not registered with the council opening their doors and offering their so-called "skills" to the public? I refer to persons who, in other jurisdictions within the European Union and perhaps elsewhere, have been de-registered in their respective countries of origin where they have so-called "qualified". In this regard, we have heard members of the Irish public on the national radio. Although I am not a regular listener as it clashes with Dáil business, I am sure Joe Duffy has attended to it at some point in time. How do we collectively address the fact that there have been - I cannot say that

there are but there have been - persons who were not properly entitled to present themselves as they did within the dental profession?

On the question of registration, I have concerns in regard to the proposed legislation that not all elements of the team of dental practitioners that I have mentioned earlier will be compelled to register. Can Dr. Croke tell me what he knows or, if there any fears in regard to the areas of dental practitioners, dentists, orthodontists and hygienists? It is my understanding that there is some fear that it might be delisted, for want of a better word; I am speaking as a layperson here. That would be absolutely outrageous.

I have named some of the key areas and the witnesses could probably add to them. Are we on the one page that all the areas I have mentioned already and any others should have their respective registration lists and should all come under the council's oversight and control, as I would want it to be? I would appreciate any assurances or advices the witnesses could offer on how we might work together collectively to ensure the legislation is fit for purpose across the board.

**Deputy Billy Kelleher:** I welcome the witnesses. Based on their statement we have major challenges in ensuring we have integrity in a process to oversee all dental practice in the country. There are varying views from other organisations and individuals. The bottom line is that we must consider this from the point of view of the patient or client. We need to ensure there is proper oversight and regulation in place along with disciplinary procedures, if necessary, when in breach of that.

By any stretch of the imagination, it is quite loose in the areas of dental hygiene, orthodontics, cosmetic surgery and the definition of a technician. We are consistently inclined to regulate those who are already regulated and not regulate those who should be regulated when introducing legislation regulating entities and it seems to be our difficulty in this case. We have met other individuals and groups. We have also seen the difficulty and damage done to people by those who are not fit to practice and should not be practising.

We have a variety of legislation underpinning regulation, including the Medical Practitioners Act and the Nurses and Midwives Act. I always thought the difficulty we had in regulating dentistry was in defining dental technicians, cosmetic surgery and cosmetic dental interventions. Those grey areas will be very challenging in the years ahead. As we have seen in other countries almost anybody can put a plaque on the wall and claim to do cosmetic surgery and cosmetic dentistry. Much of it is very invasive and potentially damaging to people.

That highlights all the obvious stuff but within that, how can we ensure that the legislation governing enforcement of fitness to practice, medical misadventure, etc. can encompass all those who are practising? We need to ensure they come into the system and are regulated. If they are not regulated, they are no longer in the system at all. The Dental Council of Ireland has almost no enforcement. It has no ability to inspect. What can it do to give me confidence that the plaque at the front door means a dentist at the top of the stairs? That is what people want to know. The legislation seems unclear in defining that and the Dental Council of Ireland is quite powerless in enforcing that.

Do the witnesses believe the new proposals will give Dental Council of Ireland more powers and - I am trying to avoid the term - more teeth? The bottom line is more teeth in all its facets to ensure people have confidence. I have come across cases of people who were given hope that their teeth could be resolved by special therapies, cleaning agents and all the rest of

it, and it has worked out tragically. They then need to head back to dental hospitals in Cork to try to rectify all these issues.

Most people believe when they see a doctor's surgery that there is a good chance there is a doctor behind it. However, there are question marks when it comes to dentistry and that issue needs to be addressed once and for all. We have one chance to do it now. I ask the witnesses to highlight the key facets they have in their presentation and to give confidence to the public that we have integrity in the profession in all its aspects. I do not doubt the Dental Council of Ireland but it needs to ensure it is enforced.

**Deputy Catherine Byrne:** I welcome the witnesses and acknowledge the broad statement they made earlier. I have read the executive summary. Dr. Barney Murphy and I spent some time together in the South Western Area Health Board. He gave me an outline of what maxillofacial surgery was about. I had to ask him on many occasions what we were talking about. I welcome him; it is nice to see him again.

As a citizen of this country, when there is a sign over a door that indicates a GP or dental clinic and one goes through the door, one leaves one's health in the hands of the people behind that door. When I go in I want to see a welcoming place, a clean place. I want the people behind the desk and those doing the surgery to be professional and to know what they are doing. That starts from the time one walks into any surgery and how one is treated by the receptionist.

In my experience, in some of the places I have attended over many years that has not been the case. When I had young children, they were sent to the local health centre for examination of their teeth through the school. I always found them very welcoming people, if not welcoming places. Certainly I had no difficulty with the professionalism of the people involved in polishing teeth, etc., but the state of the premises left a lot to be desired. Thankfully, things are changing in that regard with new primary care centres locally, which have helped.

There is nothing in the summary with which I disagree. However, I suppose the witnesses are here because they believe the legislation, as proposed, will not cover some of these things. That is something for the committee to identify and address.

On a daily basis, we hear advertisements on radio and television promoting other forms of dentistry abroad. People on these advertisements outline their great successes but I, and other public representatives, hear of the damage that can be done to people when they travel abroad not very far from our own shores. I have a fear about people not being professional, whether in this country or elsewhere.

I do not have much to add. I am not a dentist, thank God, or a medical professional. However, I believe that someone going into a clinic should be able to put their confidence in the medical team. Everything should be above board and professional. Some people are being seriously damaged, not only through malpractice but through people claiming to be professionals when they are far from professional. The Government and this committee need to seriously look at how to identify these people and take them out of the system, as Deputy Kelleher said earlier. I thank the Dental Council of Ireland for its presentation and for taking time out to come here this morning.

**Dr. Eamon Croke:** Before I answer individual questions, there is a common theme which is close to the heart of the Dental Council of Ireland. The committee members have all talked about the protection of the public, which is absolutely what we are about.

To address Deputy Ó Caoláin's points about those entitled to advertise or perform the treatment they offer, in the policy issue statements from the professional regulation unit, which the Deputy has a summary of, there is a break-down in thought - on the one hand, it has accepted that regulation, licensing and inspection of practices have to take place and, on the other, it will quite severely limit the number of people registered. That brings us back to the problem we have at present and back further than that. We will go back 30 years because people such as dental hygienists - whom the members highlighted - may or may not be on the register now but they would not have been on it then. The problem will get bigger unless registration is combined with the licensing process for premises and the inspection of premises. It requires that joined-up thinking. In our view, there is no other way of doing it.

We are aware of the cases to which the Deputy alluded. As the Deputy will appreciate, *prima facie* evidence must be established before a case can be taken against anybody. Where the Dental Council of Ireland has uncovered evidence, however, it has informed the Garda which has the power to go into places where we believe illegal practices are being carried out. The Garda brought a successful case against an individual who was practising illegally in the midlands some years ago. Around last April there was a case of someone practising illegally. Initially, this person was in charge of the practice. We believe it is possible to have a non-dentist in charge, provided the practice is regulated and someone can inspect it to ensure that proper procedures are being carried out. The person to whom I refer suddenly started to practise. By the time that became obvious, the Garda was informed but the individual was gone.

