



DÁIL ÉIREANN

An Coiste um Chuntais Phoiblí

Committee of Public Accounts

PARLIAMENTARY INQUIRY INTO D.I.R.T FINAL REPORT

Examination of the Report of the Comptroller and
Auditor General of Investigation into the Administration
of Deposit Interest Retention Tax and Related Matters during
the period 1 January 1986 to 1 December 1998.



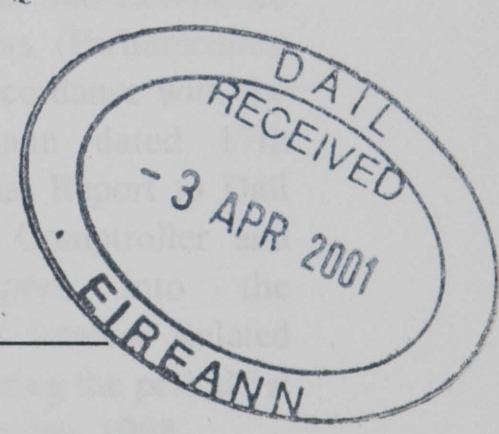


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An Coiste um Chuntais Phobla

Committee of Public Accounts

PARLIAMENTARY INQUIRY



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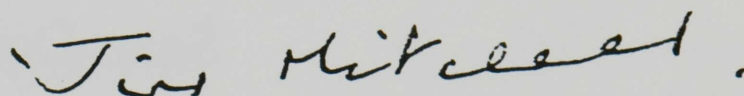
INQUIRY INTO DIRT

1. Déanann an Fochoiste um Nithe Áirthe a bhaineann le hIoncam leis seo an Tuarascáil Deiridh ón bhFiosrúchán Parlaiminteach faoi Cháin Choinneála ar Ús Taisce a ghlacadh de réir rúin dar dháta an 17 Nollaig, 1998 ó Dháil Éireann mar Thuarascáil Deiridh uaidh chuig an gCoiste um Chuntais Phoiblí ag éirí as an Tuarascáil ón Ard-Reachtair Cuntas agus Ciste maidir le Riaradh Cánach Coinneála ar Ús Taisce agus Nithe Gaolmhara le linn na tréimhse 1 Eanáir, 1986 go 1 Nollaig, 1998.

COMMITTEE OF PUBLIC ACCOUNTS

1. The Sub-Committee on Certain Revenue Matters hereby adopts the Final Report of the Parliamentary Inquiry into D.I.R.T. in accordance with resolution of Dáil Éireann dated 17th December, 1998 as its Final Report to the Committee of Public Accounts arising from the Comptroller and Auditor General's Report into the Administration of Deposit Interest Related Tax and Related Matters during the period 1st January, 1986 and 1st December, 1998.

Signed



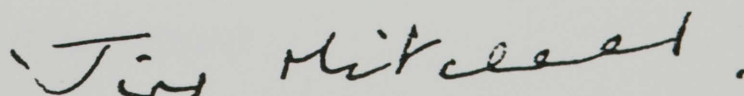
MR. JIM MITCHELL T.D.,
Chairman of the sub-Committee

30 March, 2001

2. Déanann an Coiste um Chuntais Phoiblí leis seo an Tuarascáil Deiridh ón bhFochoiste um Nithe Áirthe a bhaineann le hIoncam (Fiosrúchán Parlaiminteach ar Ús Taisce) a ghlacadh de réir an rúin ó Dháil Éireann dar dháta an 17 Nollaig, 1998, mar Thuarascáil Deiridh uaidh chuig Dáil Éireann ag éirí as an Tuarascáil ón Ard-Reachtair Cuntas agus Ciste maidir le Riaradh Cánach Coinneála ar Ús Taisce agus Nithe Gaolmhara le linn na tréimhse 1 Eanáir, 1986 go 1 Nollaig, 1998.

2. The Committee of Public Accounts hereby adopts the Final Report of the Sub-Committee on Certain Revenue Matters (Parliamentary Inquiry into D.I.R.T.) in accordance with the resolution of Dáil Éireann dated 17th December, 1998 as its Final Report to Dáil Éireann arising from the Comptroller and Auditor General's Report into the Administration of Deposit Interest Related Tax and Related Matters during the period 1st January, 1986 and 1st December, 1998.

Signed



MR. JIM MITCHELL T.D.,
Chairman of the Committee of Public
Accounts

3 April, 2001.



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Sean Ardagh T.D.

Sean Doherty T.D.

Bernard Durkan T.D.

Jim Mitchell T.D. (Chairman)

Pat Rabbitte T.D.

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Chapter One

Introduction

Chairman: *The Committee of Public Accounts Sub-Committee on Certain Revenue Matters is now in public session. Witnesses, your attention is drawn to the fact that as and from 2 August 1998 section 10 of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997, grants certain rights to persons who are identified in the course of the sub-committee's proceedings. These rights include the right to give evidence, the right to produce and send documents to the committee, the right to appear before the committee, either in person or through a representative, the right to make a written and oral submission, the right to request the committee to direct the attendance of witnesses and the production of documents and the right to cross-examine the witness. This Act has been further amended by the Acts of December 1998. In most part, these rights may only be exercised with the consent of the sub-committee.*

Jim Mitchell TD

Chairman, Committee of Public Accounts
Sub-Committee on Certain Revenue Matters Hearing
30 November 2000

At the commencement of every public session the Chairman of the Sub-Committee recited the above formalities. The references to witnesses and their rights, rights to produce documents, to cross-examine and so on; to compellability and immunities clearly communicates that something significant was under way. The language, the procedure, the “swearing in” of witnesses all suggests a process of inquiry, acting judicially.

The public Hearings of the Sub-Committee were part of a much larger process. That process included inquiries in private on behalf of the Committee of Public Accounts – again using powers of compellability and the taking of evidence under oath – as well as deliberations in private by the Sub-Committee.

The public proceedings of the autumn of 1999 were also televised live daily by TG4 and there was a simultaneous live webcast on the internet.

The Sub-Committee was a first in Irish parliamentary life. As the Chairman put it in his opening statement at the first day of the Sub-Committee's Hearings on 31 August 1999,

"Today we embarking on a new form of parliamentary inquiry. ... this is a parliamentary committee and the rules and procedures of Parliament are the ones that will be followed so long as they are reconcilable with the requirements of justice. The Committee has no doubt about the precedent that it is setting today and the importance that we do this job in a fair, expeditious and efficient manner."

The Sub-Committee's inquiry involved the first comprehensive use by a House of the Oireachtas – in this case, Dail Eireann – of powers recently granted in law. These powers were given under two Acts, the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 and the Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998. The purpose was to enable Members of the Oireachtas to undertake a parliamentary inquiry into matters of grave public disquiet.

What was the matter of grave disquiet that called for the granting of new powers? What was the matter that led to the call to account that characterised the work of the Sub-Committee – not alone of public servants and public agencies, not only private citizens and private bodies but also non-nationals, foreign corporations and Members of the House?

Background – Tax Evasion

In December 1999 the Committee of Public Accounts (PAC) published its First Report on its inquiries into the operation of Deposit Interest Retention Tax (DIRT) in the period 1 January 1986 to 1 December 1998 (the relevant period). The report was the outcome of an inquiry instigated by the PAC into press allegations of tax evasion, first made in April 1998 and repeated in more detail in October of 1998. The thrust of the allegations was that there had been evasion of DIRT by Irish depositors through the use of bogus non-resident accounts (non-resident accounts being exempt from DIRT) in the country's biggest bank, AIB Group.

When the initial press reports appeared in April 1998 the PAC immediately convened public Hearings at which the Chairman of the Revenue Commissioners was examined.

In October 1998 fresh press allegations, much more detailed, appeared, alleging knowledge in the country's biggest licensed bank, AIB Group of a very large-scale problem. The Committee responded, conducting new Hearings on 13 and 15 October. These Hearings produced disturbing evidence of a possibly gigantic tax fraud of which the relevant public authorities were allegedly aware.

The Chairman of the Revenue Commissioners said that Revenue was unaware of allegations of the large-scale use of bogus non-resident accounts. The Chief Executive of AIB said that bogus non-resident accounts were not unique to AIB but were an industry-wide problem. He further contended that AIB had, in 1991, reached an agreement with

Revenue that there would be no retrospective liability in respect of interest for accounts 'reclassified' at that point that had previously been "wrongly classified" as non-resident.

Today we can see the public hearings of April and October 1998 as the commencement of a major exercise lasting three years that has had to it four phases to date.

The hearings of April and October 1998 constituted the first phase of the inquiry. This was public, preliminary and exploratory. It led to a resolution by Dail Eireann asking the PAC to examine the matter further and to report to the Dail Eireann. The conclusion of the Committee was that it would need additional powers to proceed (using the Office of the Comptroller and Auditor General, C&AG, to carry out an investigation in private on its behalf).

On 16 December 1998 the Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998 was passed, the Bill having been introduced by the Government on 8 December. This enactment complimented the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997. Following on the enactment of the Act of 1998, the PAC embarked on what was in effect the second phase of its investigations, the inquiry undertaken by the C&AG into the matters in question, using his new powers, and his report to the Committee of his findings.

The C&AG carried out his investigations between December 1998 and July 1999. He reported in July 1999 – Report of Investigation into the Administration of Deposit Interest Retention Tax and Related Matters during the period 1 January 1986 to 1 December 1998.

The C&AG's report gave a staggering account of a very major scandal. There was practiced, over a long number of years, large-scale evasion. Irish resident depositors established bogus non-resident accounts and these were operated by deposit-takers. The practice was common to all of the licensed deposit takers examined. There was evidence of significant deposit-taker complicity in the operation of these accounts. There was evidence of encouragement by deposit-takers of the technique. There was evidence also of Revenue suspicions and eventually, knowledge of these activities and of Revenue's pursuit of deposit takers and depositors. There was evidence furthermore of contact at a high level between AIB Group and officers in Revenue, allegedly to discuss a settlement deal.

The C&AG discovered the existence within Revenue of a general order to inspectors of taxes – SIM 263 – instructing inspectors not to use powers of general inspection given to them under the law of declarations of non-residency, thus ensuring that the evasion would persist – unless the banks imposed a code of conduct.

Finally, the C&AG discovered that there was a general awareness at senior level of the public administration of large-scale tax evasion, including problems in the area of

evading and avoiding income tax on income from deposit interest and that the issue was not effectively pursued.

The Hearings of Autumn 1999

Following publication of the C&AG's report the Committee decided to develop its inquiry further – to institute a third phase in effect.

It decided to conduct an inquiry into the findings of the C&AG; to have this inquiry undertaken by a sub-committee of the PAC established for this express purpose; to conduct this inquiry in public; and to use in full all of the new statutory powers in conducting this phase of the inquiry.

This third phase of the inquiry commenced 31 August 1999 and lasted for a period of six weeks, concluding on 12 October 1999. The result of this inquiry was the First Report, laid before the Houses of the Oireachtas and published on 15 December 1999.

Our First Report

The broad conclusions of the Sub-Committee, stated in the introduction to the First Report, included *inter alia* that:

“Deposit-takers knowingly facilitated the practice. Discoveries were made of bank officials organising the opening and operation of bogus non-resident accounts for customers and indeed of establishing them for their own use.

“It is now also apparent that the evasion of DIRT was practiced in a wider culture of more generalised tax evasion. Specifically in addition to the simple evasion of DIRT, bogus non-resident accounts were employed as a means of concealing otherwise taxable income from Revenue so as to ensure the evasion of other taxes due on those monies. This phenomenon of bogus non-resident accounts and the accompanying technique of deposit splitting to evade tax dated in fact from the early 1960s. An allied technique of back-to-back deposit and loan accounts was similarly employed as a means of reducing the full liability to DIRT.”

From the Conclusion of the First Report we also quote:

“For deposit takers DIRT is, since 1987, a self-assessment tax. In that it is, this imposes a very significant duty of care on deposit takers. They must make a correct assessment and return and pay across to the Collector General the appropriate sum twice yearly. Failure to do so is a Revenue Offence.

“The duty that is placed on depositors in this context is that they must allow DIRT to be deducted. Failure to allow the deduction of DIRT is a Revenue Offence.

“From the moment of its enactment through Financial Resolution No. 12 in February 1986 bankers began to explore means of continuing to pay interest gross on deposits. The use of bogus non-resident accounts – already long established as a means of concealing capital and income from the eyes of Revenue – now took on an added dimension. Bogus non-resident accounts became a route to evading yet another tax, DIRT. Banks facilitated this, as they had long facilitated deposit splitting and bogus non-resident accounts prior to 1986.

“From 1987 Revenue took a view that the climate in Ireland was such that it was inappropriate to push for inspection and access to bank account information. This is most graphically illustrated in the non-issuance of a countermand to SIM 263.

“There is a view that the problem of bogus non-resident accounts receded and reduced significantly from around 1993. However this Inquiry has discovered persistent problems in the operation of non-resident accounts in the deposit taking sector in Ireland. The investigation of the Comptroller and Auditor General also established continuing problems with compliance. The Report of the Appointed Auditor commissioned by the Comptroller indicated that 27.3 per cent of Forms 37 sampled contained ‘declaration exceptions’, in other words were incorrect.”

The Sub-Committee considered why might have licensed deposit-takers and State institutions responsible for policy, regulation, supervision and enforcement in this area condoned the evasion?

The Sub-Committee examined two possible theories. We examined the evidence to determine which of these alternatives was the more plausible.

The first theory is that the problem was a recognised and endemic issue. It dated from the 1960s. In the words of Mr. John Keogh, senior executive at AIB *“The introduction of DIRT brought new complexities...which in the case of AIB is being worked out slowly but progressively in intermittent dialogue with the Revenue Commissioners. Our customers are, of course, an important constituent in this matter, as is the pace of implementation of Revenue requirements by our competitors and, indeed, the concern of Government overall lest over enthusiastic action by anyone should lead to a flight of funds as Exchange Controls diminish.”*

We observed in our First Report that

“This is a coherent proposition, even if it sits somewhat uncomfortably alongside the law as enacted. What this theory amounts to is a statement that the phenomenon being investigated represented a recognised problem and was being dealt with over time in a planned and co-ordinated fashion. If such a proposition is to hold, one must be able to demonstrate that the financial institutions understood themselves to be working to such a plan or programme and acted accordingly. One should also find that the State and its Agencies clearly understood themselves to be a party to such a pragmatic workout. And the theory must show that concern about capital flight made sense in the economic circumstances of the period so that there was justifiable cause to act in this phased fashion over time.”

The alternative explanation was that there was no coherent plan or understanding on the part of deposit-takers or the State and its Agencies, whether formal or informal. Furthermore there was on the part of deposit-takers and the State and its Agencies incoherent, spasmodic and *ad hoc* engagement with the problem. In addition, on the part of the State, these spurts of activity were sometimes administrative and sometimes political in origin but they contained no strategic vision or overview. Finally, occasionally, the control systems of deposit-takers triggered corrective action; and competition in the market for deposits continued throughout partly on the basis of connivance with illegality, that is the facilitation of false declarations and the operation of bogus non-resident accounts by resident depositors.

These competing theories clearly carry quite different implications. The first theory suggests rational, strategic management of a problem with its objective, the restoration of compliance and legality in the market for deposits.

Whether such an approach was appropriate is debatable. However if the matter had been successfully dealt with in this manner one would be dealing essentially with history. If the alternative theory was more applicable to the observed facts, then very serious implications arose for the system of public administration and the supervision and the conduct of banking in Ireland.

The Sub-Committee found that there was no coherent or planned approach to the DIRT crisis. It found further that there was an incoherent, spasmodic and *ad hoc* engagement on the part of the deposit-takers and the State and its Agencies with the issue of bogus non-resident accounts. Finally the Sub-Committee found implausible, the capital flight theory used to support the cautious implementation of the law.

The First Report made 57 recommendations, ranging over all aspects of the problem. While many of the recommendations were specific to particular institutions and players, there also were what might be termed cross-cutting themes. For example, the recommendations included a review of audit practice in accountancy profession. The framework for accountancy regulation and supervision is the responsibility of the

Department of Enterprise, Trade and Employment. Therefore that recommendation was directed to that Department, which did not feature prominently in the inquiry. Similarly, in relation to the Central Bank, an inter-departmental dimension came into play as a result of the already in train policy discussion of a single regulatory authority (SRA) for all financial institutions.

