

# DÁIL ÉIREANN

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## AN ROGHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

### SELECT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND RE- FORM, AND TAOISEACH

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*Dé Céadaoin, 29 Samhain 2017*

*Wednesday, 29 November 2017*

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The Select Committee met at 4,40 p.m.

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Comhaltaí a bhí i láthair / Members present:

Peter Burke,	
Pearse Doherty,	
Michael McGrath,	
Joe McHugh (Minister of State at the Department of the Taoiseach).	

Teachta / Deputy John McGuinness sa Chathaoir / in the Chair.

**Estimates for Public Services 2017****Vote 5 - Office of the Director of Public Prosecutions (Supplementary)**

**Chairman:** Today we will consider the Supplementary Estimate for Vote 5 - Office of the Director of Public Prosecutions. I welcome the Minister of State at the Department of the Taoiseach, Deputy Joe McHugh, and his colleagues. I ask him to make his opening remarks.

**Minister of State at the Department of the Taoiseach (Deputy Joe McHugh):** Gabhaim mo bhuíochas leis an gCathaoirleach fá choinne an cuireadh go dtí an coiste agus gabhaim leithscéal ar son an Taoiseach. I apologise on behalf of the Taoiseach who is unable to be here.

The net Estimate for Vote 5 - Office of the Director of Public Prosecutions for 2017 is €40,676,000. The moneys provide for the salaries and expenses of the director and her staff, the cost of the local State solicitor service, fees to counsel engaged by the director to prosecute cases in the various courts and legal costs awarded against the State arising from judicial review and other legal proceedings.

A Supplementary Estimate of €418,000 is being sought for 2017 which represents a 1% increase in the net allocation. The need for the Supplementary Estimate arises from greater than budgeted expenditure on input A2 administration – non-pay and input A3 – fees to counsel, together with receipts in input B – appropriations-in-aid falling below the level budgeted for. Savings elsewhere in the Vote are insufficient to offset the need for a Supplementary Estimate.

There are a range of factors that give rise to the need for the Supplementary Estimate. I will address them in the order in which they are listed in the Vote.

In terms of the input A2 administration – non-pay, two main factors give rise to the projected overspend of €616,000 under the subhead. The first is a requirement to spend approximately €261,000 on the office's IT case-management system to meet costs that arise from a major upgrade of software. The fact that the costs of this upgrade would fall in the calendar year 2017 only became apparent after the 2017 Estimates had been finalised.

The second aspect of administration – non-pay expenditure which is projected to run significantly ahead of the amount provided for 2017, has to do with the completion of a range of refurbishment projects that the Office of Public Works has undertaken in the context of moving all staff of the Office of the Director of Public Prosecutions to one site on the Infirmary Road, Dublin. After 16 years of being split across different sites, the Office of Public Works completed works during 2017 that enabled all staff of the Office of the Director of Public Prosecutions to be accommodated on the one site. Managing expenditure on a significant-sized capital project from annual voted expenditure is inherently difficult because of the uncertainty as to in which year costs will fall to be paid. The additional spending of approximately €355,000 projected under this heading in 2017 arises from the timing of the expenditure rather than an underestimation of refurbishment costs.

In terms of input A3 – fees to counsel, two main factors give rise to the projected overspend of €1.377 million under this subhead. The first is a general increase in activity in the courts and, in particular, the Central Criminal Court with the assignment of additional judges leading to an increase in the number of sittings. The Central Criminal Court is the court that deals with the prosecution of murder and rape cases. The second factor that gave rise to the overspend under the subhead is the cost of a series of complex financial trials. Fees to prosecution counsel in

excess of €1 million have been paid in these cases in 2017. As the factors that gave rise to the overspend in 2017 are likely to continue into 2018, I inform the committee that to ensure the underlying level of activity on fees to counsel does not give rise to a Supplementary Estimate again in 2018, an additional allocation of €1.54 million has been added to the subhead for 2018.

In terms of input B – appropriations-in-aid, there is a projected shortfall of €158,000. This arises from difficulties in estimating the amount of costs that will be awarded by the courts to the director in any one year and also from an over-estimation of the amount that would be realised from pension-related deductions from salaries. The additional expenditure, of which I have advised the committee, amounts to a total of €2.151 million. However, a range of savings made elsewhere in the Vote have reduced the amount required by way of Supplementary Estimate to €418,000.

I recommend the Supplementary Estimate of €418,000 to the committee.

**Chairman:** I thank the Minister of State for his presentation.

**Deputy Michael McGrath:** I thank the Minister of State for his presentation. The significant shortfall of €1.377 million seems to be due to the payment of fees to counsel. Will the Minister of State or his officials explain the following? How are counsel paid by the Office of the Director of Public Prosecutions? Is a panel established for the selection of counsel? Is an hourly rate paid and applied across the public service when senior counsel are availed of? Will the Minister of State, please, outline the rates for senior counsel, junior counsel and so on?