We share the Deputy's concern and frustration. For a lay person, the Deputy does himself down to an extent. He is very well informed and I thank him because he has presented a very good reason for bringing the new legislation forward quickly. The existing Act is 30 years old, is grossly out of date and does not protect the public. In our written and oral submissions, and in the submissions to the Department, we have consistently looked for those powers. We believe we are well positioned. When an inspector goes into these places, he or she will find problems not only with regard to the regulation of premises but also in respect of the behaviour to which Deputy Catherine Byrne alluded. It is important that those who carry out inspections possess the skillset to examine all aspects.

On advertising, the registrar has done work with *The Golden Pages* to try to ensure that it is very obvious that clinical dental technicians, CDTs, are qualified and registered to carry out their work. One of the difficulties that has arisen is that we do not know how many there are. I commend the work of the Dental Technicians Association of Ireland, DTAI, which has spent a great deal of its own money in preparation for going onto the voluntary register and in trying to identify both those who are operating in this area and the individuals who are in possession of qualifications in any form. The association has been surprised by what it has discovered, even though its members are involved in the profession. The Dental Council of Ireland would be very concerned if legislation gave *carte blanche* to everybody who had acted illegally to join the voluntary register without any assessment of their ability or skills to qualify for inclusion on it.

This relates to the points raised by Deputies Kelleher and Catherine Byrne that people need to be confident that when they walk into a premises, the person there is ethical, skilled and professional in approach. In the voluntary understanding with the DTAI, the Dental Council of Ireland has agreed that a step would have to be taken to prove the practitioner had a level of skill and expertise and that an assessment would be carried out if the person did not have the required documentation from a dental hospital, City and Guilds or from FÁS or AnCO, the

training council, which in years past ran courses. We would look for that. It is very important that committee members, as public representatives, are mindful that “grandfathering” individuals who have no training will not encourage the necessary confidence that Deputies Kelleher, Catherine Byrne and Ó Caoláin have sought.

In response to Deputy Kelleher, the Dental Council of Ireland has developed a scope of practice to identify those who should be in the register. We know the roles people can carry out. That is very clearly laid out, for example, a dental technician can do the fabrication and the supply of dental appliances but not the fitting, whereas a CDT can do the fitting, provided there is no interference with living tissue. The scope is relatively easy to work out if we know who are the individuals. That goes back to a general concern that the Deputies share about identifying who can do this and whether the person is qualified to do it.

Deputy Kelleher made several references to cosmetic procedures. The Dental Council of Ireland produced a code on non-surgical cosmetic procedures very early on and in the face of some opposition because wherever large interests are involved, as they are in the cosmetic industry, one faces considerable pressures. We have defined where a practitioner can use certain materials, such as Botox, off-licence because they have a function in health care. We have distinguished between the cosmetic and non-cosmetic sides. That also went through the National Adult Literacy Agency, NALA. We invite the public to look this up. For example, Deputy Byrne can look up the Dental Council of Ireland website and see in plain language what she can expect from her dental health care professional when she comes for treatment. We tried to bring in the public. We did that with our ethics and display of fees documents to let the customer see what to expect. We encourage the committee to do that.

In respect of to whom the committee and Department should listen, all voices carry some weight but on the basis that we are transparently in the business of protecting the public, a statement the lay members of the council would support - as they did to the Minister whom we met recently - perhaps, with respect, our voice should carry more weight. We have the experience and we stand up to scrutiny. We are, and are willing to be, accountable for the actions we take. I hope our submissions to the Department and to the committee today will be given some extra weight in that regard. We will only sort out where the grey areas are when we marry registration with inspection and licensing. That is the only way around it.

I agree with Deputy Catherine Byrne. Whenever I put trust in somebody else, I want to know that person has a standard and I want to be treated fairly and with respect. The various codes of practice and ethics the Irish Dental Council has produced is very important to that.

The Irish Dental Council is a founder member of the International Society of Dental Regulators. Our registrar is chairman of the society, which suggests we are held in high standing abroad. It is very important to us that we show leadership in order that the public can have confidence in our remit under the current Dentists Act but also that they will understand we are trying to make matters better, and we hope to achieve that. We have shown leadership also in terms of the profession. It is to the credit of those in the profession that they have come with us without kicking and screaming because the proposals we have made in our codes are seen to be proportionate and effective, and they are welcome. The display of fees, which is an early item we brought in, has been very well received not only by the public but also by the Office of Fair Trading in the United Kingdom, which has held it up as an example of how professionals should interact with the public. I agree with the Deputy that it is about standards as well as skills. It is about being treated as a human being.

Dental tourism is a fact of life. Even with the National Health Service, which has an accessible, relatively cheap form of dentistry, dental tourism is still rife in the UK. The previous Irish Dental Council produced a document called *Choosing a Dentist at Home or Abroad* which sets out for the public what they should look out for, not just when going abroad for treatment but also in terms of dentists and all dental health care professionals registered here in terms of standards and that they will work with them to ensure they get the service they want and that they are treated as they would want to be treated. Those are the areas we will continue to develop with, I hope, the support of legislation, and I believe the skillset lies with the Dental Council. The goodwill of the dental council is very much to continue the work we are doing, but to do it better. We need a new dental Act to do that, and we need it quickly.

**Deputy Billy Kelleher:** When we are discussing the proposed new dental Act and regulation, which we all believe is required, enforcement and so on goes with that. In terms of the perspective of members of the public, they want to have confidence in the profession but also value for money. They want reasonably priced dental services. When we regulate to the point where we are trying to protect the integrity of the profession, often it comes at a cost, but equally when we start to protect the profession or give it an advantage over anybody else who might want to compete, simply because they cannot register because they do not qualify means only one thing to many people, namely, dearer dentistry costs. Dental services in Ireland are quite expensive when compared with most OECD countries, particularly in the area of orthodontics. When we do regulate, if we cut out people currently providing services it will be argued that costs could become dearer for people. Does Dr. Croke see a potential loss of capacity in the system to deliver in the area of orthodontics if we regulate according to the way the council is proposing? Will there be a loss of capacity? If that is the case, the result will be increased prices.

**Dr. Eamon Croke:** The provision of services is not a matter for the Dental Council. I accept that there is a cost to regulation but everybody in this room would accept that living in Ireland is expensive. That is an important starting point when we talk about costs.

In terms of costs of regulation, regulation is demanded by the public. The daily experience of the Dental Council is that the public demand we have highly skilled individuals to carry out the work and in whom members of the public can put their trust.

I do not believe that competitiveness will be served at all by bringing in unskilled people to carry out a job. All that happens in that case is that costs increase because indemnity costs will increase, and Ireland has very high indemnity costs. It goes back to issues such as the foundation training. It is a question of getting the skills level increased from the outset.