Review of implementation of recommendations

The concern of the Sub-Committee at all times was to ensure that its recommendations were being implemented in a speedy and efficient manner. To this end the Sub-Committee decided that there would be an interim stock-taking at the six month stage; a more comprehensive review at the twelve month stage; and a detailed report, outlining progress on the implementation of the recommendations made in our First Report. Both reviews were conducted in public in the form of hearings and again, our powers under the 1997 and 1998 Acts were used.

The interim review was conducted over two days in July 2000. A short, technical second report issued. The second stock-taking was conducted over five days in November/December 2000 and January 2001. These exercises and this report constitute a fourth phase to our inquiry – a follow-up phase.

We are unusual if not unique as a public inquiry in incorporating a follow-up phase into our work. That is not only appropriate, it is in our view a necessary aspect to a parliamentary form of inquiry such as that undertaken by this Sub-Committee.

Tribunals of inquiry – whether under the 1921 Act or otherwise, statutory or non-statutory – can do no more than they are established and asked to do. This is generally to examine a matter giving rise to public disquiet, make findings and make recommendations. The life of the Tribunal is then ended. The ball is then back to the legislature and/or the Government to take action as appropriate.

It seems to the Sub-Committee that the parliamentary mode of inquiry must make provision as appropriate for follow-up – if it is to act with integrity having regard to its inquisitorial powers; the role of parliamentarians as public representatives; and the twin roles of the Houses of the Oireachtas as the legislature and the forum in which government is called to account.

The ideas of community and integrity¹

As citizens what particularly probably offends us about the DIRT scandal is the behaviour of the administrative state. It is not simply that there was a policy of “not

¹ The following discussion is based on the work of the noted American legal theorist and political philosopher, Ronald Dworkin. In particular it draws on Dworkin’s work, *Law’s Empire* (paperback edition, Fontana, 1991). See especially chapters five (Pragmatism and Personification) and six (Integrity) of *Law’s Empire*. The discussion uses Dworkin’s terminology and his definitions as well as availing of the underlying theory of law-based, liberal democracy.

rocking the boat” at a time of fiscal crisis and economic difficulty. It is that the approach taken was adopted *at all* – in any circumstance and done so behind closed doors in effect.

There is the argument that things then were different, that there was a certain climate or attitude that prevailed widely in the then Ireland. In this scenario the administrative system did no more than recognise this reality.

Things were different and a certain climate prevailed – but partly as a result of the behaviour of the administrative state. There were undoubtedly other contributory factors but the administrative state also contributed and its behaviour on the DIRT issue during the relevant period so contributed. As citizens we can say that this offended against concepts and principles such as community, fairness, integrity, impartiality – in a phrase, good government.

Also this is not a dim and distant past that we are examining. We are actually talking about recent times. We are talking about contemporary life and an aspect to its politics that stretches back a long number of years.

The breach by the state of the overarching principle of impartiality – operationally, equality of treatment by ‘officialdom’ and equality before the law (including the law as administrative procedure and process) is central to our sense of offence as citizens

As citizens we constitute a community. However in this discussion, while this is recognised, we also believe that “the community” has a life of its own, distinct from its members. In this, as has been mentioned above, we are following the ideas of the legal and political philosopher Ronald Dworkin. As Professor Dworkin puts it “... the community as a whole can be committed to principles of fairness or justice or procedural due process in some way analogous to the way particular people can be committed to convictions or ideals or projects.” Thus “the community has its own principles it can itself honour or dishonour, that it can act in good or bad faith, with integrity or hypocritically, just as people can.”

However this idea is not simply – not at all – a metaphorical construct. Dworkin really does assign to our political community (i.e. the state) the quality of “personification”. A political community really is some special (personified) kind of entity distinct from the actual people as its citizens. Therefore we (and Dworkin) attribute moral agency and responsibility to this distinct entity, i.e. the state in this “personified” sense.

Critically in this system, in a liberal democracy operating under the rule of law there is the right of expectation on the part of citizens – the expectation that the state will act in good faith, with integrity and with impartiality. The state acts through its officials (it may be noted that Dworkin uses the term to include not simply public servants but also politicians, ministers and the judiciary). Officials and the organs of the administrative state, in this system of thought, act as agents for the community (the state) in acquitting their responsibilities.

Public officials are of course individually responsible in the sense in which anyone is. However public officials must be guided by rules of group responsibility. In Professor Dworkin's words "the community as a whole has obligations of impartiality towards its members". Officials therefore have a group responsibility: as agents of the community (or the state) in acquitting its responsibility or obligation towards its members (citizens), they must at all times act with impartiality.

This is an enormously demanding standard, one that does not apply in the private sphere. We can see this from a brief look at individual or personal behaviour. Any conception of justice in personal behaviour will of course limit the area of personal freedom. We will argue over that area of personal freedom or "self-preference" and the limits to its limitation. However no conception acceptable to most of us will eliminate personal freedom entirely. On the other hand once we cross over to the public sphere (the behaviour of officials as agents of the state) as Dworkin puts it

"We allow officials acting in their official capacity no such area at all. They must, we say, treat all members of their community as equals, and the individual's normal latitude for self-preference is called corruption in their case."

This attitude to officials and officialdom isn't simply about the transference of ordinary rules of individual responsibility to the circumstance of being a public official.

"Some officials have very great power. But so do many private individuals, and we do not believe that a citizen's sphere of personal freedom necessarily shrinks as his power and influence grow. ... We apply the strictest standards of impartiality even to officials whose power is relatively slight and subsequently less than that of many private citizens; we have no sense that an official's duty of equal concern wanes as his power diminishes."

We would add to this that where officials have great power and are dealing with private individuals or private bodies of great power we still have no sense that officials may depart from their duty of equal concern or that it diminishes. The legitimacy of the State and the authority of politics are undermined by such a breach of the norms of the overarching principle of impartiality – operationally, equality of treatment by 'officialdom' and equality before the law (including the law as administrative procedure and process). Furthermore public cynicism and alienation are encouraged.

One aspect of group responsibility is that there is in it an inevitable logic of individual political rights against the State. This aspect – in terms particularly of legally entrenching these political rights through, for example, the right to sue and for damages – does not concern us here. It is not operationally relevant. What we are interested in at this point, in this inquiry and in the case that we are examining is the implication for group responsibility.

Group responsibility is logically prior to the individual responsibility of officials. Even if we cannot identify the individuals responsible for a particular course of action – even if there are actually no individuals responsible – we can still say that individuals did not comply with canons of group responsibility – and that the body or bodies in question did not comply.

Two themes in this Inquiry

There are two broad aspects to the DIRT scandal. One is the proximate cause of the investigation – the tax evasion engaged in by residents, assisted by licensed deposit takers who had a duty in law to collect this tax and for whom, after 1987 DIRT also was a self-assessment tax. This was law-breaking on a large scale that went on for years and cost the exchequer untold hundreds of millions of pounds.

The other aspect to this scandal has a deeper level to it. This second aspect is the behaviour of Institutions of State. During the relevant period the administrative state knew of the DIRT problem, knew of bogus non-resident accounts and knew that these phenomena were in a context of more generalised tax evasion.

Part of the generalised evasion was the evasion and avoidance of income tax liability on deposit interest. The issue of deposit interest was a matter of periodic policy discussion over many years. In the end, the response was Deposit Interest Retention Tax. In other words DIRT was contemplated and introduced as an anti-evasion measure. This effectively was its *raison d'être*.

Deposit takers and depositors immediately began to look for ways around the legislation giving effect to the new withholding tax. They did so separately and together.

However the State also immediately prevaricated. It developed a preoccupation with the theory of capital flight. Officials developed a concern to not “rock the boat”. And in the Revenue, a general order was issued putting the inspection provisions introduced in respect of DIRT on hold.

Partly the Revenue explained the order (SIM 263) in terms of the need to establish internal rules and procedures for the use of the new powers of inspection. However there was more to it than that. There was also the fact that in Revenue, there was a view that the powers were not the power it had actually wished and were unlikely anyway to yield much information. There was furthermore the statement of the then Minister for Finance in 1987, Mr. Ray McSharry, and the gloss put on it within Revenue. The preoccupation with capital flight theory did also have an impact in Revenue.

One impact of SIM 263 was in effect to change the law, the Finance Act, 1986. This change in the law was not enacted by the Oireachtas. It was an administrative action undertaken by the Revenue Commissioners. Yet under our Constitution, only the Oireachtas may make or change legislation.

On the ground, evasion of DIRT grew, developed and spread through the entire deposit-taking system. The principle means of evasion was the use of bogus non-resident accounts by residents. These accounts were established by residents by making false declarations. Deposit-takers accepted these declarations, sometimes knowingly but also within an administrative framework that had no system of checking for warning signals of residency.

It was argued in evidence to the Sub-Committee that the introduction of DIRT (a withholding tax applied to interest at source) was an improvement on the situation that existed prior to its introduction. It led to an enormous increase in the tax yield from deposit interest. However another effect of SIM 263 in precisely this context was, as a matter of fact, to create inequality of treatment in respect of taxation – between those engaged in creating bogus non-resident accounts and compliant taxpayers. This offended principles of fairness and of group responsibility of public officials.

Furthermore, the ability of Inspectors of Taxes to tackle the issue of evasion (of DIRT and, through the use of bogus non-resident accounts, other taxes also) was inhibited. Inspectors (public officials) were forced into breaches of their ‘oaths of office’.

As was stated in our First Report the Sub-Committee found no evidence of Ministerial involvement in what happened. The evidence is in respect of the administrative state. The political implications of this behaviour of the administrative state are enormous. This behaviour of the administrative state arguably amounted to an undermining of democracy, the Constitution, [and] the principles of the rule of Law and of fairness.

The Report of the Ombudsman into Nursing Homes Subvention

“In the long run, the exercise of non-existent authority, the “surreptitious” (to quote one of the commentators) introduction of family assessment, the disregard for clear principles of law, the sustained proffering of incorrect advice, the reluctance to acknowledge mistakes, the tardiness in the Department” dealings with the Ombudsman’s Office – all of these can only undermine public confidence in government and in our democratic institutions and call into question whether the present arrangements facilitate efficient, open and accountable government. From the point of view of the Oireachtas to which this report is addressed, the issue is whether its intentions, as expressed in legislation where honoured as befits its constitutional status.”

*Nursing Homes Subventions.
An Investigation by the Ombudsman of
Complaints Regarding Payment of Nursing Home Subventions
by Health Boards*

Since the Sub-Committee concluded its public hearings there has been published by the Ombudsman a report *Nursing Homes Subventions. An Investigation by the Ombudsman of Complaints Regarding Payment of Nursing Home Subventions by Health Boards*²

The report is a most damning indictment of our public administration system, in this case the Department of Health and the Health Boards in the context of their administration of an aspect of care for the aged. The severity of the Ombudsman's criticism cannot be understated. The above extract conveys the general tenor of the report. The report also made references to and drew from our First Report.

The specific subject matter of the Ombudsman's inquiry is not an issue for this Sub-Committee. However in Chapter 8 there is a wide-ranging discussion of parliamentary accountability. Although inspired by the findings of the Report the discussion in Chapter 8 is in general terms and there are in it echoes of our own deliberations. Indeed there is implicit in the discussion of Chapter 8 – as there is in the approach of the Ombudsman's Inquiry – an acceptance of the concept of group responsibility as we have set it out in this Chapter.

The Sub-Committee feels that it is appropriate to reproduce in edited form and as an appendix to this chapter of our final Report the general observations of the Ombudsman. We do so on the grounds that the Report of the Ombudsman provides us with another example of a breakdown in good government in the broad sense in which we use it. We also publish it to promote and assist public debate on a hugely important topic – and which may in part contribute to what is the ambition of all of us, a restoration of the standing of politics in Ireland.

² The report was made and submitted to the Dail and Seanad in accordance with Section 6(7) of the Ombudsman Act, 1980. It was completed in January 2001 and submitted to the Houses of the Oireachtas. It was published at the beginning of February.

Appendix to Chapter 1

Extracts from the Report of the Ombudsman, Nursing Home Subventions.

An Investigation by the Ombudsman of Complaints Regarding Payment of Nursing Home Subventions by Health Boards³.

³ The Report from which the following extracts are taken was published in January 2001 by the Office of the Ombudsman. The investigation was carried out following citizen complaints to the Ombudsman and the Report was submitted to the Dail and Seanad in accordance with Section 6(7) of the Ombudsman Act, 1980.

Sub-Committee's Introduction

The following is an edited version of Chapter 8 of the Ombudsman's Report on Nursing Home Subventions. The extracts that constitute this edited version are included as an appendix to this, the Third and final Report of the Sub-Committee on Certain Revenue Matters as relevant to the theme of this chapter of our second report and indeed to our inquiry in general.

Some information and comments of a background nature are perhaps appropriate by way of preface.

For many years the Ombudsman was in receipt of citizen complaints about the operation of a subvention scheme to subsidise the cost to patients of long-stay in-patient care for geriatric patients in private nursing homes. After a change in the law in 1993 there was an upsurge in citizen complaints and, more important, the Ombudsman also detected a change in the nature of complaint. In essence, pre 1993 complaints came down to complaints against the behaviour of individual officers in the Health Boards. After 1993 however it appeared to the Ombudsman that what was being complained about and what lay behind the complaints (which after inquiry, he upheld) was a definite plan of action – call it a policy – by Health Boards and the Department, with the Department the driving force (through the issuance of Regulations and through exhortation).

Government policy had determined to extend eligibility and entitlement in respect of nursing home care for the aged. The Department decided upon an alternative course of action (i.e. policy) on the grounds that the resources allocated (voted by the Oireachtas) were inadequate. This policy by the Department was based on taking short-cuts, disregarding legal advice, assuming powers that the Department did not have and resisting evidence that the subvention scheme as operated was seriously flawed.

The detail of the nursing home subvention scheme and the detailed behaviour of the Department and the Health Boards do not concern us here. However what is of concern to our deliberations and this report is the fact that the Ombudsman concluded that the nursing home subvention scandal raised fundamental questions about the functioning of parliamentary democracy, accountability and oversight. The Ombudsman in Chapter 8 of his report dealt reflectively with these issues and made a number of references to our own deliberations and inquiry into the DIRT scandal. There are similarities between both scandals from the perspective of how, in general, Government and public administration appear to work and how, on occasion, serious breakdowns of accountability and oversight can occur. We therefore feel it appropriate to include the following extracts as an appendix to Chapter 4 of this Report in order to assist public debate and discussion of a central and crucial topic, actually of daily and everyday relevance, as is clear to anyone who has followed either or both inquiries.

Extract from Ombudsman's Report on Nursing Home Subventions

Chapter 8

Some Reflections (edited)

"In any democracy the role of Parliament is central in:

1. deciding on legislation
2. establishing departments and other agencies of the State to implement fully and fairly legislation,
3. ensuring that Ministers, Departments and State Agencies are fully accountable to it, and
4. holding the Government to account."

Committee of Public Accounts, Parliamentary Inquiry Into DIRT

First Report, December 1999

(...)

Stepping back from all the detail of the earlier chapters, there is one overarching issue which may be put in the form of the following questions: why did this project go so badly wrong? why did it continue to operate so unsatisfactorily for so long? which systems, which should have picked up on these problems, failed to function? In a democratic society, where governmental arrangements are predicated on a system of checks and balances, one is entitled to expect that oversight and accountability mechanisms would have identified and dealt with these problems. The fact that this did not happen has to be a cause for concern.

(...)

The present report has identified serious issues in regard to the relationship, on the one hand, between the Oireachtas and the Executive and, on the other, the relationships within the Executive between the political and administrative levels as well as between those controlling resources and those in receipt of resources. The Ombudsman is drawing attention to these issues in the hope of encouraging serious debate on them.

(...)

A detailed analysis of the constitutional and legal framework of government is beyond the scope of this report but a brief survey of the issues, and of possible responses, is presented here. Because these issues relate to accountability, to authority and to oversight mechanisms generally, they are of central importance in a democratic society.

Oireachtas and Executive

The model for government in Ireland is set out in the Constitution (particularly Articles 6, 15 and 28) and in statute (particularly the Ministers and Secretaries Act, 1924 as amended). Ireland is a parliamentary democracy with a written Constitution providing for the traditional division of powers between the legislature, executive and judiciary. The executive power of the State is exercisable by or on the authority of the Government, which acts collectively and which is "responsible to Dáil Éireann". The Government is collectively responsible for the "Departments of State administered by the members of the Government", i.e. by Ministers. Each Department of State is a "corporation sole" and

all the acts of a Department are the acts of its Minister for which she or he is responsible to the Dáil.

This model of government is posited on notions of checks and balances and accountability. Practice in recent decades suggests that, increasingly, this model is more of a theoretical construct than a reality. This may be particularly the case in terms of the actual balance of power as between the executive and the legislature and in terms of the capacity of the legislature to supervise the executive.