**Deputy Joe McHugh:** The questions are technical in nature, but I shall try to answer them as best as I can. The officials are present, if the Deputy wants to receive more specific answers.

In the vast majority of cases the Office of the Director of Public Prosecutions pays set standard fees to prosecution counsel. The brief fee in the Circuit Court is €1,144, with a daily refresher fee of €572. In the Central Criminal Court, in cases of murder, a brief fee of €7,127 is paid to senior counsel, while, in rape cases, a brief fee of €5,704 is paid. A daily refresher fee of €1,562 is paid to senior counsel. Junior counsel are paid two thirds of the senior counsel rate.

I know that the Deputy specifically asked about counsel, but I highlight the fact that the number of judges has increased in the past year. The number in the Central Criminal Court has increased from between three and four judges to five and six judges. The increase has led to rape and murder cases being dealt with on a more frequent and quicker basis.

**Deputy Michael McGrath:** Is a brief fee paid to counsel for taking a case and preparing by studying the file, etc? Is the daily rate for senior counsel €1,500?

**Deputy Joe McHugh:** Yes. The daily refresher fee for senior counsel is €1,562. Junior counsel are paid two thirds of the senior counsel rate.

**Deputy Michael McGrath:** Does the term “daily refresher” refer to the *per diem* or daily rate?

**Deputy Joe McHugh:** Yes.

**Deputy Michael McGrath:** The explanation given for the shortfall is the financial trials, but that is just one aspect.

**Deputy Joe McHugh:** Yes. It was explained to me that the shortfall was due to there being

more complex financial trials. For example, financial trials alone cost €1.6 million last year. There have been a lot more complex cases in that regard.

**Deputy Michael McGrath:** Are the fees paid by the Office of the Director of Public Prosecutions the standards rates that apply?

**Deputy Joe McHugh:** In the vast majority of cases the Office of the Director of Public Prosecutions pays set standard fees to prosecution counsel. It has delegated sanction from the Department of Public Expenditure and Reform to pay fees in excess of these amounts where it is considered to be warranted. The upper limit of delegated sanction for a brief fee is €8,316 and €2,315 for refresher or daily fees. In appropriate cases non-standard fees up to the delegated limits are sanctioned and paid by the office.

**Deputy Michael McGrath:** Is it the Minister of State's view that the DPP's office is adequately resourced? What is his view on the length of time it takes for decisions to be reached? We often hear on the news about files being prepared and sent to the DPP. Is the length of time it takes for the DPP to make a decision in individual cases regarding whether to prosecute dependent on resources? To what extent is the Minister of State satisfied there are adequate resources to deal with the volume of files? Has the volume of files increased? Is the workload much greater than in recent years?

**Deputy Joe McHugh:** The workload is greater and while I have not met the DPP, Claire Loftus, in person, from the information I have there are adequate resources. As a result of the appointment of extra judges to the Central Criminal Court, which deals specifically with murder and rape cases, even with the extra workload, there is no question mark over resources.

**Deputy Peter Burke:** I thank the Minister of State for coming in to go through the Estimates. Has there been an extra workload in the DPP's office?

**Deputy Joe McHugh:** Yes, there has been an extra workload. I will break it up into two parts. We talked about the complex financial cases in recent years. There have been high-profile cases and less high-profile ones. As a result of the appointment of extra judges to the Central Criminal Court, which went from three to four in the past few years to up to six, rape cases are being taken more quickly, which is a good thing. Murder cases are also being taken more quickly as a result of the extra resources. The workload is increasing. There seem to be more efficiencies as a result of the extra judges. In addition, the office has been streamlined. It used to be at two separate venues so there is a focus on that. There were seven extra staff sanctioned in 2017, which was reflective of the extra workload.

**Deputy Pearse Doherty:** Will the Minister of State explain why formal sanction was not provided for the positions in the DPP until the fourth quarter of 2017?

**Deputy Joe McHugh:** They were sanctioned as part of the budgetary process.

**Deputy Pearse Doherty:** Will the Minister of State explain why the formal sanction for those positions was not provided until the fourth quarter of 2017?

**Deputy Joe McHugh:** All I have is the information to the effect that it was part of the budgetary process. If, however, there is a reason why there was a delay, I can find out for the Deputy and get back to him.

**Deputy Pearse Doherty:** Who was required to provide the formal sanction for these posi-

tions?