In terms of illegal practice on the denturist side, it is important to note that the Dental Council has put in place a clinical dental technicians register. The scope of practice and entry to it is well set out and it is reasonable. It protects members of the public when they are exposed and attends people who provide the service to them.

It is important for the committee to understand also that there is a training course in the Dublin Dental University Hospital. One can achieve the training levels one wants if one were intent on going from illegal practice to legal practice. That is the history there, and we have been encouraged by those who have taken the decision to go from illegal to legal practice, but there is a moral dilemma in grandfathering somebody who ignores the fact they are acting illegally and then telling them they can get on with it now. With regard to all the Deputy's concerns, that will serve the public very poorly if that were to happen in the future. There is a means by which to go legal, and I would encourage those in illegal practice to do it.

**Deputy Caoimhghín Ó Caoláin:** It is clear from Dr. Croke's contribution that while the council has a voluntary register for dental nurses, the voluntary register he proposes in regard to dental technicians has not yet been established.

**Dr. Eamon Croke:** No.

**Deputy Caoimhghín Ó Caoláin:** Is that the case? The council is working very closely with dental technicians to establish a voluntary register. How well progressed is the council with that, and does Dr. Croke have confidence that it will be established in the short term? As I said, that is essential to get to the point of statutory registration in the event that the legislation will reflect the need.

My reading of what the drafters are thinking is in terms of independent practices as against those who are ancillary to them, that is, dentists, orthodontists - I presume - and clinical dental clinicians who are stand-alone in their respective roles and functions. The situation regarding dental nurses, hygienists and dental technicians is that these are not of themselves independent practitioners but are a part of a team working under any of the aforementioned. I do not know why that thinking has entered into this in regard to dentistry in the widest sense. Registration is an essential part of a range of other areas across the health sector and no such distinction is being made. Why does Dr. Croke believe such a distinction is being made between the referencing I have made to independent practices as against support staff? I am very much of the view, and I welcome the clarity of Dr. Croke's contribution, that it is an objective shared by this committee and the Dental Council. As a Deputy, I have a degree of privilege which the delegates do not enjoy. I do not propose to name anybody, but there have been disturbing high profile cases in this area, including one which involved very objectionable behaviour on the part of a practitioner. This is a serious matter that I have no doubt gravely worries, annoys and vexes practitioners holding to the highest standards. How does the Dental Council of Ireland of Ireland react when such cases present, given that, as mentioned by Deputy Billy Kelleher, as things stand, it does not have the power to properly engage to uphold the highest standards across the profession? I would welcome some commentary in that regard, as we cannot ignore this issue. This is the first opportunity we have had to speak about it in this way. I do not want to leave this room regretting that I did not ask the relevant questions. I have put the question in the most appropriate way that will, I hope, allow for comfort in terms of our exchange.

On the issues of registration and regulation, particularly voluntary regulation of dental technicians, the general experience across the board is that standards improve as a consequence of regulation. This is something that will unquestionably be shown in the case of dental technicians. Those who are qualified and committed to the future of their chosen career path surely should not hold back in the interests of some who are not prepared or willing to move forward. I would like to know why we do not as yet have voluntary registration. Are there people who are applying a brake out of selfish interests as against the collective importance of enhancing their particular role?

**Dr. Eamon Croke:** On the voluntary register, the point had been reached where we had agreed to an assessment. The Dental Technicians Association of Ireland had identified hundreds of dental technicians who were willing to be involved in the scheme. The Dental Council of Ireland had identified, by way of an assessment carried out by the Auxiliary Dental Workers Committee, chaired by Professor Nunn, that approximately one in eight dental technicians had no proof or evidence of their educational qualifications or skills. We also worked with the Dental Technicians Association of Ireland on the issue. The summary policy was then issued by the Department and everything stopped. In fairness to the Department, that happened by accident

rather than by design. In the past two weeks everybody stood back, waiting to see what would happen next. An early green light from the Department to progress the development of the register and encourage those without skills who want to become involved to register would be welcome. There are multiple reasons for putting the register in place, including the identification of technicians, raising standards and preparation for the future. It is important that people be given time to prepare to come on board to work to one set of codes in terms of standards. That would be a fair way of doing things. People expect inspections to be introduced. It is the one thing everybody across the profession has done, but, again, time is required to do it.

Another reason the Dental Council of Ireland was keen to do this was we knew that when mandatory registration was introduced, bringing all dental nurses and dental technicians together would involve a large body of work. Having a large number on board in the context of voluntary registration would be helpful. Also, they have representation at the Auxiliary Dental Workers Committee such that their voices are heard in the Dental Council of Ireland. That is hugely important. Unfortunately, the registration process has halted, despite the fact that we were close to agreeing a final set-up. However, as I said, that was not by design and it is hoped the situation can be adjusted quickly.

On the reason independent-only practice is to be taken on board in registration, it is an issue of perceived risk. In other words, the risk is perceived to be relatively low for other members of the dental team. The evidence suggests that in dentistry - working in the mouth - if a person is unskilled or not obliged to attain standards, the risk of injury or life-threatening or life-altering diseases is very real. Nobody here would agree that that risk was low or non-existent. The capacity for it increases dramatically when we get into the grey area of who is doing what because, as I mentioned to Deputy Billy Kelleher, the scope of practice is out the window, the attitude being that because a person is not registered, he or she can do the work and nobody will know. With registration comes the enforceability of standards. As stated, all members of the dental team and registered dental premises should be subject to the same sanctions and fitness to practise standards. That is important.

We are aware of the high profile cases. We feel inept, angry, frustrated and annoyed with the Department about the delay in the introduction of the dental Bill which will allow us to get on with the business we want to carry out. In cases in which evidence is available we provide it for An Garda Síochána. It would be a mistake to sit around and do nothing. That would be the worst possible position for a dental council to find itself in. We regularly notify the Garda about our concerns. However, doing something about an issue is very difficult because the Garda needs to have a reason to take action. It comes back, therefore, to the ability to go into a practice and knowing what one is looking for. A garda in walking through the door of a dental practice, bar catching an individual red-handed doing what he or she should not be doing, would not because of patient confidentiality and data protection issues be able to even look up a record. New laws are required to address these issues. In terms of how we feel, we are distressed, annoyed and angry and get it in the neck from the profession. We can also get it in the neck from members of the public who contact us to tell us what has happened to them and the distress it has caused. Our inability to help is hugely frustrating. It lets down what the Dental Council of Ireland is good at. We are good at what we do; we just need the powers required to support us in what we want to do. I appreciate the Deputy's comments in terms of the need for clarity. I hope the position is clear. To us, it is very clear. We have lived with this day in and day out. In terms of our functions, we know when something is not good enough and we also know what we should be doing. In all honesty, we would like to be able to do tomorrow what we know we need to do.

**Chairman:** I thank the delegates for a very informative and thought-provoking presentation and question and answer session. This has been a very riveting meeting. I also thank Deputies Billy Kelleher and Caoimhghín Ó Caoláin for their engagement with the delegates.