The notion that the Oireachtas sets policy, makes the laws and then leaves it to the executive to implement the laws does not fit with how government operates in practice. The reality, as attested by many political scientists and commentators, is that the Government once elected controls the Houses of the Oireachtas with a resulting diminution in the capacity of the Houses to supervise the executive. For all practical purposes, it is the Government which decides policy; which proposes legislation and ensures its passage through the Oireachtas and, subsequently, in its executive capacity ensures that the laws are implemented.

In *Administrative Law in Ireland* (3rd edition, 1998), Hogan and Morgan describe the Irish governmental system as a "fused executive-legislature" rather than one in which the executive and the legislature are separate. They write:

"... all the Dáil's powers over the Government are conditioned by the basic fact of political life which is that a Government can almost always command the support of a majority of deputies, because deputies are elected principally on the basis of the party which they have pledged themselves to support in the Dáil. Such is the strength of the whip-system that the legislature cannot be regarded as speaking with a voice independent of the executive and, so, it is realistic to characterise the central element in the Irish governmental system as a fused executive-legislature."

Writing almost 30 years earlier than Hogan and Morgan, the same issue was addressed by Basil Chubb in somewhat starker terms:

"A division of functions and powers along the lines suggested by the literal meaning of the words of the Constitution does not obtain in Ireland. It would be absurd to think of the Government as having only 'executive' functions. ... Again, it would be misleading to envisage the Oireachtas as 'making laws' in the literal sense or to the extent that American congressmen, for example, are 'legislators'. The Oireachtas has the authority to declare law and thus to legitimize it. Although it makes some contribution to its content by way of criticism and amendment, the initiative in preparing and proposing bills rests almost wholly with the government, and the origins and formulation of legislation owe little to the Oireachtas as such."

Constitution and Constitutional Change (3rd edition, 1970)

If Chubb's analysis is accurate - and several more recent commentators appear to take the same broad view¹ - then it would make sense either (a) to legitimise the actual practice by way of an appropriate amendment to the Constitution (while taking care to provide for some new system of checks and balances) or (b) change the practice in a manner which allows the legislature to exercise its constitutional functions of law making and of supervising the executive. It is disappointing that the 1996 Report of the Constitution Review Group makes no proposals in this area. However, it does seem to the Ombudsman to be fundamentally unsatisfactory that the practice of government should diverge so significantly from the theoretical model.

Whereas Dáil Éireann remains supreme in that it retains the ultimate power of making or breaking a Government, power actually resides with the Government rather than with the Oireachtas. Some Oireachtas members, for their part, give the impression that legislation is the property of the sponsoring Minister and his or her Department rather than of the Oireachtas itself. This is particularly the case with lengthy and highly technical Acts such as the annual Finance and Social Welfare Acts. In terms of secondary legislation, as this present report suggests, the Dáil and Seanad appear to have no effective mechanism for vetting regulations. This means that the Dáil and Seanad find it very difficult to exercise any legislative or supervisory role other than what is permitted by the Government of the day.

The main casualty in all of this is the integrity of the governmental process. As currently operated, the system of checks and balances envisaged in the Constitution appears not to be functioning. If it were functioning, it is unlikely that the difficulties with the nursing home subvention scheme (as described in this report) would ever have arisen.

If the system had functioned properly in this case, the issue of requiring adult sons and daughters to contribute to their parents' nursing home costs would have been raised, debated and decided upon within the Oireachtas. Similarly, if the Oireachtas had been made aware at the outset that the State did not have the financial capacity to meet its obligations to elderly patients in need of nursing home care, then it could (had the system functioned properly) have debated priorities and options and, perhaps, decided to target scarce resources more effectively. For example, the Health Acts might have been amended to confine hospital entitlement to a smaller proportion of the population. The Ombudsman is not aware that any such analysis or proposal was ever put to the Dáil and Seanad. The action actually taken was at the executive level and was by way of secondary legislation which the Dáil and Seanad had no real opportunity to debate or amend. It is true that, within a restricted timeframe, a motion opposing the coming into effect of a regulation may be put down in either of the two Houses of the Oireachtas; but the volume of secondary legislation is now so great that such motions seldom, if ever, occur.

Concerns Expressed

Within the Oireachtas itself, and among commentators on politics and government, concerns are increasingly being expressed about the manner in which the respective branches of government relate to one another and, more specifically, as to whether the Houses of the Oireachtas are in a position to exercise fully their functions. The Ombudsman feels it is important to advert to these expressions of concern and, without in any way wishing to be drawn into party political debate, some recent examples are summarised below.

At a meeting of the Committee of Public Accounts (PAC) on 13 July 2000 the Committee Chairman, Deputy Jim Mitchell, made a series of comments on the need for parliamentary reform as well as wider governmental reform. Deputy Mitchell observed: "Following the DIRT inquiry it was the conclusion of this committee that all the recent scams, going back to the beef scandal, were contributed to, in part at least, by the lack of performance by the Oireachtas itself in obtaining accountability from the Government and state agencies."

Deputy Mitchell went on to comment that insufficient attention was being paid by the House itself to "the need for accountability, proper processes, and checks and balances in the system".

In its report of December 1999, entitled *Parliamentary Inquiry Into DIRT - First Report*, the PAC discussed the issue of Oireachtas reform. The PAC identified a number of weaknesses in procedures and practices and made a series of recommendations as to how matters might be improved. Overall, it was the view of the PAC that "accountability to the Oireachtas is weakened ... by a lack of clear boundaries between Parliament and Government."⁴

The Fine Gael party published a policy document in September 2000 entitled *A Democratic Revolution - A Plan for Institutional and Public Service Reform*. This document drew attention to a number of concerns of relevance in the present context. These included:

- a concern that the "laws enacted by Parliament elected by the people are often set aside or ignored by the very public servants hired for the directly opposite purpose";
- a concern that legislation is increasingly framed "in a way that allows political or administrative discretion to decide which individuals should benefit from it, rather than the application of clearly drafted rules";

⁴ To illustrate this point, the PAC pointed out that in conducting its DIRT Inquiry it had "to repeatedly seek sanction from the Department of Finance for staffing and resources and for other, even minor, expenditure". The fact that such requests were always met in this instance does not, according to the PAC, take from the fact that it was dependent for resources on the good will of the Executive (in the form of the Department of Finance).

- a concern that the Houses of the Oireachtas are ineffective "in scrutinising the activities of Ministers so as to ensure that Ministers are acting in the public interest in the discharge of their duties..." and a related concern with what is termed the "subjugation, possibly unconstitutional, of the Houses of the Oireachtas to the Government which they are supposed to hold to account".

Speaking in a personal capacity, the present Attorney General, Mr. Michael McDowell SC recently alluded⁵ to a "democratic deficit" arising from the non-involvement of the Oireachtas in relation to European Union law making. Mr. McDowell made the point that, "unlike some other European member state parliaments, the Oireachtas does not, to any significant extent, claim for itself a right of input into forthcoming directives or regulations". He went on:

"Indeed, the scheme of incorporation of directives into Irish law envisaged by the European Communities Act, 1972 which allows for incorporation by regulation subject to parliamentary veto has little effect in reality. The theoretical supervisory role exercisable under the 1972 Act remains just that - theoretical."

Mr. McDowell suggested that it is possible for a Minister at a departmental level to negotiate the terms of a draft directive or regulation without reference to his or her Government colleagues and to make a regulation under the 1972 Act transposing it into Irish law "without substantial governmental involvement and without any notice at all to the Oireachtas."

The Government has recently published a discussion document, *A Dáil for the New Millennium*, which "recommends the most radical reappraisal of the workings of the Dáil parliamentary system since the foundation of the State." These proposals are designed to "increase the relevance and effectiveness of the Oireachtas by way of reform of some of its undoubtedly outmoded procedures and practices." These proposals appear to represent a response to some of the concerns identified earlier in this chapter.

Relationships within Executive

What is of interest here is the nature of the relationship between a Minister and his or her senior civil servants. The legal status of the Minister as a corporation sole generally precludes the possibility of independent action by senior civil servants. All acts of the Department and of its officials are the acts of the Minister. This remains the case even after the enactment of the Public Service Management Act, 1997. Of course, in practice, common sense has to apply in relation to the extent to which a Minister should be held accountable for the actions of each and every official. As a general rule of thumb, accountability should apply to those actions of which the Minister was aware, or of which the Minister as head of the Department could reasonably be expected to have been aware,

⁵ Speech by the Attorney General, Michael McDowell SC to the Association of European Journalists, 22 November 2000.

or to have made himself or herself aware.

Clearly, the strict legal position could give rise to considerable practical difficulty in a situation where the range of activity of a typical Department is far beyond the compass of the individual Minister. The particular *modus operandi* which evolved to cope with this difficulty was succinctly described in the 1969 Report of Public Services Organisation Review Group (Devlin Report):

"The *modus operandi* which has been adopted is to issue letters, minutes and instructions, in the name of the Minister.... The official does not sanction, he conveys the sanction of the Minister. He does not describe himself as authorising, he speaks of the Minister authorising. The personal and final responsibility of the Minister is in every instance stressed. The whole system is extra-statutory but it functions. That it does so is because of the special relationship of trust between the Minister and his officials. The trust is and must be mutual. The official knows that the Minister will stand over his action vis-à-vis public and parliament if this action is in conformity with his general views. The Minister knows that the official in taking any action will always be conscious that the Minister may, in relation to the official's action, be challenged: that it is his business to have a convincing answer to such challenge. He knows furthermore that the Minister must be personally consulted and a direction sought from him where the subject matter may have serious public and political implications."

Report of Public Services Organisation Review Group (Devlin Report) 1969

Within this model there was a clear division of functions as between the political (Ministerial) side and the official side. Good government, as Professor Séamus Ó Cinnéide put it, "depended on a certain distance and balance between the two sides"⁶. The question is whether this traditional *modus operandi*, as described in the Devlin Report, continues to operate some 30 years later. The Ombudsman has already commented on the cumulative effect of a series of recent enactments - the Public Service Management Act, the Privilege and Compellability Act and the Freedom of Information Act - on this traditional model⁷. The effect of these enactments, as the Ombudsman sees it, is to move away from the traditional model without having put anything specific in its place.

Other commentators are perhaps more forceful in contending that the traditional, extra-statutory arrangement no longer exists. For example, Professor Séamus Ó Cinnéide argues that there has been a radical change amounting to an unspoken revolution in our system of governance (see following page).

"... both sides still have power, but otherwise the position has completely changed in regard to both ministers and civil servants. These changes represent an unspoken revolution in our system of

⁶ Séamus Ó Cinnéide, *Democracy and the Constitution*, Administration, Vol. 46, number 4.

⁷ Ó Cinnéide, *ibid.*

governance, all involving greater power with the executive and less accountability. ... The problem is that we do not know what exactly has replaced the old system. This very uncertainty is yet another challenge to democratic values."

Séamus Ó Cinnéide

Democracy and the Constitution, Administration, Vol. 46, No. 4.

In the case of the nursing home subvention project, the subject of this present report, it is not the Ombudsman's conclusion that the officials failed to consult with the Minister, or that they failed to act in accordance with his wishes. Ultimately, the Minister (and more than one was involved over the period) signed the various regulations and is, as a matter of constitutional law, responsible for them. Even if the Minister had not been properly briefed, which is not contended by the Ombudsman to have been the case, he would still be responsible. What is perhaps cause for concern is the paucity of written evidence of the Minister's involvement and of the Minister's own views on the subject. This apparent reluctance to record the Minister's involvement represents a departure from the traditional model in which senior civil servants could expect to have a detailed record of the Minister's thinking. The traditional model certainly existed up to the 1980s.

The Ombudsman has already⁸ raised the issue of what appears to be a growing practice within Departments whereby Ministers tend not to put their views or instructions explicitly in writing. For example, the views of the Minister may be conveyed verbally, or conveyed via his or her private secretary, or conveyed through such phrases as "as directed" or "as discussed". While acknowledging the pressure of work facing all Ministers, there are a number of difficulties with this type of practice. In the immediate

⁸ Paper delivered by the Ombudsman/Information Commissioner, Kevin Murphy, at the Management of Government in the New Millennium, Conference organised by the Departments of Government and of Law, University College Cork, 1 October 1999.

(Text of paper available on Ombudsman website - <http://www.irlgov.ie/ombudsman/>)

"What comes over very strongly to me is that the attempt by means of these various Acts to move away from the traditional model of accountability to a new model seems to lack completion and that as a result there is scope for a great deal of confusion. The traditional model - which I would call the Collaborative Model - is at its best exemplified by the Seán Lemass/John Leydon relationship in the Department of Industry and Commerce. ... The model to which we seem to be moving is what I would call the Contractual Model exemplified by the new relationships in the New Zealand public service. Here the Minister with the advice of special advisors determines what he/she wishes to achieve during a term of office and enters into a short-term contract with the Secretary General. The Secretary General undertakes to deliver a range of outputs to realise the Minister's desired outcomes and is assessed on the success or otherwise of that delivery. The Collaborative Model is by definition less open and much less defined than the Contractual Model and respective responsibilities are much less clear cut. To operate successfully it requires a high degree of co-operation and common ground as well as mutual trust - some would say loyalty. It may also require a high degree of official secrecy, particularly in relation to the Minister/Secretary General relationship. The Contractual Model needs very precise definition especially in relation to responsibilities and accountabilities. It is a more professional relationship but by its nature may develop an adversarial aspect. It may be that holding someone accountable necessarily requires an adversarial aspect. It is clear that, while we have moved somewhat in the direction of the second model, we have stopped well short of it."

term, it may lead to a lack of clarity as to a Minister's actual views and intentions. In the immediate and medium terms, failure properly to record a Minister's views and intentions may well undermine that sense of absolute trust between a Minister and his or her senior officials which is vital to an effective working relationship. Such a practice also has implications for accountability; the absence of a clear, written record can lead to uncertainty when the actions, or inactions, of a Minister (and his or her Department) are being scrutinised by the Oireachtas. In the longer term, and from an archival point of view, it means that public administration records are going to be incomplete.

There are two other elements which call for comment. First, it is disappointing that there appears not to have been any detailed discussion within the Department of Health on alternative courses of action, including the option to amend the legislation, when it became clear that the subvention scheme as originally envisaged could not be realised within existing resources. (The issue of health service funding, which is of relevance in this context, is discussed later in this chapter.) One would expect that, in putting proposals before a Minister, a range of alternatives should be proposed. While senior civil servants, in putting alternatives, may be expected to be attuned to political realities, it is surely their role sometimes to put unpalatable options to their Ministers so long as the "pros" and "cons" of the various options are clearly outlined. The Ombudsman has not seen any records which suggest that serious discussion on such alternatives took place.

Second, the dialogue between the Department of Health and the Department of Finance, on the one hand, and between the Department of Health and the health boards, on the other, clearly falls in to the category of the "controllers" talking to the "controlled". As often happens, this dialogue was concerned largely with post hoc "damage limitation" so far as financial costs were concerned. It is self-evident that the Department of Finance has a crucially important role to play in controlling public expenditure, especially in a demand led sector such as health. It is equally self-evident that the Department of Health must ensure that maximum effectiveness is achieved by the health boards in using the resources given to them. But dissatisfaction on the part of the general public also gives rise to considerable costs which are not taken into account when schemes and programmes are being costed. What seems to have been lacking from the dialogue is an acceptance that, increasingly, human rights, including economic and social rights, have to be addressed. In a number of areas recently this has given rise to criticism of the executive by the judiciary⁹. This aspect is further discussed later in this chapter.

⁹ See, for example, the High Court judgement of Mr. Justice Barr in *Jamie Sinnott and Minister for Education, Ireland and the Attorney General* (4 October 2000). This case involved the failure of the State to make adequate provision for Jamie Sinnott's constitutional right to primary education in a situation where Mr. Sinnott had special educational needs because of autism. Mr. Justice Barr commented on

"the administrators in the Department of Finance, who play a major role in advising on the dispositioning of the financial resources of the State, [and] who appear to be insufficiently informed regarding the constitutional obligations of the State to the weak and deprived in society to enable them to assess realistically the degree of priority which should be attached to each such claim ... the ultimate financial decision-makers and officials who devise annual revenue/exchequer budgets and administer state funds must have a real awareness and appreciation of the

(...)

What Next?