**Deputy Joe McHugh:** The Department of Public Expenditure and Reform.

**Deputy Pearse Doherty:** It was the Department.

**Deputy Joe McHugh:** Yes.

**Deputy Pearse Doherty:** We are not just looking at expenditure here. There are savings of €771,000, which, I assume, probably relate to two positions. The DPP is under-resourced. Budgetary sanction was given, which this committee dealt with in terms of providing money to employ additional staff. However, formal sanction for those positions within the DPP was not provided by the Department until just a couple of weeks ago. That has resulted in a saving of approximately €750,000. What we thought was happening within the DPP during that period did not happen. Two positions should have been taken on board. This is one of the major items. Will the Minister of State explain why there is that type of saving at the same time as under-resourcing of the DPP?

**Deputy Joe McHugh:** On the reasons, if there was a roadblock, I will get back to the Deputy on it. The officials can do that. If one looks at the sanctioning of positions across a range of Departments, if there are roadblocks, difficulties or the possibility of moving more quickly, we have to find out the reason why. I will certainly do that.

**Deputy Pearse Doherty:** I would rather have had that information while we were dealing with the Estimates. We need a detailed note about why the committee agreed Estimates for the approval of additional personnel yet formal sanction was not received until just a couple of weeks ago.

**Chairman:** Will the Minister of State send that information to the committee?

**Deputy Joe McHugh:** Yes.

**Deputy Pearse Doherty:** I appreciate that. On the other items of expenditure, will the Minister of State take me through the fees to counsel, which Deputy Michael McGrath has dealt with? In terms of the €1.377 million shortfall in the fees to counsel subhead, what does the €155,000 in terms of pay mean? It is subhead A1. Is it a transfer from pay? Are the savings that have been made being transferred to fees to counsel?

**Deputy Joe McHugh:** It is to make up the full amount.

**Deputy Pearse Doherty:** Is the underestimated fees to counsel figure a result of the number of complex legal or financial cases?

**Deputy Joe McHugh:** Yes. There are other reasons as well but it includes the Central Criminal Court, which deals with murder and rape cases.

**Deputy Pearse Doherty:** Is it because there has been an increase in the number of murder and rape cases? The financial cases were known about when we dealt with the Estimates.

**Deputy Joe McHugh:** The logical reason for the extra workload is that there are extra judges and extra sittings so we are in the very fortunate position that, in the context of very sensitive rape cases, we are getting justice at an earlier stage. I welcome that but with it comes an extra workload. I am putting a big proportion of that down to the fact we have extra judges. We

have gone from having three to four judges in the Central Criminal Court to having five to six.

**Deputy Pearse Doherty:** That is in the Central Criminal Court. Assigning extra judges has led to an increased number of sittings. The Minister of State has said two factors led to the overrun or shortfall - whichever way one wants to look at it - of €1.377 million. What proportion of it is as a result of the increased activity in the courts, particularly the Central Criminal Court, and what proportion is as a result of the series of complex financial trials?

**Deputy Joe McHugh:** We have a rough breakdown. I am told by my official that about €500,000 or €600,000 is probably attributable to the Central Criminal Court with the balance driven by the complex financial trials.

**Deputy Pearse Doherty:** Approximately €700 million to €800 million is a result of the financial trials, which are small and some of them collapsed. The rest is attributable to the changes in the Central Criminal Court. We have changed how we deal with Estimates over the past number of years. The output targets remain the same despite an increase in activity. Even though the reason for this overrun or shortfall is increased activity in the Central Criminal Court, the actual output is exactly the same as what was budgeted for earlier which is between 3,000 and 3,500. Is that not the case?

**Deputy Joe McHugh:** The target is the number of new court proceedings to deal with. In 2016, we had a figure of 3,554. The projected-----

**Deputy Pearse Doherty:** Is that figure for 2016?

**Deputy Joe McHugh:** It was the output target for 2016. The projected 2017 output target is 3,740.

**Deputy Pearse Doherty:** Are those figures for 2017?

**Deputy Joe McHugh:** Yes.

**Deputy Pearse Doherty:** The target for the number of new court proceedings to be dealt with in the 2017 Revised Estimate is 3,000 to 3,500. The revised target or projection is 3,000 to 3,500. In both cases the figure would be less than the output for 2016 and less than the projection which the Minister of State has put on the record. How is that the case?

**Deputy Joe McHugh:** This is due to a small number of cases in the Central Criminal Court leading to greater expenditure.

**Mr. John Burns:** The overall number of cases does not seem to move very much. Within that figure the increase in the Central Criminal Court represents quite a small number of cases, but they are very expensive cases. One sees a bulge in the expenditure but not much movement in the number of cases because they are very expensive cases.

**Deputy Pearse Doherty:** I understand that.

**Deputy Joe McHugh:** To give the Deputy some additional information, the 2018 output target-----

**Deputy Pearse Doherty:** The target for what year?

**Deputy Joe McHugh:** The 2018 output target is projected to be between 3,500 and 4,000.

**Deputy Pearse Doherty:** We are not dealing with the 2018 figures.

**Deputy Joe McHugh:** I just wanted to give the Deputy an idea of the projections.

**Deputy Pearse Doherty:** I hear that but I would argue that it is a bit misleading. We hear about increases in the number of judges and the number of sittings and we think that there is increased activity, while in fact it is the case that more complex cases are incurring these increased costs, as opposed to a dramatic increase in the number of cases being heard, which is not what we have before us. I want to move on from that.