**Deputy Caoimhghín Ó Caoláin:** I ask that the transcript of the meeting be furnished to the Minister and the Department, with a recommendation on the points highlighted, including the earliest possible publication of the new Bill.

**Chairman:** Is that agreed? Agreed.

*Sitting suspended at 10.50 a.m. and resumed at 11.15 a.m.*

### **General Scheme of Adoption (Information and Tracing) Bill 2015: Department of Children and Youth Affairs**

**Chairman:** We will now deal with the adoption (information and tracing) Bill 2015. The Bill has been sent to us for pre-legislative scrutiny and we will now meet the representative of the Department and Children and Youth Affairs. I welcome Ms Noreen Leahy, principal officer in the adoption policy unit, and Ms Anne Marie Kilkenny, assistant principal officer.

This is the opening session of the committee's work on the pre-legislative scrutiny of the Bill. It is an opportunity for us to hear from and invite those interested in the issue and for them to have their say on this important, sensitive and long overdue legislation. We all welcome the publication of the heads of the Bill. Over the next number of weeks the committee will hold further hearings to consider the draft legislation and will meet a variety of stakeholders with different views. The Minister for Children and Youth Affairs, Deputy James Reilly, will come before the committee in the third session, on 22 October, and will respond in detail on the issues that have been raised during our hearings and discussion. I hope our scrutiny will be of use and benefit to the Department and also to those interested in this important and complex legislation.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given, and they are asked to respect the parliamentary practice to the effect that, where possible, they should not comment, criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

**Ms Noreen Leahy:** I thank the joint committee and its Chairman, Deputy Buttimer, for providing the Department of Children and Youth Affairs with the opportunity to brief the committee on the heads of the adoption (information and tracing) Bill 2015. The Minister's overall policy objective for this legislation has been to provide access to as much information as possible to adopted persons within constitutional parameters. A particular challenge was faced in the case of adoptions in the past in reconciling an adopted person's request for information about his or her identity with the constitutional right to privacy of his or her birth parent.

I will now turn to the main features of the Bill. The heads of the Bill provide for the establishment of the adoption information register on a statutory basis. The register will be a gateway for those seeking adoption information and tracing services. It will allow an individual to indicate his or her preference regarding contact or the sharing of information or both. Tusla, the Child and Family Agency, will be responsible for the operation of the register and the provision of information and tracing services. Tusla will facilitate and support contact between parties, if desired. Support and guidance will be offered to all persons who request contact or the sharing of information or both. The Adoption Authority of Ireland will be responsible for collecting, restoring, preserving and safekeeping adoption records for all domestic and intercountry adoptions, including information relating to informal adoptions and incorrect birth registrations. The heads of the Bill set out the information that must be retained by the Adoption Authority of Ireland for future adoptions and, in so far as it is available, for past domestic and intercountry adoptions, informal adoptions and incorrect birth registrations.

On the information to be provided for future adoptions, for all adoptions effected after the commencement of this Bill, provision is made for Tusla to provide a copy of a birth certificate, an adoption order and other information to an adopted person following an application by the adopted person. Birth parents will be notified of the proposed release of this information to applicants at least 12 weeks prior to the release of such information. There is a presumption in favour of the disclosure of information unless there are compelling reasons, such as may endanger the life of a person, for the non-disclosure of adoption information. Tusla will consider same and decide if the information is to be disclosed. The birth parents and adoptive parents will be advised of these arrangements by Tusla and the Adoption Authority of Ireland, as appropriate, during the assessment and the adoption process.

Moving on to information to be provided for past adoptions, the right to privacy has been recognised by the courts as one of the unspecified personal rights protected by Article 40.3 of the Constitution of Ireland. A particular challenge was faced in reconciling an adopted person's request for information about his or her identity with the right to privacy of his or her birth parents. One key provision in the Bill is to give an adopted person aged 18 or over, who was adopted prior to its commencement, a statutory entitlement to the information required to apply for his or her birth certificate. The adopted person will be asked to make a statutory declaration agreeing not to contact the birth parent. The inclusion of provisions regarding a statutory declaration were developed to provide for a balancing of the rights of adopted persons to information about their identity and the birth parents' right to privacy. There, of course, will be no requirement for an adopted person to sign a statutory declaration where birth parents have indicated a preference for contact or have consented to the release of the information or where it has been established the birth parents are deceased. At all stages of the process, both the birth parent and the adopted person will be offered appropriate support and guidance by a social worker.

The heads of the Bill also provide that information that relates solely to an adopted person, such as information about time spent in a nursery or early personal medical history, will be provided to the adopted person as soon as possible. In addition, information that focuses on the adopted person but which may incidentally include non-identifying information about his or her birth parents, such as personal history or family background, also can be provided. In releasing such information, Tusla will ensure the birth parents' identity or contact details or both are not disclosed. The heads of the Bill provide that additional identifying information will be disclosed to an adopted person with the consent of the birth parent concerned. This includes specific information requested by the adopted person and other information that could identify birth parents. The heads also provide for circumstances in which this information can

be provided without consent such as where, following reasonable steps having taken by Tusla, the person cannot be located or where the person to whom the information relates is deceased. The heads of Bill also provide for a court procedure to dispense with consent where the person concerned cannot give consent because of incapacity to so do. In addition, provision will be made for an adopted person or a birth parent who is not satisfied with the outcome of the process to appeal to the court.

As for the awareness campaign, there will be a period of one year after commencement before an adopted person will have a statutory entitlement to the information required to apply for his or her birth certificate. However, it should be noted that during this time, this information and any other information which might identify a birth parent will be provided to an adopted person where the birth parent consents or where the birth parent is deceased. During this initial period, there will be an extensive high-level information campaign to publicise the provisions of the legislation and to encourage adopted persons and birth parents to enter their details on the adoption information register. They also will be advised to engage with Tusla's information and tracing services if they are considering sharing information or having contact or both with a person from whom they were separated as a result of an adoption. The campaign also will outline that an adopted person aged 18 years or more will be entitled to receive the information required to apply for his or her birth certificate subject to the adopted person signing a statutory declaration. Birth parents also will be made aware they may indicate a preference of no contact at present on the adoption information register where they do not wish to have contact with the adopted person at present.