It may be that if the Committee system, which exists at present in the Houses of the Oireachtas, had been in operation when the Health (Nursing Homes) Bill was being considered that some of the problems identified in this report might have been avoided. In particular, the gulf which occurred between policy and implementation might have been avoided, or at least narrowed. The present system now seems flexible enough to enable the Committee dealing with a particular piece of legislation to explore its "mechanics" with the officials of the sponsoring Department. It may be also that, if the Freedom of Information Act, 1997 had been in operation in the early 1990s, the pressure on the Department to get to grips with the defects and illegalities of the nursing home subvention scheme might have been much greater.

Nevertheless, there is no certainty that the failures in accountability highlighted in this report could not occur in the case of other schemes and programmes. This is because of certain basic features of the system:

- the difficulties that the Houses of the Oireachtas face in attempting to monitor the growing mountain of regulations and other secondary legislation by which policy is implemented;
- the weakness in the links between two separate legislative processes, the process whereby the Houses of the Oireachtas create new entitlements or benefits for the public and the process by which Dáil Éireann allocates resources annually to facilitate the actual provision of these entitlements or benefits;
- the difficulties faced by members of the Houses of the Oireachtas in feeding into the Administration, in a formal and transparent way, their concerns and those which are brought to their attention by their constituents, or indeed by the Ombudsman's Annual Report, in a way which ensures an effective response.

Secondary Legislation

In the shorter term, establishing a mechanism for monitoring secondary legislation is an obvious step worth taking. Such monitoring might have to be done, initially at least, on a selective basis. This could be done by ensuring that, in the case of certain Bills, the section dealing with the making of regulations by the relevant Minister would provide that an affirmative resolution from each of the Houses of the Oireachtas would be needed before any such regulations would come into effect. This would be particularly the case where the regulations in question confer entitlements, require payments by, or otherwise impose penalties on members of the public. There is something to be said for having the Committee, which dealt with the passage of the legislation, also deal with monitoring the

constitutional obligations of the State to all sectors of the community and in particular to the rights of the grievously deprived in society ..."

It would seem that the broad thrust of Mr. Justice Barr's comments may also be relevant in relation to the State's funding of statute-based services for the elderly.

making of the regulations. In this context, what was done in the case of the Ombudsman Act, 1980 may be of interest. When the Ombudsman Act was passed it contained, at Section 4(10), the "standard" provision in relation to the making of regulations whereby public bodies could be added to, or deleted from, the list of public bodies subject to investigation by the Ombudsman. When the Act was implemented in 1984 with the appointment of the first Ombudsman, the then Minister introduced the Ombudsman (Amendment) Bill. This, when enacted, provided that any regulation under Section 4(10) required an affirmative resolution by each of the Houses of the Oireachtas. It was considered that any proposed amendments to the Ombudsman's jurisdiction were worthy of consideration by the two Houses.

Funding of Entitlements

Dáil Éireann might also wish to give consideration to the way in which, at present, it deals with the Annual Estimates. It might be useful if expenditures which are effectively non-discretionary (i.e. which arise from entitlements which must be met, for example, public service pensions) were identified. The Departments responsible for these expenditures would be asked to confirm that these were the best estimates of what was required to meet these entitlements; if this proved not to be the case, they would face questioning by the Public Accounts Committee in due course. If, because of a general need to reduce public expenditure, it became necessary to reduce the estimate for a non-discretionary service below the realistic amount, then the Department concerned would have to indicate the actions required to "square the circle". It would then be a matter for Dáil Éireann to decide how this might be achieved.

Oireachtas-Executive Interaction

There may also be a case for particular Oireachtas Committees, from time to time, pursuing with specific Departments areas which have been identified as giving rise to a significant number of justifiable complaints.

Human Rights Issues

The Ombudsman has already observed that, in relation to the particular scheme the subject of this report, there is little evidence that notions of the rights of applicants were paramount. Whereas it may be easier to recognise and meet basic rights in times of economic success, it is more important that those same rights are provided for when times are hard.

With the passing of the Human Rights Commission Act, 2000 and the intention that the European Convention on Human Rights will become part of Irish law, it is clear that international human rights instruments will increasingly represent a significant influence in the State's approach to service provision. This is likely to be particularly so in the case of entitlements for groups such as children, the disabled, the homeless, travellers and other minority groups, the elderly, immigrants and persons in custody and detention. A human rights approach may not, in fact, be all that different to what our Constitution

already provides; but it may well be the catalyst to unlocking what is already contained in the Constitution.

This approach will pose fresh challenges for our institutions of government. It will underline the importance of an open and accountable parliament, an executive which is accountable to that parliament, an independent and impartial judiciary and a free and responsible media. These institutions will have to develop an awareness of the relevance of human rights protection not only to existing international instruments but also to domestic law and, indeed, to administrative schemes and programmes which are not part of domestic law. Citizens too will need assistance, on the one hand to develop their awareness of these rights and how they impact on their daily lives and, on the other, to develop new responsibilities which tolerate and encourage support for individual difference.

Viewed in the broadest sense, a government's task is to serve the interests of its citizens and it derives its legitimacy from the way in which it does so. The function of serving its citizens is most clearly seen in areas in which the government protects or cares for individuals and their interests, or provides public services. Although it may seem paradoxical, the public also needs to be assured of protection against the government when it fails to fulfil its responsibilities in relation to the public. For example, doing justice to social, economic and cultural human rights and the right to development may pose serious problems if a country's finances do not permit the government to honour justifiable claims. In that situation it is important that the model of government in place permits the allocation of scarce resources to be administered under a system of priorities in an equitable and transparent manner. In cases where a government has not adequately protected these and other human rights, it is important that the citizen is enabled to pursue the matter further either to the courts or to the appropriate "national human rights institution" in the form of a National Ombudsman or a Human Rights Commission.

The growing importance of the human rights dimension is evident from the increasing extent to which the case law of the European Court of Human Rights (ECHR) is penetrating national legislation. The European Convention on Human Rights celebrated its 50th anniversary last year. Of all the judgements handed down by the ECHR over that period, some 80% have been given in the past ten years.

It should be clear from the above that the subject matter of this report - the elderly and the manner in which they were treated in relation to nursing home subventions - can be analysed at two distinct levels. The first level is quite specific and involves a consideration of the actions of the Department and the health boards by reference to Section 4 of the Ombudsman Act. As already indicated, there is no doubt that on this basis significant maladministration has occurred. The second level is more general but equally important in that it involves a consideration of the extent to which the human rights of elderly patients in nursing homes have been infringed. Admittedly, awareness of the human rights dimension of these issues was not well developed in the early nineties. However, one of the central messages of this report is that the human rights dimension of

issues of this type need to be carefully considered by the Oireachtas and the Executive from now on.

The Ombudsman is not convinced that the various measures mentioned above can, by themselves, deal adequately with what is fundamentally a constitutional matter. In the longer term, the relationship between the Oireachtas and the Executive, as well as the relationships within the Executive, may need to be thought through afresh in the context of a wider programme of constitutional reform. There is already a momentum in support of such reform and the Ombudsman hopes that this report will make a contribution to the debate.

Chapter Two

The State and its Agencies

“I learned too of the tenacity with which officialdom can strive to avoid publicity for manifest mis-management.”

*Lord Howe of Aberavon, in
Procedure at the Scott Inquiry,
Public Law, Autumn 1996*

Introduction

Our purpose in this chapter is to report on our examination of the implementation of our recommendations in respect of the State and its agencies – principally the Departments of Finance and Enterprise, Trade and Employment, the Central Bank and the Revenue Commissioners and to make further recommendations as are in our view appropriate.

In this chapter we examine progress on a number of our recommendations in addition to those relating to the Revenue Commissioners. These include our recommendations in respect of

- the duties of the proposed single regulatory authority for financial services;
- the regulation of the audit profession;
- the adoption of a system of independent audit as an intermediary between bank secrecy and full Revenue access;
- the question of dormant accounts.

In addition we examine

- the issue of a Revenue Court and fiscal prosecutor; and
- the Appeal Commissioners.

The Look-back Audit

One aspect of the recommendations relating to the State and its agencies is not explored in this Chapter. This is our review of the Revenue look-back audit of deposit taking institutions, implications arising therefrom and recommendations relating thereto. The Revenue look-back audit is examined in Chapter Three - the Deposit-taking Institutions.

Part 1

The responsibilities of a single regulatory authority for the financial services sector

The principal players on this question are the Central Bank, the Department of Finance and the Department of Enterprise, Trade and Employment. In the background, the proposal for a single regulatory authority for financial institutions has implications for the Registrar of Friendly Societies and for the Office of the Director of Consumer Affairs. These aspects to the proposal did not enter into our deliberations as they are not material to our inquiry.

By the commencement of the third phase of our inquiry (the public Hearings of autumn 1999) the Government had decided in principle, separately and unconnected with our investigations, in favour of a single regulatory authority (SRA)¹⁰ for the financial services sector in Ireland. The regulation and supervision of all financial institutions (deposit-takers, insurance companies and financial intermediaries) and all aspects of financial regulation and supervision (prudential and consumer) would be put 'under one roof'.

This policy decision was not an aspect of our inquiry. We took it as settled and given some of the recommendations that we were making (dealing with the role of chief executives in deposit-taking undertakings, whistleblowing on wrongdoing and so on), clearly this proposal was relevant to those aspects of our reform package.

Extract from First Report:

"The Government is at present preparing for the establishment of a Single Regulator for the financial services sector in Ireland. This decision will require the enactment of a modern legislative framework for the operation of the financial services sector.

Recommendations of the Sub-Committee

The Sub-Committee recommends –

- *that in preparing this legislation, the Department of Finance in consultation with the Department of Enterprise, Trade and Employment have regard to the following:*
- *That the Single Regulator address ethics, professional standards and corporate governance in the provision of financial services in Ireland;*
- *The requirement that each licensed and regulated financial institution*

¹⁰ The proposal of a single regulator was recommended by an expert committee chaired by Mr. Michael McDowell SC, established by the Tanaiste and Minister for Enterprise, Trade and Employment in 199x. The report of the working group (the McDowell Committee) was completed in (month) 199x. While the committee came down on the side of a single regulator, it left in abeyance the question of how the Central Bank would fit into the structure.

appoints a Tax Compliance Officer, to be the Chief Executive Officer of the licensed institution;

- ***The detailed rules and requirements in relation to the duties of directors of financial institutions to be proposed for the Single Regulator; and***
- ***A scheme and procedure for bank officials to report suspected wrongdoing.***

The Sub-Committee recommends –

that within six months an outline of the proposals for legislation in this regard be presented to the Oireachtas.”

The deadlines set in our original recommendation were not met. Indeed by the commencement of the final phase of the review in November 2000, it appeared to the Sub-Committee that little had happened with respect to giving effect to the decision to establish a SRA – other than an argument at official level, centrally between the two frontline departments, Finance on the one hand and Enterprise, Trade and Employment on the other but also involving the Central Bank.

This argument at official level was mirrored at Government with the two relevant Ministers, the Minister for Finance, and the Tanaiste and Minister for Enterprise, Trade and Employment, adopting the positions of their respective Departments.

The Department of the Taoiseach was also a party. It attempted to hammer out a ‘compromise’ to which the two Ministers and their Departments could agree. This compromise was seen as having raised additional problems. As a further twist, the Central Bank had its own opinion on how matters should proceed.

However, on 20 February 2001 the Tanaiste and the Minister for Finance made a joint announcement setting out a proposed new structure for the regulation of the financial services sector in Ireland. In their joint statement unveiling their scheme, it was stated that

“Having reviewed the proposals contained in the McDowell Report for the linking of monetary policy and financial services (prudential and consumer protection) regulation the Tanaiste and the Minister for Finance are satisfied that the effective coordination of these two functional areas and the efficient use of resources would be best achieved by linking a monetary authority carrying out for ESCB-related functions and a single regulatory authority for financial services within a new structure, the Central Bank of Ireland and Financial Services Authority, which will be chaired by the Governor.

The structure will include a new authority responsible for prudential regulation of both the banking and insurance sectors and for consumer protection. The new authority will be known as the Irish Financial Services Regulatory Authority (IFSRA). It will have its own board, with an independent chairperson. The Ministers intend to proceed immediately to establish an interim board ... on a non statutory basis ...

The new structure will include an Irish Monetary Authority (IMA) which will carry out administrative functions required by the role of the Governor within

the European System of Central Banks and will manage the reserves. The Irish seat with the European System of Central Banks will continue to be held by the Governor as chair of the board of the CBIFSA.”

View of the Sub-Committee

The Sub-Committee stresses that the SRA as such is not a matter of direct concern. This is in the end a policy matter and the Committee of Public Accounts is not concerned with policy debate. However as a practical matter, one also has a certain regard for the view of the Governor of the Central Bank, expressed at the Hearings of 28 November, 2000 on a general issue in respect of the ‘pillars’ proposal:

Mr. O’Connell: ... *What is important is corporate governance. No matter how many pillars you have within the Central Bank you have to have somebody in overall charge of any organisation otherwise you do not have a single organisation. We are all the time here talking about corporate governance and all the things that should be done, procedures and everything, and here we are discussing twin pillars or triple pillars – I don’t know which at this stage –*

Deputy Ardagh: *Twin.*

Mr. O’Connell: *Twin, thanks.*

Deputy Rabbitte: *Siamese twins.*

Mr. O’Connell: *Do we agree on one thing? If you want to protect the integrity of any organisation, Central Bank or otherwise, you have got to have someone in overall charge. Otherwise I do not see how an organisation could function at all and I think that is essential to the whole thing.*

Hearings
28 November 2000

While the issue of the SRA is a matter of policy and outside the remit of this Sub-Committee, the issue of accountability – the accountability of public officials to the political and democratic system – is very much a concern of this Inquiry. The Sub-Committee agrees with the view expressed by the Governor in the above extract from his evidence. After almost three years of inquiry into the events surrounding the operation of DIRT during the relevant period, one thing that we have concluded is that during the relevant period and in relation to DIRT,

- there was a most disturbing, dramatic and disastrous breakdown in public accountability and that
- there was furthermore an equally dramatic and disastrous breakdown in the system of parliamentary scrutiny.

This was critically due to the under-resourcing of the Oireachtas. However there was also the withholding of information, the conduct of policy discussion and policy implementation behind closed doors and the development of an actual policy that was the opposite to that provided for in law.

During the public Hearings of November 2000 the Sub-Committee heard from officers of the Department of Finance that, while the impasse on the SRA was being dealt with, the Department was also separately preparing a Central Bank Amendment Bill.

The Sub-Committee was informed that the measures being included in that Bill included, *inter alia*, the relevant recommendations made in our First Report. Furthermore, the Governor of the Central Bank reported in his oral evidence, changes in the regime being applied by the Bank to licensed deposit takers. *De facto*, and pending legislation, many of the recommendations made in our First Report were being effected and the spirit of those recommendations was also accepted.

The Sub-Committee notes these reports.

Recommendation of the Sub-Committee

The Sub-committee recommends that –

The Department of Finance and the Department of Enterprise, Trade and Employment report to the Committee of Public Accounts by the beginning of June 2001 the status of the SRA Bill and the estimated timescale for publication and enactment. The Sub-committee urges that the Bill be enacted as soon as possible.

Part 2

The future of the Revenue Commissioners

The Report of the Steering Group (the Blue Book)

“It is important that the basic need for an independent, impartial, effective and efficient revenue service is served by a structure that will be durable and yet sufficiently flexible to respond to changing needs of government and taxpayers in the future.”

Dr. Miriam Hederman O'Brien, former Chairperson of the Commission on Taxation, Submission to the Steering Group on its Report.

Extract from First Report

The Sub-Committee recommends –

that the Minister for Finance prepare proposals for the enactment by the 28th Dail of a Revenue Act to provide a clear and modern framework in law for the Revenue Commissioners.

The Sub-Committee recommends –

that the drafting of the Bill be preceded by a general review by the Public Service Management and Development Division of the Department of Finance of the Revenue

Commissioners and that the results of this review be reported to the Committee of Public Accounts within six months. The review should address the issues of independence and accountability, organisation, structures and practices and the desirability or otherwise of executive and non-executive Commissioners on the Board of Revenue.

These recommendations were made in the light of the evidence to the Committee by witnesses. This evidence showed that

- During all of the relevant period the Revenue operated under a 1923 piece of secondary legislation – a statutory instrument, the policy intent of which was to establish a unified organisation but which was not put into effect;
- During much of the relevant period, reflecting the failure to give effect to the policy import of the statutory instrument of 1923, the Revenue did not function as a single body and did not in reality have a single chief;
- During much of the relevant period the Revenue did operate a close relationship with the Department of Finance, while maintaining its tax administration separateness from the Minister for Finance;
- At a critical moment in the relevant period the Revenue did become implicated in a policy view, the false view of the flight of capital theory;
- There was a real case for a modern Revenue Act, putting beyond doubt the independence of Revenue, enshrining its integrity and establishing it as a single, modern organisation.