On output, in terms of the Estimates process we have to measure not just the money, but the targets, which must then be compared with the outputs. I am completely confused now. The Minister of State has told us that the 2017 target for new court proceedings is 3,740 and he told us that the 2016 output was 3,554, yet the documentation before us does not reflect any of those numbers.

**Deputy Joe McHugh:** I will send on the information I have.

**Deputy Pearse Doherty:** Is there a rationale for this?

**Deputy Joe McHugh:** Is there a rationale for the figures not being included in the documentation provided to the committee?

**Deputy Pearse Doherty:** The figures are included in our documentation but they are completely at odds with the figures which the Minister of State has just presented. The figures which were sent to members of the committee, which is supposed to approve these Estimates, say that the original number of court proceedings was between 3,000 and 3,500. As a result of the Revised Estimate they are now 3,000 to 3,500. The Minister of State is telling us that those figures are not accurate. I will not make a big issue of it but there is an issue here in respect of accurate information being provided to the committee when it is being asked to approve Estimates. We do not have the fullest of information before us.

**Deputy Joe McHugh:** I can certainly ensure that the committee gets the full information.

**Deputy Pearse Doherty:** The other issue is in respect of staffing in the Office of the Director of Public Prosecutions, DPP. Will the Minister of State inform the committee of the complement of staff it has at present? Have all approved positions been taken up? Are there any vacancies in the office at this point in time?

**Deputy Joe McHugh:** The total number of staff throughout the whole organisational structure of the DPP is 194. The Public Appointments Service is working to fill vacancies for solicitors and administrative support. The DPP has three main divisions including a directing division consisting of barristers and solicitors who examine criminal investigation files and decide whether prosecutions should be taken. The solicitors' division consists of solicitors who prepare and conduct cases on behalf of the director in all courts sitting in Dublin. The administration division consists of general Civil Service grades. It provides support and other services to both the directing division and the solicitors' division in order to enable the office to fulfil its statutory function.

**Deputy Pearse Doherty:** I thank the Minister of State. My final question is connected with the budgetary process in terms of the office's complement of staff and the pay subhead of the Estimate. Has there been any internal or external examination carried out in the office of the

DPP in respect of the resources it needs, including both personnel and other supports, to meet the demands it faces in a timely manner? Deputy Michael McGrath spoke about the frustration that the Moriarty report is still being examined by the DPP five years later. Has there been an examination of the office's staffing needs internally or externally? The Central Bank has carried out a report in respect of what it needs. Has that happened within the DPP? If it has not happened recently, within the last three years for example, does the Minister of State believe it is necessary for such a review to be carried out? I ask because major financial trials have collapsed, which has caused serious upset among a large section of the population, and some would say that these collapses were caused by the DPP.

**Deputy Joe McHugh:** Based on the information I have, there has been no external review or any work done on an external basis. There has been an internal review.

**Deputy Pearse Doherty:** Can that documentation be shared with the committee?

**Deputy Joe McHugh:** Yes. It was requested by the Department of Public Expenditure and Reform. I certainly do not see why not.

**Deputy Pearse Doherty:** I thank the Minister of State.

**Chairman:** Does Deputy Peter Burke have any further questions? Will the Minister of State provide the committee with a note in respect of his answer to Deputy McGrath on the question of the fees?

**Deputy Joe McHugh:** Yes.

**Chairman:** The note would cover in a general way the types of fees being paid, what they are for and so on.

**Deputy Joe McHugh:** Yes. I have a combination of information here. It is obvious that Deputy Doherty has part of it. I will give the committee all of the information I have here in respect of the projected output. Obviously there is a difference between the target and the output. I will give the committee-----

**Chairman:** The Minister of State will provide a comprehensive note on each of the issues raised on which a response is required.

**Deputy Joe McHugh:** Absolutely, yes.

**Chairman:** As the select committee has now completed its consideration of the Supplementary Estimate, in accordance with Standing Order 90 the clerk to the committee will convey a message to that effect to the Clerk of the Dáil. Under Standing Order 89(2), the message is deemed to be the report of the committee.

I thank the Minister of State and his officials for their attendance.

### Message to Dáil

**Chairman:** In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Select Committee on Finance, Public Expenditure and Reform, and Taoiseach has



29 November 2017

completed its consideration of the following Supplementary Estimate for public services for the year ending 31 December 2017: Vote 5 — Office of the Director of Public Prosecutions.

The select committee adjourned at 5.20 p.m. until 9.30 a.m. on Thursday, 30 November 2017.