The heads of the Bill provide that Tusla will provide a person whose name is entered on the register of intercountry adoptions with all information held on record where Tusla has been given approval by the authority to disclose the information to the applicant. Where the adopted person seeks additional information, the authority may seek this from the central authority of the country of origin. Birth parents of children who are subject to intercountry adoptions also may avail of information and tracing services from Tusla. Provision is made in the heads of the Bill for persons who were the subject of informal adoptions and incorrect registrations to apply to have their details entered on the adoption information register to avail of information and tracing services. Informal adoptions include persons in a long-term family care arrangement where a child was in the custody of a person other than his or her parent or guardian and where no adoption order was effected. Incorrect registrations include persons who were the subject of an incorrect registration of a birth under the Civil Registration Acts for the purpose of registering as a parent a person who was not a parent of that child. The heads of the Bill also provide that birth parents of people who were subject to such arrangements may apply for information in the same way. The heads of the Bill provide that persons who are subject to these arrangements can be provided with information, where available, in a similar manner to the provision of information to adopted persons whose adoption was effected prior to commencement. However, it should be noted that many of these arrangements operated in conditions of great secrecy and there rarely were any contemporary records of these events. In such cases, there may be very little information available or very limited information, if at all. The heads of the Bill also provide for the sharing of information about a child who was adopted between birth parents and adoptive parents, where both parties agree. Once again, I thank members for the opportunity to brief the joint committee today. I hope the information and briefing material provided has been of assistance to the joint committee and I am happy to address any questions members may have.

**Chairman:** At the outset, I thank Ms Leahy and all the staff who are working on this Bill

for the amount of work they have done to date in this regard.

**Senator Jillian van Turnhout:** The witnesses are welcome and I thank them for-----

**Chairman:** I should apologise on behalf of Deputy Anne Ferris, who cannot be present this morning and who has sent her apologies. She will attend other meetings.

**Senator Jillian van Turnhout:** She will. I thank the witnesses for all the work to get the legislation to this stage. It is difficult when we are on the eve of whenever the election will be. I had really hoped this measure could have gone through but at least the work members will do in these hearings should mean it will get an early start in the lifetime of the next Government. I have a few issues on which I seek to ascertain the underlying thinking. Obviously, this is an issue on which I have worked to a considerable extent, given that I worked with Senator Power on a Bill on this issue that has gone through all Stages in the Seanad. I believe we have gone further on the issue of the right to identity and while I understand the Department's concerns regarding the Constitution, I do not agree. I am sure this is a matter the joint committee will explore in its hearings but I do not agree with the consensus on the Constitution regarding the right to privacy. It has not been fully tested in the courts. We, as legislators, must ensure we put into legislation what is right.

One issue I have is what will constitute a "compelling reason". I have found it difficult to understand what could be a compelling reason. Do the witnesses have an example of a compelling reason? I feel very strongly about it. I would start from the position that everybody has a right to identity. We have stigmatised adoption beyond belief, which is not the case in other jurisdictions such as the UK. We need to unpack the issue of the right to identity. While we are examining the historic situation, a child being adopted today still does not have the right to discover his or her identity when he or she turns 18. It is very wrong and shows how far we still have to go.

Wearing my hobby hat of researching family history, I can find most birth records if somebody has a name that is not very common or usual. If I have money, I can go to the General Register Office and get as many birth certificates as I want and turn up on as many doorsteps as I wish. Nobody wants adopted people to be forced to turn up on doorsteps and ask people if there is a chance they might be their parents, based only on birth dates. We want information and tracing in order to allow people to make contact. Nobody I have talked to who has the hunger for their identity wants to turn up on somebody's doorstep and embarrass them. They are looking to fill the empty gap they have, to be able to know who they are and where they came from. It is an issue we still have to explore.

I also want to know about the records that are held, the processes there will be, and how many records have been handed over so far. Do we know how many records have been handed over? When former Senator Martin McAleese was writing the report on the Magdalen laundries, the different charities gave him records, but he handed them back. How is the State collecting those records, especially records from outside the State? Many children went to the US. One of my greatest privileges during this term as a Senator was to meet Philomena Lee, whose child was sent to America for a "better life". This brings me to the issue of consent. We have over-interpreted what is meant by consent. Anybody who has read Philomena Lee's book or any of the forms will know that what mothers signed to was not consent. It was not consent when they gave up those children. While we have the idea that we are basing everything on the right to privacy, they never agreed to it. We must be very careful how we interpret consent.

I have a further issue, which I will explore in the Bill and which I tried to bring up under the Civil Registration Bill. It relates to the birth certificates we produce now. A parent of an adopted child can get a clean birth certificate which in no way identifies that the child is adopted. While it is a side issue to the Bill, it is very relevant to the issue and I will raise it. On the statutory declarations, Claire McGettrick from the Adoption Rights Alliance said, “It is important to separate the issues of information and tracing; adopted people are seeking a statutory right to information as opposed to a statutory right to a relationship with their natural mothers”. This statutory right to information and tracing is what we are all seeking and what we want to experience in the Bill.

I commend the Department officials on coming forward on the Bill and trying to push it as far as they can. I hope, in the hearings, we will try to push it further. I have met so many people who are seeking their identities, including children who were given up for adoption and parents - mainly mothers but some fathers - who gave, or were forced to give up, their children for adoption, or whose children were given up for adoption unbeknown to them. The right to identity is very clearly with the young person and child and I will seek to ensure that we balance the rights. However, in balancing rights, we need to ensure we do not overinflate the right to privacy. While I am very respectful of people’s privacy, a right to identity is central to the UN Convention on the Rights of the Child. This is what we will be working towards in the hearings.

**Deputy Robert Troy:** I thank the Department officials for coming here and giving an overview of this important Bill. All parties have been seeking it during recent years, and it is welcome that it has reached this stage and that we have an opportunity to tease out some of the issues. The kernel of the issue is that for future adoptions we are creating a template and there will be no issue regarding right to identity. Once we set it down, anybody who enters the adoption process will know exactly what they are getting into. The source of the uncertainty and the reason it has taken so long to come to this stage is the issue of retrospective adoptions and the need to bring forward a proposal that will not fly in the face of the Constitution. One of a person’s fundamental rights is the right to his or her identity, and nobody can argue with it.

Do the signed declarations apply to an adopted person? Do the declarations state that, following the 12-month period, an adopted person will not contact his or her biological parent if the biological parent has explicitly said he or she will not make contact? Where the parent and child want to meet and have contact, I presume there will be no objection or issue. It is only trying to bring forward a proposal where there is an expressed wish by one party that he or she does not wish to be contacted by the other party. Could the officials clarify this? I have some concerns about the 12-month lead in. For many people, this is a time sensitive issue, given that their cases may date back to the 1930s and even earlier. Time is of the essence in terms of seeking their identities and having an opportunity for contact, if both parties wish it. Did the officials consider a shorter lead-in time period, perhaps six months, with a more intensive and extensive media campaign?

Regarding the implementation of the legislation, Tusla’s capacity to manage it will be crucial. It will put considerable additional pressure on Tusla. People who have a much greater knowledge of the area than I have told me that, even with the restricted information and tracing service available in Tusla, some people are waiting up to three years to have their cases heard. If this is the case, while it is all very well bringing in the legislation, if we do not have the means to put it into effect, we will have problems.