In June of last year, during the mid term review, the Committee asked the Minister to expand the remit of the Revenue Review Group to include an examination of the issue of a separate Revenue Court and the Appeal Commissioners. This was accepted by the Minister.

Arising from our recommendations, the Minister for Finance established a Steering Group to oversee an examination of the Commissioners. Chaired by Mr. Tom Considine, Secretary General, Public Service at the Department of Finance, there were two external members on the group as well as five service officers including the Group chairman and also, as a member, the Chairman of the Revenue Commissioners.

The Steering Group was assisted by a team (the Working Group) headed by Mr. Eric Embleton, Assistant Secretary, Department of Finance, who was also a member of the Steering Group. A second member of the Working Group, Ms. Annette Connolly (Department of Finance), was also on the Steering Group as Secretary to the Group.

Following on the examination undertaken by the Working Group the Steering Group prepared and submitted to the Minister for Finance its report, the 'Blue Book'.

There are 48 detailed recommendations contained in the Blue Book. The recommendations include *inter alia* proposals for new legislation, a new governing board (comprising the three Commissioners and three 'lay' Commissioners), a new top

management structure, the integration of departmental and general service grades in Revenue and proposals relating to audit and investigation and the appeals procedure (including the work of the separate body, the Appeal Commissioners) as well as the issue of a Revenue Court.

In the context of our findings, conclusions and recommendations made in the First Report and given the requirement voiced by Dr. Hederman O'Brien the Sub-Committee set out to satisfy itself on a key issue. To what extent does the Blue Book represented a rigorous piece of work in conformity with the terms of reference and in particular our core concern – the independence and integrity of the Revenue Commissioners?

Status of the Blue Book

The current status of the Blue Book was explained at the hearings of 30 November by Mr Tom Considine of Department of Finance (chairman of the Steering Group):

Mr. Considine: *The review has been noted by the Minister for Finance. At the request of the Minister for Finance, the Government authorised him to present the report to the Committee of Public Accounts, to lay it before the Houses of the Oireachtas and to send a copy to Mr Justice Moriarty. The Minister for Finance indicated in his press statement of 5 September 2000, and I quote 'following a more detailed consideration of the steering group's report by the PAC and any recommendations the committee may make, I will make proposals to Government'.*

Hearings
30 November 2000

This statement would appear to put the Sub-Committee centre-stage in relation to the recommendations made by the Steering Group. The Government awaits any recommendations that the PAC might make in respect of the Blue Book's recommended reform programme for the Revenue Commissioners.

The Sub-Committee and the Moriarty Tribunal

In addition to submitting the Blue Book to the PAC the Government, on the advice of the Attorney General's Office, also forwarded a copy to Mr. Justice Moriarty. As explained by Mr. Considine in his evidence this arose from the fact that an aspect of the Group's terms of reference overlapped with those of the Moriarty Tribunal, specifically in relation to the Moriarty Tribunal being asked

Mr. Considine: *to make whatever broad recommendations it considers necessary or expedient for maintaining the independence of the Revenue Commissioners in performance of their functions while at the same time ensuring the greatest degree of openness and accountability in that regard that is consistent with the right to privacy of the compliant taxpayer.*

Hearings
30 November 2000

The Steering Group's terms of reference included *inter alia* undertaking "a general review of the Office of the Revenue Commissioners and in that context, to address in particular

... the independence and accountability of the Office ..." The terms of reference were drawn directly from the PAC Report. Therefore the Sub-Committee, the Steering Group and the Moriarty Tribunal address, in one respect, a common concern or subject - the question of independence for the Revenue. The subtext here is obviously the proposition that independence is central to the integrity and perceived integrity of Revenue.

In relation to its recommendations for change at the Revenue Commissioners the Steering Group seems not to have concerns about awaiting the Report of the Moriarty Tribunal. For example it envisages, recommends, moving rapidly to interim arrangements pending enactment of the legislation. Furthermore a detailed programme of change and restructuring and a timetable for implementation is set out. It envisages implementation of recommendations commencing during the final quarter of the year 2000 with completion scheduled for the third quarter of 2001. Perhaps in respect of detailed proposals for organisational change (e.g. the proposals on grading structures) no issue arises. On the other hand in relation to the bigger picture, the broader canvas, it might be argued that the Report of the Tribunal may have points and recommendations to make.

Recommendation of the Sub-Committee

The Sub-Committee recommends that –

The recommendations of this Sub-Committee in this chapter are brought to the attention of the Moriarty Tribunal.

Collection targets

There is a technical discussion (and an associated recommendation) contained in the Blue Book that, in the view of the Sub-Committee, is a matter deserving comment in the context of principles of public accountability, the subject matter of this Inquiry and the remit of the Committee of Public Accounts. It is the discussion of collection targets.

"The warning that the annual budget target is not a comprehensive measure of the collection effectiveness of Revenue because it is influenced by other factors ... is somewhat hidden in the text but deserves greater emphasis. ... The recommendation in 3.11 is important."

*Dr. Miriam Hederman O'Brien,
Submission on the Report of the Steering Group,
21 October, 2000*

In her submission Dr. Hederman O'Brien also observed that there is no detailed discussion of what system of collection targets (a performance benchmarking system) might look like, even in principle and that "The basis for the compilation of the target figure needs to be described and reviewed."

The issue of collection targets (in effect performance benchmarking) is a technical matter but one of great overall importance in the view of the Sub-Committee. It is dealt with in

Chapter Three of the Blue Book. The critical paragraphs are 3.10 and 3.11, the former containing an admission and the latter a recommendation from the Steering Group.

Extract from the Blue Book

3.10 A key objective for Revenue is achieving or exceeding the annual budget target.

This figure is determined by the Department of Finance based on known tax receipts and economic forecasts, and can sometimes be revised in the course of a fiscal year. Revenue make a strong input into the preparation of the forecast. While this figure is, and must continue to be, of primary importance in fiscal management, it is not a comprehensive measure of the collection effectiveness of Revenue because it is influenced by other factors, such as economic buoyancy. Revenue, therefore, relies internally on other measures, notably the rate of compliance with the obligation to make returns and payments on time, and the size and composition of accumulated debt (in money terms and as a percentage of collection). These are associated with a range of subsidiary measures which enable analysis of collection effectiveness to be undertaken in more detail. The intention of using a range of measures is to achieve the best possible balance between collection efficiency (i.e. prioritising the larger taxpayers from whom the bulk of the money comes) and equity (i.e. ensuring that all taxpayers are managed effectively).

3.11 While the Group believe that the Budget target is an important performance indicator, it recommends that the various other measures already in use within Revenue be further developed and given more prominence. In particular, information should be published showing the amount of tax charged each year, the amount of that tax collected within one year, and the changes achieved in the level and age-structure of the debt. The Group believe that reporting the collection and debt figures in this manner is in line with the principles of accruals accounting which is now being introduced in Government Departments and in the EU and would more clearly illustrate the effectiveness of Revenue's collection and debt management procedures.

In essence it is acknowledged (paragraph 3.10) that at present, tax revenue or collection forecasts are formulated with the Department of Finance in the context of economic forecasting. It is admitted that this is not an appropriate basis for evaluating Revenue performance from the point of view of gauging the effectiveness of the Commissioners as a collection agency. It is recommended (paragraph 3.11) that a more appropriate set of benchmarking measures, indicators and collection targets and debt performance should be formally developed and introduced, using existing internal information in Revenue. However no detailed scheme is advanced for such a system of collection performance indicators, and benchmarking of Revenue performance, from this point of view.

In the view of the Sub-Committee this is a shortcoming. The assessment of performance targets and debt performance are of direct and immediate interest to the C&AG and PAC. The assessment is indeed crucial from the points of view of the C&AG's audit function and parliamentary accountability and Dail scrutiny (through the PAC). From these standpoints, clearly the system of performance indicators must be such that parliamentary scrutiny can fully see through what is happening – subject of course to maintaining confidentiality in respect of individual taxpayers.

The Sub-Committee is of the view that had a transparent and appropriate system of performance indicators and benchmarks been in place during the relevant period, accountability would have been enhanced. The problems with DIRT and evasion in general would have become obvious and the standing and integrity of Revenue would have been intact.

Any system must, in the view of the Sub-Committee, incorporate benchmarks for the assessment of performance – such as has been put in place by the National Treasury Management Agency (NTMA) in respect of its activities. The Sub-Committee acknowledges that the operations of the Revenue Commissioners and the NTMA are not directly comparable. However the broad principles applied at the NTMA seem to the Sub-Committee to be generally applicable, subject to appropriate modifications.

Recommendation of the Sub-Committee

The Sub-Committee recommends that –

- ***The that Revenue Commissioners develop and prepare annually and publish***
 - ***In respect of all of the taxes under their care and management, measures of***
 - ***the tax base;***
 - ***the amounts of tax charged;***
 - ***the Budget forecast;***
 - ***the tax collected;***
 - ***variances and explanations;***
 - ***underlying tax debt; and***
 - ***changes achieved in the level and age structure of tax debt (taxes outstanding) for the individual taxes;***
 - ***In respect of tax debt, measures of risk and policy on the containment of risk within acceptable limits; and***
 - ***Performance against independently derived and externally approved and audited performance benchmarks, the benchmarks to reflect the medium term strategic management objectives of the Commissioners;***
 - ***The benchmarks to be periodically reviewed and to be approved by the Minister for Finance.***

Structure and Composition of the Board of Revenue

"Given the formal responsibilities vested in the Chairman, which are a mix of chairman and CEO roles in the governance sense, and which under any alternative arrangements s/he must continue to discharge, assigning his/her remaining responsibilities to an independent chairman would result in a diluted, and arguably untenable, role for a non-executive chairman.

Blue Book, page 91.

"The key problem exposed by the DIRT Report was that when Deposit Interest Retention Tax was passed into law the Revenue Commissioners adopted an *a la carte* approach to the policing of the tax law ... although the Revenue Commissioners had a Mission Statement 'To serve the community by fairly and efficiently collecting taxes.'

Alternative recommendation: To avoid repeating the problems exposed by the DIRT Report and to restore public confidence the Chairman of the new Governing Board should be a non-executive director and the current Revenue Chairman should become the Chief Executive Officer of Revenue and they should both report to the Minister for Finance and the Public Accounts Committee."

*James Marron, Inspector of Taxes on the Blue Book,
Correspondence File,
submission dated 20 October 2000.*

Mr. Quigley: *There is a decision to be made and that decision will be made taking account of your recommendations and those of the Minister for Finance and the Government.*

Hearings
18 January 2001

There is, as the present Chairman of the Revenue Commissioners put it, a decision to be made. It is a crucial decision and there are two strongly opposing points of view as to the appropriate course of action. One view is that the roles of chairman and chief executive should be split. A wide spread of literature from management theory, reports of review groups and expert committees and general practice in the private sector are appealed to in support of this view.

The opposing view is that the two roles should remain combined. It is recognised that there is a *widely??* entrenched position in support of dividing the roles. However in the particular circumstances, it would not work – there would be little if any real role for a non-executive chairman. Also in support of the view there is an appeal to some recent developments in management theory. These developments recognise the possibility of cases where the roles may be combined. In such circumstances, the argument goes, there

may be a role for a non-executive vice chair. The Steering Group in the end sided with this view of things.

The Sub-Committee approached this question with an open mind. However it also wanted to test the rigour of the Steering Group's thinking on the question – according to the chairman of the Steering Group, Mr. Considine, “this issue was probably the issue that we gave most thought to.” What were the issues that compelled the Steering Group to its conclusion and recommendation?

The single most coherent explanation of the thought process and the rationale for this key recommendation in the Blue Book was provided by the Chairman of the Revenue Commissioners in response to Deputy Rabbitte.

Deputy Rabbitte: *Mr. Quigley, do you think it would be a great load off your shoulders if you continued as chief executive officer of the Revenue and you had an affable outside, suitably qualified non-executive person to take on the many functions of chairman?*

Mr. Quigley: *I have difficulty in answering the question in a way because I have a double interest to declare at the outset, which I must do. First of all, I was a member of the steering group and secondly as the incumbent for the time being of the Revenue I am probably not the most objective person to ask this question of. I try to be completely objective ...*

(...)

Revenue should be part of the public service. I am personally very committed to that ... There are particular responsibilities under the Public Service Management Act which go to the head of a Government Department and the Chairman of the Revenue Commissioners is the head of that Government Department known as the Office of the Revenue Commissioners. That role, as has been said, comprises both the head of office functions, the power to delegate tasks, the responsibility of reporting to the shareholder in this case, the shareholder being the Minister for finance on behalf of the taxpayers generally and the Irish public.

(...)

Then there is an accountability role which, under the Exchequer and Audit Acts, devolves the role of accounting officer on the Chairman. I participated in a very strong discussion in the Steering Group about this issue ...if you look at the outside parallel ... and look at the management literature and the Cadbury recommendations they clearly suggest that the roles should be separate ... There is other more recent management literature which outlines a more recent management view. The Hempel recommendations, published in 1998 suggest ... that where the two jobs are combined, there is a potential role for a vice-chairperson who could be a focal point, if you like, for any representations which other non-executive directors or other people in the organisation might want to make ... So the role of a potential vice chairman was recognised in some of the literature in circumstances precisely where the two jobs are combined.

Hearings

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What all of this boils down to is the proposition that there are certain legal constraints (the Public Service Management Act, 1997 and the Exchequer and Audit Acts), a certain “ideological” perspective (Revenue should be part of the Civil Service) and indeed some management theory in support of combination of the roles. As to a counterbalance to the recognised concentration of power, there is the possibility of a non-executive or lay vice-chair.

In probing the issue the Sub-Committee did ask why we were, in the words of Deputy Rabbitte, “hidebound by the existing situation. I mean isn’t the Minister for Finance free, having heard whatever the Committee’s deliberations conclude and having heard from Mr. Justice Moriarty when he’s finished and presumably separately having heard obviously from the Revenue and the trade unions concerned, isn’t the Minister for Finance of the day free to bring in whatever new Revenue Bill that he chooses?”

However much the question was probed with members of the Steering Group the grounds for the recommendation always returned to legislation and the nature of the Civil Service. But legislation can be changed and was it a reasonable representation of the position in the Civil Service?

Chairman: ... have you not had regard to the ample precedents there are elsewhere in the public service? For instance, the commercial and, indeed, non-commercial semi-state bodies have chairmen and the have chief executives. The chairmen are mostly and almost invariably non-executive chairmen ... We have the precedent of the DPP’s Office where the Accounting Officer accounts to this committee without in any way interfering with the DPP himself. You have, of course, the relationship between the Minister for Finance and his Secretary and it is the Secretary who is the accounting Officer to this Department (sic) Committee. So it seems to me that a false argument, regardless of those precedents, is being created here to defend the position that someone has decided shouldn’t be changed.

Mr. Considine: Well, Chairman, I would be, I think, quite upset if you thought that we set out to produce a result which suited somebody. We certainly didn’t do that anyway. ... those State bodies that you talk about on the commercial side, and the type of relationship that I have just described to Deputy Rabbitte, operates quite well there because the board have the job of appointing – they have a big say in appointing the chief executive...

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This reply does not actually properly address the issues raised by the questioner. It also raises its own questions. For example, what at all is the role of a non-executive vice-chair (which has been recommended by the Blue Book) in this scenario? What even is the role of the non-executive directors contemplated by the Blue Book?

Deputy Doherty: There is a question I am still not fully clear about, Mr. Considine. The report recommends and gives substantial reasons for the

having of an executive chairman and also for the having of a non-executive vice-chairman. Presumably a reasonable person could take it that at some time the executive chairman might be unable to fulfil the role and, consequently, the presumption would be that the non-executive vice-chairman would, but, of course, if the executive chairman is one and the same, being the chief executive and the chairman, how does the non-executive vice-chairman ever fit into the position when that person is sick or away ...?