**Senator Colm Burke:** I thank the witnesses for a comprehensive presentation. Has the information campaign been planned already and what form will it take? One of the major con-

tacts in healthcare is the GP service. Is there a format set out for how the information will be disseminated? I was surprised, a number of years ago, to learn that maternity hospitals do not seek identification from their patients. A person can check into a maternity hospital under an assumed name. I have heard of instances when that has occurred. My understanding is that, to date, maternity hospitals still do not have a strict and common code across all 19 maternity units nationally regarding proof of identity being furnished. Going back over the years, it was an issue that some adoptions took place via informal arrangements. I wonder if that issue has been examined. I heard that as recently as the last six months that someone was in a hospital where a patient had two or three medical cards under different names. Ensuring that proper identification is furnished in maternity units is also going to be an issue when we have people coming in from abroad. Has that issue ever been looked at? It was an issue I remember having to deal with quite a number of years ago and things do not seem to have changed in any way.

**Senator Averil Power:** Like Senator van Turnhout, I welcome the fact that we are at the point where heads of a Bill are before us. It is an issue I have been working on for some time both as a Member of the Oireachtas and as an adopted person myself. It is something that has been promised for a long time and finally we are at the start of a legislative process at least. It is, of course, positive. I also welcome the fact that the Department has indicated that there will be a somewhat proactive tracing service and advertising campaigns to back up the legislation and I would like more detail on those matters. I also welcome the fact that heads of the Bill before us go further and are more positive than the Government had been indicating even up to quite recently. When the Minister, Deputy Reilly, was in the Seanad to discuss the Bill Senator van Turnhout and I put forward earlier this year, the position he outlined from a Government perspective was much more conservative. People who were adopted in the past would not have a right to information, whereas those adopted in the future would. It would not address the 50,000 to 60,000 of us adopted in the past. There would be no point to that really because there are very few domestic adoptions in Ireland now. It really is about redress for adopted people who were separated from their parents and for women who were forced to separate from their children during a really dark part of our past. We have an opportunity now to get it right for all of those people and to do the humane and generous thing. We must be generous and ambitious in doing this because it means so much to people. We must go as far as possible.

In that context, I have concerns along the lines of those raised by Senator van Turnhout with regard to what is meant by the term “compelling reasons”. I am nervous about that in particular because I do not accept that there are any reasons an adopted person should be denied his or her birth certificate. I accept that a natural parent’s current contact details should only be released with that person’s consent, but we must separate the two issues of identity and contact. While it is fair enough not to give out someone’s current contact details, I do not accept that there are any situations in which the adopted person should be refused access to the basic information in his or her birth certificate. In trying to balance the two, one right is rendering the other at nil. That is not acceptable. When the Government announced the Bill earlier in the summer, it was stated that the circumstances would be limited, but naturally there are concerns. I have spoken to some legal people and I understand the committee will hear from Dr. Conor O’Mahony and Dr. Fergus Ryan about the matter. There are concerns among the legal community that this could open the door to legal challenges in that we will really only know what constitutes a compelling reason following a court case. That is not acceptable. As such, I will be arguing that the clause should be removed. I hope that in coming before the committee the officials and the Minister have an open mind in this area in terms of listening. Obviously, they have one set of advice on which they are acting and of course the Attorney General has a role to play. However, I hope the officials will keep an open mind in listening to alternative views on prospective legal

balances being put forward by Dr. O'Mahony, Dr. Ryan and others.

The statutory declaration has been criticised by groups representing both natural parents and adopted people. The First Mothers group, which is due to come before the committee, has criticised this just as strongly as those representing adopted persons. It seems to reflect a negative assumption that adoptees are irrational and insensitive and that we want to enforce some kind of pain or inconvenience on our natural parents, which could not be further from the truth. When I was looking for my mother and preparing for us to meet, I was more conscious of her needs and how it would affect her family and my birth siblings who did not know about me yet and how we would figure that out. I was really concerned about the memories it would bring back for her of a difficult time in her life. I know from talking to other adopted people that they feel the same. It seems to me to be unnecessary and offensive. When one approaches this as a legal and legislative issue, one needs to be conscious that for many it is a very sensitive human issue. That is why people are so upset by the statutory declaration. There is no doubt that there will be situations where an adopted person will wish to have contact while the natural parent will not. There will also be situations where a natural parent is reaching out and the adoptee is not interested. It is my strong personal view that in the vast majority of those cases people may be disappointed but they will accept the situation. They might hope it will change at some point, which often happens. Many natural mothers decide after a spouse or other person they have not told has passed away that they want to have contact at that later point. Those options should always be open.

We need to start with the majority of cases and legislate for those. In the majority of cases, there will not be a problem and we can let our other law look after the rest. In relation to any form of human behaviour, whether it is adopted people or others, the potential arises for harassment or situations where people do not respect boundaries. However, we have existing laws to deal with that and, as such, I do not know why special provisions are needed in this case. As Senator van Turnhout already pointed out, the Bill will make unwanted contact less likely. The unfortunate thing currently is that it is very difficult to find information oneself, but it is possible. As a result of the fact that there is no intermediary, the only way people can know if contact is welcome is to reach out and ask. That is not ideal. Given that the Bill will make that less likely, let us assume that for most this will be a positive experience, reduce the likelihood of unwanted contact and that existing legislation can deal with any difficulties which arise.

Resources will be crucial. It is extremely important to ensure that the necessary counselling and support services are there for people and that there is no backlog. Deputy Robert Troy referred to the existing backlog in respect of social worker appointments. We need to ensure that people who go through this process are not delayed because of a lack of resources but also that they have the supports they need. It is up to the person whether to engage in counselling or other services, but the offer should be there. It is very important that the contact letter that goes from Tusla to the adopted person or the parent is sensitively worded and is not - and I mean this in the nicest possible way - worded in Civil Service speak or legalese. It should not be technical as Government documents often are having been written by lawyers to cover all the technicalities. This is a personal issue and the letter asking people if they wish to have contact must be written in a sensitive, positive and supportive way and must make clear that no contact is not no contact for ever but rather just for the present. It will be very important to get all that right.

I have a question on illegal birth registrations. The witnesses stated that an effort will be made to bring records together to help establish what happened with illegal adoptions. The Department said in the opening statement that those who were illegally adopted can apply for

information. What about those who do not know they are illegally adopted? This is a huge issue because people's birth records were falsified. Will the Department examine the records in a proactive manner? If ledgers or registers - such as, for example, that belonging to Nurse Doody which was uncovered some years ago - recording details of babies, their birth parents and, even though there were no real adoptions, their so-called adoptive parents are found, will the Department reach out, contact the people involved and make them aware of the situation in a sensitive way in order to help them to re-establish their links with their past? Unfortunately, we do not know how many countless people there are across Ireland who do not even realise that they are adopted. I thank the Chairman and appreciate that he has given me a bit of time.

**Deputy Catherine Byrne:** I am sorry I missed the presentation but I did read through it. I will read out head 11, as I want to ask a question on it. It states, "The agency shall offer support and guidance to a person whose name is entered on the register." What does that mean? Can Ms Leahy give us an example of what that support and guidance will be?

Under head 12 it states, "Fees will be chargeable for services provided under the legislation." How much will those fees be and how will they be calculated? Why should we be charging fees for people who have gone through enough in their lives and who should not be charged for seeking or obtaining proper information?