Mr. Considine: *I suppose that conundrum can occur in any Department where the Secretary General or accounting officer is for one reason or another indisposed. ... If it were the case that the chairperson of the Revenue was going to be unavailable for a considerable amount of time, the Minister for finance would have to consider appointing one of the other commissioners as chairman ...*

Deputy Doherty: *So in such circumstances the non-executive vice chairman would never in any situation become the chairman.*

Chairman: *Or act for the Chairman.*

Mr. Considine: *No. ... We are saying that because of the particular structure in the civil service, the role that the office has in reporting to a Minister, the strategy statement, agreeing it with the Minister and so on, accounting to this committee, that that really can't be discharged effectively by the non-executive chairman.*

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The logic of the position held by the Steering Group and the recommendation made in the Blue Book as it appears to the Sub-Committee was most graphically expressed by Deputy Doherty: "The chairman and the chief executive is one person; the vice chairman is another. Because he is not the chief executive as well, the vice-chairman can never be the chairman, so as the Chairman has properly identified, what is the point of having a vice-chairman? Will he be paid some stipend for the honour of having a job in which he has no function to exercise in the context of vice chairman? He is vice-chairman of nothing. What is the meaning of vice-chairman? What is the dictionary meaning of it?"

There is perhaps a certain frustration evident in the words of Deputy Doherty. It is shared by the rest of the Sub-Committee.

Chairman: *To be honest with you, it sounds like a palliative to the committee. We will keep the chief executive as a chairman, but we will throw in a sort of non-executive appointment to appease the committee in its recommendations.*

Mr. Considine: *It certainly, isn't that, chairman. Can I try to explain again? I am, obviously, not doing it very well ...*

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The view of the Sub-Committee

A major task now facing the organisation is the restoration of public confidence in it as an independent public body with integrity. The integrity and standing of the Office of the

Revenue Commissioners has been damaged by the revelations at our Inquiry and remains to be commented on by other investigations. The restoration of integrity as a concept as discussed in Chapter One of this report – behaviour and action according to the principles of group responsibility – is a priority.

In the view of the Sub-Committee the Steering Group has not demonstrated rigour of thought or analysis in arriving at its recommendation. The recommendation made in the Blue Book to retain combined, the roles of chairman and chief executive in the Revenue Commissioners is therefore unacceptable to the Sub-Committee.

There are ample precedents in both the Civil Service and the wider public service of the splitting of the roles. In the examples of the DPP's Office and in the very structure of Ministerial Departments, there are, it appears to the Sub-Committee precedents. It was not explained by the witnesses who gave evidence on this issue precisely what the constraints were in the Public Service Management Act and the Exchequer and Audit Acts. However if there are such constraints in this case, they are only constraints of the law – the law can be changed. Parliament after all is the legislature and it is there to legislate, including legislating to amend existing legislation.

The Sub-Committee would further point out that as a matter of fact, it is not normal practice in the corporate world today for the two functions to be merged, principally because such merging of roles negates many of the advantages of having non-executive contributions to the board. We would recognise that there is also in the corporate world some overlapping of the functions of directors and the board of directors with the executive function. There is the potential for difficulty in this respect in introducing non-executive directors *at all* to the board of Revenue. However no one at this stage is opposed to non-executive Commissioners/directors. Furthermore, these are not insurmountable and they can be dealt with in legislation.

Recommendation of the Sub-Committee

The overarching desire of the Sub-Committee is to ensure that a formal, independent structure exists to ensure good governance and the protection of the interests of taxpayers generally and the Irish public. The Sub-Committee therefore recommends that –

- ***The roles of chairman and chief executive at the Office of the Revenue Commissioners be separated; that***
- ***The Board of the Revenue shall comprise three executive and three non-executive Directors and that the Chairman be drawn from the non-executive directors; and***
- ***That the chief executive and accounting officer be the same person.***

In the following table we set out for consideration how the separate roles and functions of the chairperson and the chief executive at the Office of the Revenue Commissioners might be defined in law.

Table 2.1
Model for the separation of the roles of Chairman and Chief Executive

	Role of Chairman	Role of Chief Executive
1.	Reporting to <ul style="list-style-type: none"> Minister for Finance PAC on governance issues 	Head of Department as defined in legislation: <ul style="list-style-type: none"> Public Service Management Act, 1997 New Revenue Commissioners Act
2.	Chairing the Board in consideration of policy and strategic aspects of <ul style="list-style-type: none"> Performance/operations Human resources Information technology Resource allocation 	Accounting Officer as defined in legislation
3.	Overseeing compliance with applicable law.	Development and implementation of strategies, business plans and operational budgets.
4.	Monitoring the equitable and equal treatment of all stakeholders as governed by the Revenue Charter of Rights.	Measurement of results against strategies, business plans and budgets.
5.	Monitoring public perception of Commissioners. The organisation must not only operate on an independent and fair basis, it must be seen to so do.	Monitoring and reporting progress on specific governance and control issues to the Board.
6.	Chairing the audit committee.	Resolution of conflicts between divisions and units in the best interest of the organisation as a whole.
7.	Liaising with the C&AG in relation to internal control and governance issues.	Liaising with the C&AG on operational issues and financial results for the year.

The Office of the Chief Inspector and the Inspectorate - Integration

It is recommended in the Blue Book that there is introduced throughout the Office of the Revenue Commissioners an integration of grading structure with that prevailing in most of the rest of the Civil Service and within much of the Revenue already. At bottom, the issue here is that of integrating the Inspectors of Taxes (the Office of the Chief Inspector) with the rest of Revenue and the rest of the Civil Service.

The principal reasons advanced for this proposed course of action – which was previously recommended by an earlier examination of the Office of the Revenue Commissioners – are that this would provide for mobility and movement between Revenue and the rest of the service; that it would make for a more flexible and efficient

Revenue service (facilitating co-operation between different units within Revenue); and that the project of a unified and integrated general service is an ambition to pursue for reasons of general efficiency. It is also argued that integration has already been achieved to a significant degree within Revenue – only the Inspectorate (the Office of the Chief Inspector or CIO) remains outside the general service structure. Even Customs and Excise has been successfully integrated into the general service.

As with so many things however there are at least two sides to the argument. The two sides were represented at our Public Hearings by Mr. Paddy Keating of the trade union IMPACT and Mr. Quigley, Chairman of the Commissioners.

Mr. Quigley: *I am anxious that we make early progress on integration. I am very much in favour of it. There are very strong reasons for it in Revenue. Without integration we seem to run into difficulties on lots of things that we try to do to improve the structure of our organisation and the effectiveness of our organisation.*

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Mr. Keating: *... some of our members who would be in favour of the integration may be in favour because they wish to get out of Revenue. I do not think, generally, we would be happy to see that as a good reason for supporting the proposal. ...The underlying reasons people are dissatisfied need some further analysis...*

And

... if they do get out of Revenue, we could end up with a dilution of the expertise. At the moment there is a relatively small trickle out to the private sector because there is a maximum there. If there was to be a very large move at different levels, that could create a problem. We feel these are issues that need to be fully addressed before a decision is taken.

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There is a perspective from which it makes sense that the CIO has its own structure. It is a *corps* or force endowed by law with significant, even special powers. It is a specialised inspectorate with enormous compliance, investigative, inquiry and even prosecuting powers. It engages in intelligence work, has draconian powers of inspection and so on. Inspectors have possession of and access to the most personal financial information on citizens as taxpayers.

Inspectors also have a level of expertise and knowledge in their field – tax law and administration – that is necessary for the proper functioning of Revenue. This is expertise and knowledge that is built up and learned over the years. It could be argued that such a *corps* ought to be separate and distinct. If there are issues in relation to promotional systems and procedures, duplication of resources and other human resources

and industrial relations issues such as efficiency, these, it could be argued, should be seen as matters to be dealt with appropriately outside of an approach bent on establishing a single grading system with the potential to disrupt the Inspectorate, lead to loss of human capital and possibly even loss of effectiveness.

There are also quite significant personal implications for personnel to whom integration will apply – created by the particular integration proposals that have been put by management to the unions.

View of the Sub-Committee

It would be inappropriate for the Sub-Committee to intrude into the internal management of the Revenue and industrial relations at Revenue. In the end the issue of integration is a matter for management and unions in the organisation. However, the Sub-Committee would express a concern that in pursuing the project of integration, the expertise, knowledge and human capital that is embodied in the Office of the Inspector of Taxes is not diluted or damaged. The Inspectorate is surely the core resource of Revenue.

A Revenue Court

Background

The essential background to the idea of establishing a Revenue Court is the low level of prosecution for serious tax offences – which is to say prosecution on indictment – in this State, historically. This low historical level of prosecution on indictment was against a background of evidence of a significant problem with tax evasion – serious evasion. The evidence to the PAC during the original hearings suggested this. The investigation by the Comptroller and Auditor General showed it to be the case. The Public Hearings of the Sub-Committee dramatically and daily demonstrated the scale of the problem through the relevant period. Even in the three years 1997 to 2000 there were only 13 prosecutions involving 11 cases.

Therefore the Sub-Committee was concerned and so, asked itself if there might be institutional innovations – such as a Revenue Court with expert assessors and so on – that might make a contribution to increasing the level of prosecution and compliance.

The argument

The argument for a Revenue Court is not clear-cut. Indeed there is not even a single vision of what a Revenue Court might be or represent. Furthermore, we were concerned to explore whether a Revenue Court, whatever shape it might take, was the answer or were there other institutional and working reforms that might deal with the matter?

A Revenue Court might be constituted to have financial and accountancy assessors available to advise the Court. Likewise a fiscal prosecutor might be singularly focused on Revenue offences and have the necessary specialist expertise in the office.

The issues

A Revenue Court raises some very important issues legally and constitutionally. Among

these is the question of prosecution. In short would we accompany a Revenue Court with the establishment of a separate prosecution service – a fiscal prosecutor – for that Court? At present all prosecutions of indictable offences go through the DPP.

The Director of Public Prosecutions (DPP) was clear on this question. His own view was that the status quo should be maintained.

Mr. Hamilton (DPP): ...*You suggested the idea of a special prosecutor. I would be quite reluctant to see us go down that road. We have always in this State had the principle of a single prosecutor to deal with indictable crime. ... I certainly would not favour breaking up the prosecution service into different units which would deal with different types of crime. I think it is important that we maintain a consistency and a unity, so far as criminal prosecution is concerned, and the same standards.*

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The Chairman of the Revenue Commissioners also commented on the issue:

Mr. Quigley: ...*I would also say that I would see possible constitutional or legal implications in such a course of action. I would also see disadvantages ... the separation between the investigating and prosecutorial roles is a fundamental distinction.*

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30 November 2000

There is a power to prosecute on the part of various agencies and the number of such agencies is growing. However the power is confined to non-indictment cases which include technical breaches for example – as with the case of the Revenue in respect of technical breaches such as those relating to form filling, late filing and so on. The DPP saw no problem with this practice continuing.

The DPP also pointed to, in his view very significant developments in Irish law in respect of the rules of proof in criminal cases. These rules have been amended in the recent past. In particular there was the very important change introduced by the Criminal Evidence Act, 1992, commenced in 1995 or 1996 (check commencement). This Act makes it “very much easier to prove documents which are kept in the ordinary course of business and which hitherto you would have had a difficulty proving because very often you have a document that somebody may have compiled ten years previously.” The situation today is that there is a presumption that such documentation represents the truth of what happened. This amendment of the rules is one of the reasons why – of of the explanations for – the pick up since the mid 1990s in the rate of prosecution of indictable tax cases. The DPP also drew attention to the new duties and responsibilities placed on financial institutions in relation to suspicious transactions. In his own words “all of these things have made a difference.”

There is also a dilemma, or perhaps choice that faces the Revenue in these cases. It is the choice between prosecution and getting the money in – the primary duty of Revenue.

This is not an irrelevant conflict and it recurs in Chapter Three in our consideration of the Revenue look-back audit and the care and management provisions of the Taxes Acts. In this current context however we simply quote the DPP:

Mr. Hamilton: ... *the Revenue Commissioners themselves, they have to at some point to make a judgement whether they are going to get in the money or go for a prosecution. It is actually in any individual case probably quite difficult to try and do both, because once you go down the prosecution route you are not going to get co-operation from the individual concerned. He is going to stand on his right to stay silent. He is not going to co-operate except to the extent that he can be compelled to do so ... If, on the other hand, you go down the route of trying to make some kind of deal ... you probably find that statements and so on that have been made, and admissions that have been made, will not be useful from the point of view of a criminal prosecution, because they have effectively been procured as a part of a deal. ... people have to make these rather fine judgements, sometimes in the context where they know that there will be difficulties in a criminal case. We may have to advise them [Revenue], for example, that there are certain proofs that are difficult, there are certain matters that may not be possible to prove ...*

Hearings

30 November 2000

The DPP and the Revenue witnesses (particularly the Chairman and the Revenue Solicitor) described also in some detail extensive new co-operation arrangements that are in place in Revenue, in the Revenue Solicitor's office, in the Revenue Solicitor's Office *vis a vis* the DPP and in the DPP's office *vis a vis* the investigation section of the Revenue. For example additional staff have been allocated. The Office of the DPP has made available one of its most senior officers to the Revenue on a full-time basis *inter alia* to advise on preliminary stages of investigation so that all steps taken are consistent with a possible prosecution later. There is also under discussion further co-operation between the Office of the DPP and Revenue investigation teams – subject to preserving the separation between investigation and prosecution.

View of the Sub-Committee

To sum up, a number of arguments have been made against the institution of a Revenue Court at this point. Furthermore there may be difficulty associated with establishing such a service at any point in the future – should the need arise. The case against at this point comes down to recent reforms in the law in relation to proof and working arrangements and additional resources to the DPP and the Revenue Commissioners. On the question in principle, the issues are both legal and constitutional and are matters that clearly have to be weighed if at any time in the future, the decision has to be taken.

Against the weight of argument presented to the Sub-Committee against a Revenue Court at this stage there are however points to be borne in mind: they are from the evidence of the Director of Public Prosecutions and from that given by the Revenue Solicitor.

Mr. Hamilton (DPP): ...*I have to say that it may be that if we did run a lot of*

cases on indictment that I could be coming back here in two or three years time and saying "There is a real problem getting juries to convict." I am just saying that at the moment, I think, it would be premature to make that judgement.

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Ms. Cooke (Revenue Solicitor): *I am certainly getting very nervous at this stage when I hear about all the cases that are coming down the line, that are presently in investigation branch, because the criminal investigation files involve an enormous amount of work in processing. Certainly, under present circumstances I would not be able to handle more than one or two in a year – a major trial.*

Hearings
30 November 2000

Finding of the Sub-Committee

The Sub-Committee finds that the case has not been made for the introduction of a Revenue Court and fiscal prosecutor. The Sub-Committee notes the concerns expressed by the DPP and by the Revenue Solicitor in relation to juries and to volume of cases forthcoming and these concerns are recognised in its recommendation.

The recommendation of the Sub-Committee

The Sub Committee recommends that –

the Department of Finance in conjunction with the Office of the Attorney General undertake a more detailed study of the benefits of

- ***a Revenue Court and***
- ***a fiscal prosecutor***

And report to the Public Accounts Committee by 31 March 2002.

The Appeal Commissioners

Separate from the Revenue Commissioners there is the Office of the Appeal Commissioners. There were two Commissioners to 1978. Between 1978 and 1993 there were three and since then two. The Blue Book examines the operation of the Appeal Commissioners as part of an overall review of the appeal procedures in the Irish tax system. The Appeal Commissioners were invited to give evidence to the Sub-Committee at its Public Hearing of 18 January 2001.

The Office of the Appeal Commissioners is part of the normal Civil Service structure. The Commissioners - like the Revenue Commissioners - are civil servants. The administrative and clerical staff at the Office also are permanent Civil Servants.

However the Appeal Commissioners differ from other departments and offices of the civil service in a number of respects. First of all, there is the anomaly that the Appeal Commissioners do not have their own Vote in the Book of Estimates or their own Accounting Officer. The Chairman of the Revenue Commissioners is the accounting officer and the Appeal Commissioners are financed from the Revenue Commissioners' Vote in the Estimates. This clearly is a highly anomalous position particularly given the independence and autonomy of the Appeal Commissioners from the Revenue Commissioners.

Secondly, the Appeal Commissioners undertake their duties and responsibilities with a surprisingly modest financial and staff resource allocation. There are currently two Commissioners and there are two administrative staff, neither of whom holds a high level rank. There is no executive administrative Head of Office. The present budget does not allow the Appeal Commissioners to publish an annual report, make readily available their decisions or operate an up to date web site. The capacity of the Appeal Commissioners to database cases and analyse trends and patterns of cases is also limited. The Appeal Commissioners have no in-house IT or research capacity and have no internal legal advice available to them.

As with the Revenue Commissioners, the Appeal Commissioners have not been provided with a modern, comprehensive statutory footing.

The Commissioners have some judicial type powers such as taking evidence under oath and in practice, operate in a quasi-judicial environment. Counsel often represents appellants and the Commissioners' Hearing Schedule generally follows that of the High Court. The Commissioners sit, normally separately, as a tribunal under the Taxes Acts and adjudicate on appeals by taxpayers, where certain conditions are met, against assessments raised by the Revenue Commissioners, effectively in respect of any and all taxes. The grounds for appeal are narrow. The adjudication is on the assessment in respect of the quantum of tax alone (the Appeal Commissioners cannot deal with either penalties or interest). The adjudication is strictly to be based on the interpretation of the Appeal Commissioners of the law as it stands. Costs are not an issue for determination and each side bears its own costs.

The decision of the Appeal Commissioners may itself be appealed - to the Circuit Court with the judge sitting as an Appeal Commissioner (actually a re-hearing of the case). There may also an appeal of the decision to the higher courts on points of law. However the Appeal Commissioners themselves cannot ask an Irish Higher Court for an interpretation of a legal point that might be at issue in a case although they can make such a request to the European Court of Justice in a case involving VAT, which is an EU tax.

In their evidence – and in associated evidence by the Chairman of the Revenue Commissioners – the Appeal Commissioners did point to certain trends that appear to them evident in recent years. There is a trend towards the mounting by Revenue of 'test' cases and also, more commonly, the appeals by individual taxpayers of assessments again on a 'test' point. Such cases can have major consequences for Revenue with possibly

tens and hundreds of millions of pounds turning on the decision of the Appeal Commissioners.

The Appeal Commissioners emphasised in evidence that many issues - for example those of costs and penalties and interest - are matters of policy and therefore for the Government to consider. However they have in their written submission of 2 March 2001 (see Volume 2 Part 1) provided an agenda for policy consideration and legislative action that appears to the Sub-Committee to be comprehensive from the perspective of creating a modern, effective and transparent appeals system within the tax code.

The Blue Book contains four recommendations in respect of the Office of the Appeal Commissioners.

Recommendations of the Steering Group in respect of Appeal Commissioners

The Steering Group recommended that –

- *the Appeal Commissioners consider publishing an Annual Report giving details of their Office, the number of appeals heard and the decisions they have made, in a manner that preserves taxpayer confidentiality*
- *the Appeal Commissioners avail of the Annual Report in a manner similar to the Ombudsman, to comment on areas of tax legislation based on their first-hand knowledge of interpreting them*
- *the grading of the Administrative Head of the Office of the Appeal Commissioners be reviewed in consultation with the Appeal Commissioners with a view to providing the Office with a separate Vote and Accounting Officer*
- *the new Accounting Officer conduct a review of the adequacy of the resources of the Office, including the number of Appeal Commissioners and report the outcome of the review to the Minister for Finance.*

*Report of the Steering Group on the Review of
the Office of the Revenue Commissioners,
Pages 109, 110*

In the view of the Sub-Committee the tenor of these recommendations is broadly correct. However the Sub-Committee is inclined to go further.

On the question of the annual report there is absolute agreement that this ought to happen. The Appeal Commissioners agree. The Blue Book recommends it. The Sub-Committee is absolutely in favour of such. The Sub-Committee goes further in its belief that parallel with a published annual report there must also be developed a comprehensive, up to date web based service including cases and decisions. Currently, the Appeal Commissioners are facilitated by the Institute of Taxation. However the Appeal Commissioners must be given the resources to undertake their own publications programme (including the annual report and the web site).

It is recommended in the Blue Book that the Appeal Commissioners avail of the proposed Annual Report to comment *a la* the Ombudsman on areas of tax legislation on the basis of their first hand experience of interpreting them.

In the view of the Sub-Committee this is an interesting concept. However we feel that it needs more detailed examination. The Office of the Ombudsman is a statutory office, the purpose of which is to examine individual citizens' complaints and also to conduct inquiries into classes complaints made (such as the recent inquiry into Nursing Home Subventions). The Appeal Commissioners are a Tribunal acting judicially. They have no modern comprehensive statutory footing and a very small, indeed minimal, resource base. Without action on other fronts – budgets, legislation, staff, professional and technological resources – it would be inappropriate to contemplate such a demand being put on the Appeal Commissioners at this stage. However the proposal should be examined immediately and the examination should extend to a right to comment also on administrative acts

On the questions of the grading of the Head of Office and the establishment of the separate Vote and Accounting Officer, the Sub-Committee sees no direct connection between these. The issue of grading of both existing members of staff – and also the overall level of staffing – is a matter that should immediately be dealt with in consultation with the Appeal Commissioners. The Vote and the Accounting Officer are different issues – although they should be catered for in time for the 2002 book of Estimates.

A Third Commissioner

Deputy Ardagh: *The question of the third commissioner, I notice from this book [the Blue Book] that there is a desire to have a third commissioner and*

(...)

Mr. O'Callaghan: *But where does that come from? We pick it up occasionally in newspapers, the reference to a third commissioner and some references to the notion that maybe a commissioner should come from Revenue this time, which is rather interesting; it is rather like saying a garda should be made a judge because most of them are actually lawyers. I do not quite follow it.*

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The Appeal Commissioners consider two Commissioners adequate. Delays are minimal. The workload is manageable. There are no severe problems. The Sub-Committee is not convinced.

The Blue Book explored the issue. The Chairman of the Revenue Commissioners in evidence indicated a wish on the part of the Revenue to see a third Commissioner

appointed. The Sub-Committee understands that there is also a view among accountancy/tax practitioners that a third Commissioner would be justified.

Of course the desires and wishes of the Revenue and the tax profession are not in themselves sufficient grounds for recommending in favour of a third Commissioner. On the other hand the Appeal Commissioners have referred to the growth in the number of appeals, the growing complexity of cases, in the increasing importance of decisions and the emergence of the 'test' case. If we add to these developments

- the increasing complexity of tax law;
- the large programme of legislative reform put forward for consideration by the Appeal commissioners;
- the continuation and proliferation of incentives, allowances and deductions (and therefore cases and appeals); and
- the idea of publication by Appeal Commissioners of comments on tax law and tax administration based on their practical experience

it seems to the Sub-Committee that an increase in the number of Appeal Commissioners is warranted.

There is a further argument in favour of a third commissioner that carries weight with the Sub-Committee. This is the argument that the Office of the Appeal Commissioners should have a chief commissioner or chairman. The chairman and third commissioner in this context would function as a Head of Office from the point of view of assignment and allocation of cases and a 'casting vote' in the case of issues that cannot be resolved by agreement. The third commissioner would make easier the hearing of cases by two commissioners (which does happen, though not normally). Three commissioners would also facilitate the objective of having, among the commissioners, as broad a range as possible of relevant expertise and knowledge.

But where might one look for a third commissioner?

Chairman: *Would you be opposed to or would you have any objection to him [a third commissioner] being appointed from within the public service or specifically from the Revenue itself?*

Mr. O'Callaghan: *It seems a silly idea to us, to speak frankly, that it should be in particular. Some of my best friends are inspectors of taxes but I do not see that there is any sense in the idea. If that were the case then if somebody was going to Killarney for an appeal, you might have the taxpayer saying: "Well, I do not want the inspector of taxes commissioner; I want the other fellow". It does not seem to make a lot of sense to us.*

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18 January 2001

There are two questions in this context. They relate to the background or qualifications of Commissioners and secondly, the method of appointment.

The first point that the Sub-Committee acknowledges fully the qualifications of the present Commissioners. However in the context of growing workload and complexity, there should reside collectively among the Commissioners expertise in all of the relevant areas – accountancy, taxation (including Customs and Excise), public administration and the law. These should be specified as minimum qualifications in any future selection process – whether the appointment of a third commissioner or not.

At present Appeal Commissioners are appointed by the Minister for Finance under Section 850 of the TCA. The Act does not set down any criteria for appointment, prescribe any qualifications or deal with removal from the post. In common with other appointed officials however, the Appeal Commissioners are restricted in dealing with cases in which they have a personal interest and they make statutory declarations regarding confidentiality. The Minister is required to notify both Houses of the Oireachtas within 20 days of the appointment being made, which is to say after the fact.

The Sub-Committee is of the view that the present method of appointment needs to be reviewed. For the future vacancies should be publicly advertised, minimum/desirable qualifications should be specified and a revised selection procedure should be adopted. The selection procedure might involve the Civil Service Commission conducting the interview procedure and making a recommendation to the Minister or, alternatively providing the Minister with a panel from which to make an appointment. Alternatively, the Top Level Appointments Committee (TLAC) might be inserted into the procedure – either to conduct the procedure or to conduct the final stage of the procedure after a Civil Service Commission first round, with one name going to the Minister.

Conclusion and recommendations of the Sub-Committee

The Sub-Committee finds that the Office of the Appeal Commissioners is currently a small and under-resourced but nonetheless vital part of the Irish tax administration system.

The Sub-Committee recommends –

that the Minister for Finance, as part of the Bill intended to put the Revenue Commissioners on a statutory footing, a new statutory footing should also be made for the Office of the Appeal Commissioners and the provisions to take account of

- ***the transparent method of appointment of Appeal Commissioners;***
- ***a mechanism for the removal of an Appeal Commissioner;***
- ***the range of expertise that resides collectively among the Appeal Commissioners; and***
- ***an expansion of the role of the Office of the Appeal Commissioners to comment on their experience of interpreting areas of tax law and of dealing with administrative acts by Revenue which come within the ambit of appeal.***
- ***commissions an objective benchmarking exercise, similar to the exercise to be undertaken for the Houses of the Oireachtas in the context of preparing for the establishment of the Oireachtas Commission, with the purpose of objectively determining a realistic budget to run a modern Office of the Appeals Commissioners; and***

- *invites submissions from relevant parties such as the judiciary, the Revenue Commissioners, the relevant professions and their representative bodies as well as the public prior to the preparation of the legislation.*

The Sub-Committee recommends –

that the Minister for Finance

- *appoint a third Appeal Commissioner and one of the three to be Chairman and Head of Office;*
- *provides, if necessary by way of Supplementary Vote, sufficient resources to permit the re-grading of the existing administrative staff and an initial increase in staffing levels and to enable the Appeal Commissioners to prepare an annual report for last year, embark on a programme of publication of adjudications and the development of their web site*

Part 3

The Accountancy Profession

This is the report of an Inquiry into allegations of large-scale tax evasion. The Inquiry discovered that the allegations were true but that they also grossly understated the scale of evasion. The original allegations centred on one bank. In fact virtually the entire deposit-taking sector was engaged with customers in the practice – establishing and operating bogus non-resident accounts. In the scheme of things one might expect the internal and external audit functions to pick up the evasion. Our Inquiry discovered that they did in certain cases but that external auditors in particular turned away from the implications of what stared them in the face. The behaviour of accountants and of accountancy firms in relation to the problem of tax evasion through the use of bogus non-resident accounts prompted the Sub-Committee in its first report to make wide-ranging recommendations in respect of the profession and firms in the profession.

Extract from First Report – recommendation in First Report

Arising from our recommendations, the Tanaiste and Minister for Enterprise, Trade and Employment established a Review Group on Auditing chaired by Senator Joe O Toole. The report of the group was comprehensive and its central recommendation was that there be established an oversight board for the profession.

The accountancy profession is a self-regulated profession. The professional associations are recognised by the Department of Enterprise, Trade and Employment and function as regulatory/supervisory bodies. The Department functions effectively as a last resort in that it can decide to withdraw recognition of an association – or to recognise an association.

A central recommendation of the Review Group on Auditing was that this role of the Department should change. In place of the Department there should be established an

oversight board for the profession. The role was explained by Mr. John Corcoran of the Department:

Mr. Corcoran: ... *the functions of the oversight board are ... approving the professional rules of each of the recognised bodies, recognising the bodies in the first place, working with the accountancy bodies to develop auditing practice... Furthermore, the question of auditor... fees that can be obtained from someone, will be underwritten by law. So we have, then, the professional bodies with the reserved function of going into individual auditing firms if necessary.*

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28 November 2000

The Sub-Committee understands that it is the intention of the Department to have established in the very near future on an interim non-statutory basis the Oversight Board. It is also the intention to have the Heads of the Bill cleared by the early summer and to have the legislation enacted by the end of this year. The Board will have a majority of non-accountant members and the chairperson also will not be drawn from the profession. All of this is to be welcomed. However there are some aspects of the proposal that are of concern to the Sub-Committee. Principal among these is the funding formula for the Board. It is proposed that the Board will be part funded by the State and that the majority of the funding (60 per cent) will come from the profession. In effect this is likely to mean that the associations will levy their member firms.

In the view of the Sub-Committee the funding formula raises the danger of professional capture. The oversight Board is not quite a regulator but, *de facto*, it is a regulator. Regulators should not depend, in whole or in part, for their financing on the firms and bodies being regulated. It is not generally the practice – telecommunications companies, for example, do not fund the Office of the Director of Telecommunications. We would look askance at the proposal that they should.

In the view of the Sub-Committee even the perception of compromise would damage the integrity of the Board, regardless of the fact that the majority of board members will not be drawn from the profession. The instinct to influence or attempt to influence is not simply theoretical. For example, there are the allegations that have been made in relation to the Office of the Insurance Ombudsman, a voluntary scheme and an office that is fully funded by the insurance industry.

The Sub-Committee has some additional concerns. In evidence to the Sub-Committee the Secretary General of the Department (Mr. Paul Haran) stated that it was also the intention that the functioning of the Oversight Board would be reviewed in ten years with a view to determining whether or not to move to a full, formal system of regulation as opposed to oversight. In the view of the Sub-Committee this time-scale is too long.

Finally, the Sub-Committee would wish to see the Oversight Board as a proactive organisation engaged in more than investigating and enquiring when necessary and after

the fact. Oversight is not regulation, of course. On the other hand, if oversight is to be meaningful, the reserved function requires to be exercised proactively with firms being examined on a regular cycle, random and risk-based, by the Board from the standpoint of assessing professional practice and standards at the level of the firm. Confining the role of the Board essentially to the oversight of the associations would be an inadequate response to the problems identified by our Inquiry. Random and risk-based examination of firms would act also as a spur to the associations to exercise their regulatory role to the highest standard.

Recommendation of the Sub-Committee

The Sub-Committee recommends that –

the Oversight Board for the accountancy profession be fully funded by the Exchequer;

- ***The review of oversight be conducted in five years rather than in ten years as proposed; and***
- ***the staffing, financial resourcing and mission of the Oversight Board for the Accountancy Profession should be such that the Board can engage in regular review of standards and practice at firm level as well as evaluation of the policy and behaviour of the professional associations,***

the necessary legislation to be enacted by 1 January 2002.

Part 4

Other Issues

The system of Independent Audit.

In our First Report the Sub Committee recommend a system of independent audit be put in place by the Minister for Finance as described by the appointed auditor to the Comptroller and Auditor General. The system proposed was by the independent auditor was in the then context of limited powers of inspection of deposit accounts to establish tax compliance. The proposal was modeled on a similar scheme operated by Inland Revenue in the UK. The purpose of that structure was to put in place an independent structure that would on the one hand provide deposit takers with comfort in respect of confidentiality of depositor details. On the other hand it gave Inland Revenue a mechanism through which it could have undertaken on its behalf an inspection and sampling procedure to check for the compliance of deposit accounts with tax law.

A similar scheme for Ireland would have met the deposit takers' demands for confidentiality and would have provided a means for Revenue to check for compliance with DIRT requirements (including the operation of non-resident accounts). An alternative of course would have been direct Revenue access to underlying accounts and documentation in order to check for compliance.

In fact the Finance Act 1999 (FA99), following the initial stages of this inquiry did make provision to give the Revenue Commissioners direct audit access to Financial Institutions. FA 99 inserted into the TCA a new section – section 904A – the empowered Revenue to audit the underlying accounts in a deposit taking institution for compliance with the law in respect of DIRT. Therefore the Revenue Commissioners now have access to Financial Institutions in line with the powers they already have in relation to other tax payers.

Furthermore, arising from the recommendations of this inquiry provision has been made in the Finance Act 2000, to allow the Revenue Commissioners appoint persons (Auditors) whom the Revenue Commissioners consider to have relevant qualifications and experience, to carry out audit work on their behalf as an adjunct to direct access to the institution by the Revenue Commissioners themselves.

The Sub Committee believes that the provisions contained in the 1999 and 2000 Finance Act, in relation to audit and Financial Institutions, are far reaching and significant, and bring financial institutions into line with other individual tax payers and businesses.

The Sub Committee believes that these reforms of the law are significant steps on the road to securing full compliance in the deposit taking sector generally and that the issue of the independent auditor is no longer live.

Dormant Accounts.