**Ms Noreen Leahy:** I am delighted that there is such interest in the Bill. Starting off with the constitutional right to privacy, our legal advice is that the birth mother's right to privacy stems from Article 40.3 of the Constitution, which states:

1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

As I said earlier, this issue posed a particular challenge for us. We sought to identify a way of reconciling an adopted person's request for information about his or her identity with the right to privacy of the birth parents. We recognise that the birth certificate is an important piece of identifying information that is shared by the adopted person and his or her birth parents. It can be distinguished from other identifying information which can be more readily characterised as belonging to one or the other.

However, for the Bill to be legally sound it must include safeguards to protect the constitutional right to privacy. We consider that the safeguards proposed in the Bill, namely, the awareness campaign, the statutory declaration, the offer of support and guidance, and the possibility of an appeal to court, provide sufficient protection of the birth parents' constitutional right to privacy, and balance the right to identity information and to ensure that the birth parent has a right to be left alone. As Senator van Turnhout mentioned, we accept that we are providing a right to information, not a right to contact. That is very clear.

It is known that, in practice, adopted people do in fact respect the birth parents' right, but for the Bill to be legally sound we need to have measures in place. We need to have important safeguards in place. It is our view that the safeguards proposed in the Bill provide sufficient protection for the birth parents' constitutional right to privacy.

The Department did consider the Senator's Bill which was of great assistance in developing proposals. Our advice is that it was not legally sound and for that reason additional measures

were put in place. Certainly, however, the work that was done was very valuable to us. I think we all share the same objective in ensuring that adopted people have access to as much information as possible about their identity and to get that information in a timely fashion.

We feel that the current proposal provides a practical, workable and fair balance between the adopted person's right to information about his or her identity and the birth parents' right to be left alone and to protect their privacy.

Compelling reasons were mentioned. As members of the committee know, the Bill operates on the basis of a presumption in favour of disclosing all available information required to apply for a birth certificate to people who were adopted before the Bill was commenced. As part of the safeguards, if a birth parent provides a compelling reason not to disclose this information, Tusla's information tracing services can refuse to release it. A working definition of "compelling reason" is that such as may endanger a person's life.

The Department fully recognises that this aspect of the proposed legislation requires further consideration. I am not surprised that it has been raised at the committee today. This is an area where we feel that deliberations and the views of the joint committee during the pre-legislative scrutiny can make a valuable input. The committee's views in this regard will really be welcomed and will be given close consideration.

Some 42,000 records on adoptions are held by the Adoption Authority of Ireland. Every legal adoption has a file record in the authority. The Department of Foreign Affairs and Trade has given the US records for US adoptions to the National Archives which now holds them. Tusla has the vast majority of records which are held in its care. A small number of adoption agencies still hold records. We are working on moving all those records. While the heads of the Bill provide that the Adoption Authority of Ireland will have ultimate control for managing and safeguarding the records in the long term, it is set out step by step how it would do so, and it will be a very organised and managed process.

The Department has established a joint adoption records working group with Tusla, the Adoption Authority of Ireland and ourselves. Therefore, work is commencing to bring adoption records together and to ensure that they are secured. The Department recognises how important these records are to individuals, but also for historical purposes. They are very significant records, so that work has commenced in advance of the legislation.

The Department will continue to consider resource implications.

**Chairman:** I am sorry but I want to let people know that there is a vote in the Dáil.

**Ms Noreen Leahy:** The Department will work with Tusla and the Adoption Authority of Ireland to establish what resources are required. We are aware that resources are required and our discussions with Tusla have already commenced as part of the Estimates process.

The awareness campaign will get under way as soon as the legislation is commenced and it will run for a period of one year. The reason for the one-year period is to ensure that everybody is made aware of the Bill's provisions. During that time an adopted person can still apply for and get his or her birth certificate, and it can be provided once there is consent or the birth parent is deceased. The awareness campaign is part of a package to secure the rights of all involved.

Senator Burke mentioned the registration of maternity hospitals, but that is not a matter for our Department and I would not be able to comment on that.

**Senator Colm Burke:** It is an issue no one has dealt with. It is an issue that needs to be dealt with, especially now.

**Ms Noreen Leahy:** Okay.

**Senator Colm Burke:** Some 25 years ago, the vast majority were Irish people whereas now we have a lot of different nationalities using our maternity services. I am saying that there has not been any comprehensive identification requirement put in place.

**Chairman:** I propose that we suspend the meeting until after the vote. Is that agreed? Agreed. Apologies to everybody.

*Sitting suspended at 11.58 a.m. and resumed at 12.14 p.m.*

**Ms Noreen Leahy:** The next question I will address relates to support and guidance provided for, as Deputy Byrne noted, in head 11 of the Bill. The adoption information register is a gateway to Tusla information and tracing services. Everybody affected by adoption who wants to share information and have contact with somebody separated from him or her by adoption needs to apply to have the details entered on the register. The Bill provides that Tusla will offer support and guidance to anyone whose details are entered on the register. That is also in head 11. The Bill also provides that Tusla will develop guidelines to be approved by the Minister on support and guidance that can be offered. The aim is that anyone who enters the details on the adoption information register can be offered support and guidance when and as they need it. Where it is considered appropriate and helpful, a social worker may refer a person to the HSE national counselling services.

There was another question regarding fees but that is a standard provision in the Bill. We spoke to Senator Burke during the break with respect to incorrect registrations and informal adoptions. The Bill provides for people who were the subject of informal adoptions or a long-term family care arrangement where a child is in the custody of a person other than his or her parent or guardian, where no adoption order was effected. Wrongful registration relates to the incorrect registration of a birth under the Civil Registration Acts for the purpose of registering as a parent a person who is not a parent of that child. The people affected may apply to have the detail entered on the adoption information register to avail of information and tracing services. It will also provide the birth parents or people subject to these arrangements with the facility to apply to Tusla's information in the same way.

People who are the subject of these arrangements can be provided with information, where available, in a similar manner to the provision of information to adopted people whose adoption was effected prior to commencement. However, as I stated earlier, many of these arrangements operated in conditions of great secrecy and there were rarely any contemporary written records of these events. In such cases, there may be very limited information, if any. Members may appreciate that information such as a birth being incorrectly registered only arises when a person seeks information. The information, unfortunately, is very limited but we are aware of some cases and we have been looking at some of them to see if anything could be done.

We are well aware that adopted people and people in general respect each other's right to privacy. On the rare occasions when this is breached, it is often out of frustration about not having accessing to information. We note that in practice, starting a search often begins a process of breaking down the fears and worries often associated with what was, for most, a deeply painful experience in the past. The Bill aims to make it easier to get access to information and offer

support, when needed, to address fears and hopefully make those first steps towards contact. Nonetheless, to ensure the Bill is legally sound, it must include safeguards to protect privacy. The publicity campaign that will accompany the establishment of the adoption information register will help everyone affected by adoption to understand the new legal framework and give them the opportunity to state their preferences in making contact. Encouraging people to join the register will also help make it easier to share information. If a birth parent has expressed a preference for contact, information can be released straight away. Otherwise, the information required to apply for a birth certificate is released to the adopted person on signing the statutory declaration agreeing not to contact the birth parent. It is not that this is forever; they are agreeing also to seek the assistance of Tusla's information and tracing services should there be a wish to make contact in the future. This is to ensure the process is managed. The birth parent and the adopted person will be offered appropriate support and guidance by a social worker.

The Department believes these elements provide sufficient privacy safeguards. It is our view that the proposal reconciles in a practical way adopted people's right to information with the right to be left alone for birth parents.

**Deputy Mary Mitchell O'Connor:** I welcome this overview and am delighted to hear it. I know that many people were hurt in the past and spent a lifetime looking for their identity. I welcome the work that has been done and I thank the witnesses.

**Senator Jillian van Turnhout:** We can explore the policy decisions made in the Bill as we go through the hearings and we will formulate our recommendations. Will the witness explain the nature of the US records handed over by the Department of Foreign Affairs and Trade to the National Archives? What is the status of them? Are they currently being handed over to the agency? Where are they at present and how are we dealing with them? Also, where are the records that are held by St. Patrick's Guild? Are they being handed over to the State?

**Senator Averil Power:** I have two additional questions. The witness said the birth certificate will be given out but other information will only be released with the consent of the natural parent. Is it only the birth certificate or the birth certificate and some other information that can be given without consent? For example, if the natural parent cannot be contacted, what information will the adoptive person receive? Will it be only the birth certificate or will it be other information on their early care records and their time in a mother and baby home? Will an adopted person have a right to know that they have siblings? Will they be told that when they are given their birth certificate or will they only be told if the natural parent consents to them having that information? Every person is entitled to know that they have siblings so perhaps the witness will clarify that.

With regard to the drafting of the Bill, there is speculation as to when the current Dáil will finish. While I do not care when the election is held from a personal point of view, as a politician I care a great deal about this legislation. It would be an awful shame if it was not completed. It is important that a Bill is drafted as soon as possible. I am not sure if we can get it through the Oireachtas but if we are still here until next February or March, we could. The witnesses have the heads of the Bill. Is the Bill being drafted now, or does that not happen until the committee's report is finished? I hope the drafting of the Bill could be worked on now and some sections might be changed on foot of feedback from the committee. To commence the drafting *ab initio* after getting the feedback would delay the process. What is the current position on that? Obviously, the legislation is quite complicated so how long will it take to draft it?

**Deputy Catherine Byrne:** I have a question about the fees again. I am sorry to harp on

about this. I am reading the information, but perhaps I am reading it wrongly. No decision has been made about fees and what the amount will be. In many cases people who have gone through this dreadful process have been medical card holders. Will there be any type of waiver in the future or will we hear more about that as we get to the nitty-gritty parts of the Bill?

**Ms Noreen Leahy:** To start with the nature of the records, the Department of Foreign Affairs and Trade has records relating to adoptions to the United States. I do not know exactly what they are, but we are informed it might be travel documents or passports for children who have been adopted to the United States. These records are currently held by the National Archives and they will come under the remit of the Act. In fact, the Department of Foreign Affairs and Trade was keen to meet with us to ensure its records were included under the Bill.

The process of transferring the records from St. Patrick's Guild is under way. There are ongoing discussions between ourselves, Tusla, St. Patrick's Guild and the authority. That forms part of the working group that has been commenced. It is working on that. The consideration on that is happening at present and we are trying to progress it as soon as possible.

With regard to other identifying information, one can separate the information into a number of categories. While they are not all mutually exclusive, I will explain each category. It does not necessarily mean that an adopted person will come in on the first day and look for particular information, but I will explain how each category works. The first piece of information is information about the adopted person. This would be the time in the early nursery, medical information from the time of the birth and any information that is held on record. The Bill provides that it can be provided immediately to the adopted person.

The next level of information, if one can call it that, will be non-identifying information about the adopted person but which incidentally has information about the parents. One is talking about family background and perhaps some information about the circumstances of the adoption. It is shared information, but it is information that is important to the adopted person. In practice, many people when they seek information get what I would call an early life story, in which they would be told some non-identifying information about their parents. We are providing in the Bill that this non-identifying information can be provided as soon as possible. Of course, one also must ensure that it does not identify the birth parents, but that can be provided.

The next level of information would be where a birth parent has sent information to be provided to their child who was adopted. For example, if there is some more recent medical history that a birth parent has provided to be given to their adopted child that can be provided, again in a non-identifying way. There is provision for that in the Bill.

Then we move into the realm of identifying information. The first level of this would be the information required to apply for a birth certificate, which obviously identifies the birth parents. This is provided immediately with the consent of the birth parent or if it is established that the birth parent cannot be traced or is deceased. Under the legislation there is the one year awareness campaign. Once that has concluded the information required to apply for a person's birth certificate can be provided on signing the statutory declaration.

The next level of information would be other identifying information. In this situation we are getting very close to somebody seeking contact with the birth parent. At this stage the adopted person will most likely have a good level of information, so it would be information about current contact details or particular questions on which an adopted person might want information, for example, medical history or a particular question they might wish to pose. Obviously

the birth parent has to provide that information and they must consent. This is information that would not be available on record so they must consent. However, we would see that as getting very close to the stage of the adopted person seeking to initiate contact.

I hope I have explained that.

**Senator Averil Power:** Where does the existence of siblings fall in the hierarchy?

**Ms Noreen Leahy:** If it is known from the records, the existence of siblings can be provided in a non-identifying way.

**Senator Averil Power:** However, it is only in a non-identifying way. One is not entitled to know the name of one's sibling.

**Ms Noreen Leahy:** That is in terms of the information we are providing. It should be remembered that we have the adoption information register and if there is information on the register to show that there are siblings and they have registered-----

**Senator Averil Power:** And if they are not registered?

**Ms Noreen Leahy:** The register is going to change. At present, one registers as an adopted person and says one is looking for siblings or for one's birth parent. Unless there is a match on the register nothing happens until either a sibling or a birth parent registers. Then the process commences.

The new register will be proactive. When an adopted person registers, and they are not seeking the birth certificate as they have gone through all of that process, and say they are looking for siblings, the trace for siblings will commence. Similarly, if a sibling enters the details on the register, a trace will commence for that adopted person. The register will facilitate contact for siblings.

Drafting has not yet commenced on the Bill. We are awaiting the report of the committee. At the same time we are considering how best to proceed, so that may change.

There has been no decision yet regarding fees. As I mentioned, it is a standard provision in the Bill. If we had not included it, we could be in trouble down the road, but there is no decision at present.

**Chairman:** I thank the witnesses for attending and for their presentations. I thank the members for their participation.

The joint committee adjourned at 12.30 p.m. until 5.30 p.m. on Tuesday, 20 October 2015.