Deputy Doherty: *About ten years ago I made a submission to the Department of finance on dormant accounts and I got a long and very irate letter back, but the Department that time deemed it an impossibility to introduce legislation to deal with the question ... and they described the difficulties as associated with constitutionality and with legal circumstances. That seems to have changed in the ten year span and indeed overnight when the recommendation came from the committee....*

Mr. O’Gorman (Department of Finance): *There are two points there, Deputy. Yes, the Department has changed its mind. I can’t speak, as I do not have first-hand knowledge of the Department’s view at that time, but there were certainly divided views within the Department on the merits of addressing this question.*

Deputy Doherty: *There (sic) they said it was impossible in fact.*

Mr. O’Gorman: *There were difficulties. Many difficulties were seen in terms of rights to privacy, property rights and so forth. In fact, I suppose what has changed, and it is partly the committee’s view, I think the present Minister has seen this as a priority issue to be addressed, and considerable effort has been put into it. Perhaps the climate also has changed in the institutions ... they were rather more receptive to the idea at this stage than maybe they would have been in the past ... we have quite a lot of solid information ... on dormant accounts. Obviously it is only solid to the extent until such time as you begin to shake the tree ...*

Deputy Doherty: *There will be a wake-up call I presume.*

Hearings
28 November 2000

The issue of dormant accounts has been a thorny one in politics for many years and for all political parties. The question in part is one of whether financial institutions should have the benefit (the free capital effect) of holding on to dormant accounts. For years the cross-party view has been that they should not and that the funds should be put to use for the benefit of society, subject always to provision being made in any scheme for the contingency of a return of the funds with interest, should the legal owners or their successors present themselves.

In its First Report the Sub Committee recommended that legislation be prepared by the Minister for Finance so that funds in Dormant Accounts could be used for specified projects of societal and community benefit. The Committee is pleased to report that significant progress has been made on this issue and that the Administrative and legislative scheme is in.

The Minister for Finance, in November 2000, outlined his proposals for this scheme and its implementation. Legislation will be put in place to deal with Dormant Accounts. Dormant Accounts will be defined as an account with no customer initiated transaction in the previous 15 years. The legislation will apply to financial

institutions such as Banks, Building Societies, Insurance Companies and the Post Office. Consultation will take place with Credit Unions with regard to Dormant Accounts in Credit Unions. The legislation will not infringe the citizens right to privacy, being customers or former customers who owned such accounts.

A Board of Trustees nominated by the Minister for Social, Community and Family Affairs, in consultation with the Minister for Finance, will be set up with a remit to disburse funds for charitable purposes or purposes of societal and community benefit.

These funds will be managed by the National Treasury Management Agency on behalf of the trustees. The Minister also proposes that The State Property Act 1954 be amended to allow funds currently held in The Intestate Estates Funds to be transferred to the Dormant Accounts Fund. The detailed legislation will be prepared and is to be published forthwith. This scheme is to come into operation on the 1st April 2002.

The Sub-Committee welcomes and endorses the prompt action of the Minister for Finance on the recommendation made in our First Report in respect of dormant accounts.

Chapter 3

The Deposit-taking Institutions and the Look-back Audit

Mr. Fingleton: ...*There is no profit in this. It costs us a huge amount of money and it costs us a huge amount of time and a huge amount of disruption. Nobody in their right senses could say that they would continue in a haphazard manner again. Also, it is the norm of the day. Even from a consumer point of view you conform and you are transparent fully in every aspect or you won't stay in business. That is the reality.*

Mr. Michael Fingleton, Managing Director,
Irish Nationwide Building Society.
Hearings, 1 December 2000

Times have changed according to Mr. Michael Fingleton – and according to virtually all the executives from all of the deposit takers to give evidence before the Sub-Committee. No bank or building society executive “in their right senses” will behave in “a haphazard manner” again.

It is perhaps worth reminding ourselves once more, precisely what was this “haphazard manner” of behaviour that gripped virtually every licensed deposit-taker operating in the State at some stage at least during the years 1986 to 1998. Some were b'times even gripped by the contagion for quite extended periods and some even saw it as the normal relationship between banker and client.

The “haphazard manner” of behaviour identified by Mr. Michael Fingleton, Managing Director of the Irish Nationwide Building Society, was the large scale engagement of banks and building societies with many thousands of their customers in an enormous intrigue to evade tax. This was not simply an exercise in the evasion of the Deposit Interest Retention Tax, but in many cases the object was to hide from Revenue income and wealth on which no taxes had ever been paid.

The story of this parliamentary inquiry began with the follow-up action taken immediately by the Committee of Public Accounts (PAC), following on press reports of alleged large scale evasion of DIRT by Irish residents through establishing bogus non-resident accounts, allegedly facilitated by AIB, the country's largest bank. The process set in train by the by PAC follow-up led to the unmasking of an enormous scheme and to establishing the dimensions of this widespread tax fraud – the operation throughout the entire deposit-taking system (not at all confined to AIB) of bogus non-resident accounts to evade the payment of DIRT and also, in many instances, to hide from taxation undeclared income and capital.

It is now absolutely clear that the reported problem at AIB was an industry wide phenomenon – as indeed was stated by AIB at the time of the commencement of our investigations. As we approach the end of this inquiry we must say also that, unconscionably, a State bank owned by the Minister for Finance of the day – the ACC -, and the country's largest banking institution – AIB Group – were among the worst cases discovered by the inquiry. But the practice was utterly pervasive, extending down to the smallest institutions with perhaps one of the smallest domestic deposit-taking institutions examined – GE Woodchester – proportionately the worst offender of all by one measure of behaviour – the ranking of deposit-takers by expressing the settlements made with Revenue as a percentage of their 1990 deposit base. The results of this exercise undertaken by the Sub-Committee are set out in Table 3.2 below.

Table 3.1
Revenue Look-back Audit
'Top Ten' Ranking of Offending Deposit-takers.
(Settlements as a percentage of 1990 deposit base)

Deposit-taker	Deposit base (1990) (Note 1) £m	Look-back Settlement (Note2) £m	Settlement as % of 1990 deposits	Ranking
GE Capital Woodchester	68	4.626	6.80	1
ACC Bank	443	17.901	4.04	2
Irish Nationwide	376	4.44	1.18	3
NIB	500	5.25	1.05	4
AIB Group	9,138	90.044	0.99	5
TSB	418	2.75	0.66	6
IL&P	1,442	7.593	0.53	7
BoI Group	7,452	30.5	0.41	8
Ulster Bank Group	1,239	4.2	0.34	9
EBS Building Soc.	897	2.805	0.30	10

Data source: Extracted from Report of Revenue Commissioners on Look-back Audit.

Notes:

Note 1: The 1990 deposit base was selected as being broadly representative of the deposit base for the relevant period (1986 – 1998) from the point of view of the subject matter of the Inquiry (bogus non-resident accounts).

The evidence of all inquiries does suggest that the problem persisted through the entire relevant period but that it was particularly prevalent in the early 1990s.

Note 2: Amounts paid by deposit takers to Revenue include back-tax, interest on arrears and penalties imposed as provided for in the TCA97.

The Deposit-takers

We know all of this now – the dimensions and extensiveness of the connivance, the amount of tax evaded by depositors and the role of the offending banks and building societies – in the wake of our inquiry and particularly since the carrying through of the key recommendation of our First Report, the conduct of a look-back audit of all deposit-

takers by the Revenue, covering the 13 Tax years 1986/87 to 1998/99 (the 'relevant period').

EXTRACT FROM FIRST REPORT

Recommendation of the Sub-Committee

The Sub-Committee recommends –

That the Minister for Finance in the Finance Bill, 2000 or as soon as is feasible make such provisions as are necessary to give effect to the following:

- *There shall be a requirement on the Revenue Commissioners to undertake a full look-back audit to April 1986 of each financial institution to assess DIRT liability;*
- *The cost of the look-back be borne by the financial institutions being audited;*
- *The full interest and penalties be paid in respect of DIRT arrears assessed irrespective of any currently existing statutory time limits;*
- *That for the purposes of this review, Revenue may delegate the work in whole or in part to suitably qualified outside persons and/or may engage such consultants as it finds necessary to assist in the review;*
- *The look-back be completed by 1 September 2000;*
- *The Revenue be empowered and required to report for public information only, before 1 November 2000, to the Committee of Public Accounts, the results of its look-back in the case of each institution, specifying the DIRT arrears levied, the interest charged, the penalties imposed, any comments considered to be appropriate and if any appeal has been lodged;*
- *Measures to ensure that the appeals process is expedited;*
- *Provision is made for the results to be made public on determination.*

The Revenue Commissioners were given the power to undertake such an exercise with the enactment of the Finance Act, 1999 (FA99). That Act amended section 904¹¹ of the Taxes Consolidation Act, 1997 (the TCA) through the insertion of section 904A¹² which gave Revenue the power to conduct a look-back audit of banks in respect of their compliance with the law in respect of DIRT. This look-back audit of the relevant period was the first such use of its 1999 powers by Revenue. It completed the audit and the report within the timeframe laid down by the Sub-Committee.

The result of the look back audit was that Revenue collected **£173,292,786** from the various institutions for the 13 Tax years 1986/87 to 1998/99. This figure comprises

¹¹ Section 904 of the TCA provides for powers of inspection by authorised officers in respect of tax deduction from payments to certain subcontractors. This is an inspection measure in relation to the operation of Relevant Contracts Withholding Tax (RCWT), a tax that applies in certain sectors characterised by extensive use of sub-contracting and self-employment.

¹² Section 904A of the TCA (inserted by section 207(e) of FA99) in effect extends to the deposit taking sector, in respect of deposit interest retention tax or DIRT, the system of inspection provided for in section 904 in respect of RCWT. Authorised officers are empowered to check DIRT returns and in order to do so, to sample accounts that are treated as not liable to DIRT in order to establish that they are properly classified and that the deposit taker's procedures and administration of DIRT is correct.

Table 3.2
Composition of Full and Final Settlement
arising from Look-back Audit

Arrears of tax	£70,566,547
Interest on back tax	£99,658,239
Penalties	£3,068,000
Total	£173,292,786

All Audits are now completed except for IIB Limited and Guinness and Mahon (Ireland) Limited where a conclusion on the liability of these banks could not be reached because of the outstanding Ansbacher investigation. Both institutions have made payment on account and these sums are included in the yield figures. A full list of institutions and the liability accruing to each is reproduced at Table 3.3 below.

Table 3.3 - Results of DIRT Look-Back audits

Deposit-Taker/Group	Tax	Interest (note 1)	Penalties (note 2)	Total
ABN AMRO Bank N.V.	£8,338	£8,454	£30,000	£46,792
ACC Bank plc	£7,511,000	£9,958,500	£431,500	£17,901,000
*Allied Irish Banks Group	£34,579,432	£55,076,758	£388,000	£90,044,190
An Post - Post Office Savings Bank	£46,521	£65,345	£26,500	£138,366
*Anglo Irish Bank Group	0	0	0	0
Bank of America N.T. and S.A.	0	0	0	0
*Bank of Ireland Group	£12,746,882	£17,253,118	£500,000	£30,500,000
Bank of Scotland (Ireland) Ltd	£27,753	£42,536	£15,500	£85,789
Banque National de Paris S.A.	0	0	0	0
Barclays Bank plc	£925	£230	£6,500	£7,655
Chase Manhattan Bank Ireland plc	0	0	0	0
Citibank N.A.	0	0	0	0
EBS Building Society	£1,291,862	£1,329,818	£183,500	£2,805,180
First Active plc	£1,222,358	£1,314,115	£136,500	£2,672,973
GE Capital Woodchester Bank Ltd	£1,956,890	£2,410,281	£259,500	£4,626,671
*ICC Group	£103,265	£63,693	£30,000	£196,958
IIB Bank Ltd (note 3)	£13,230	£18,416	£2,500	£34,146
Irish Nationwide Building Society	£2,170,077	£1,977,423	£292,500	£4,440,000
*Irish Life and Permanent Group (note 4)	£3,714,797	£3,645,269	£233,000	£7,593,066
*National Irish Bank Group	£2,291,363	£2,774,137	£184,500	£5,250,000
Pfizer International Bank Europe	0	0	0	0

Scotiabank (Ireland) Ltd	0	0	0	0
TSB Bank	£1,200,691	£1,367,809	£181,500	£2,750,000
*Ulster Bank Group	£1,681,163	£2,352,337	£166,500	£4,200,000
Westdeutsche Landesbank (Ireland) plc	0	0	0	0
Totals	£70,566,547	£99,658,239	£3,068,000	£173,292,786

* The seven Groups listed above comprise nineteen individual deposit-takers in total.

Note 1 Statutory interest, which was 15% p.a. up to March 1998 and 12% thereafter, was charged on DIRT arrears due.

Note 2 Civil penalties were charged on deposit-takers by reference to accounts individually identified by Revenue auditors as wrongly exempted from DIRT for 1994/95 and subsequent years. This was in accordance with the relevant law (which imposes a six-year time limit on the principal civil penalty relevant to DIRT non-compliance) and with legal advice (that the penalty concerned - a £500 penalty for each failure to deduct DIRT from an interest payment - could not be charged by extrapolation from the samples of accounts examined). The penalties set out above reflect the concentration on the years 1994/95 to 1998/99.

Note 3 This audit has not been completed and the amounts shown are payments on account. Finality could not be reached because liabilities may depend on the outcome of wider investigations (into Ansbacher accounts).

Note 4 Please refer to Note 3 which also applies to the amounts in respect of Guinness and Mahon (Ireland) Ltd included in the figures for the Irish Life and Permanent Group.

It is clear from the evidence given to the Sub Committee that the Revenue Commissioners consider that licensed deposit-takers have now discharged their liabilities 'in full and final settlement':

Deputy Ardagh: *Just finally, the settlements that you arrived at with the financial institutions, are they full and final settlements that have been agreed by the Revenue Commissioners.*

Mr. Quigley: *Yes. We have, as we would normally, as a result of an audit, once we had gone the route of giving priority to obtaining the substantial amounts of tax outstanding, with the interest and appropriate penalties, we entered into a process, which has resulted in full and final settlements for the liabilities concerned.*

Hearings, 30 November 2000

The Sub Committee did recommend that the costs of the look back audit should be borne by the financial institutions. However the Attorney General has advised the Minister for Finance who, in turn, has informed the Dail in his statement of 30 March 2000, that Article 15.5 of The Constitution prohibits retroactive penal legislation. Any retrospective charge for the cost of a Revenue Investigation already undertaken would infringe that Article of the Constitution.

Recommendation of the Sub-Committee

The Sub-Committee recommends that –

The Minister for Finance provides for the inclusion in the next Finance Bill or as soon as is feasible, a measure that will ensure that for the future, the cost of a Revenue Inquiry under Section 904A of the Taxes Consolidation Act, 1997 as amended, or similar type Revenue inquiries elsewhere provided for, may be required to be borne by the person or body being examined where warranted.

For purposes of clarification, “where warranted” means where such an inquiry is undertaken,

- *on the basis of prima facie evidence of breaches or fraud;*
- *the inquiry involves significant (resource) opportunity cost; and*
- *the original suspicions are largely confirmed.*

All licensed deposit-takers examined have given evidence to the effect that their administration and work practices have been significantly strengthened and overhauled to such an extent that in their opinion this type of systematic evasion and breach of the law cannot happen again.

The Irish Bankers Federation produced a code of ethics in September 2000, to which all of the member institutions have subscribed, and each financial institution gave evidence to that effect.

One feature of the evidence given is that deposit-takers in relation to any of the wrongdoing unmasked took little or no disciplinary action. The Sub Committee has at all times maintained that it considers this to be unsatisfactory. We have been assured in evidence that future behaviour will be strictly policed and we expect this guarantee to be honoured by all without exception. The questions of ethics, behaviour and the regulation and supervision of financial institutions from this point of view were dealt with in detail in Chapter Two.

The depositors

Deputy Doherty: *In relation to the recent DIRT inquiry, a very successful exercise has been engaged upon by the Revenue and, that having been completed, no prosecutions will be occurring. In the case of persons who have had accounts which are causing liability for them now, if disclosure is forthcoming will you be saying to the general public, or to any element of it ... “Come along, make full disclosure and the same rule of thumb will be applied ...”?*

Mr. Quigley: *We have split the exercise into two parts. The primary part was the follow-up to the first report Part two is the question ... of the underlying tax. By that I mean, leaving aside the DIRT, concealed income which may have been in that account ... either for the purposes of income tax or for capital tax and so on.*

We are looking very carefully at how we are going to go about that exercise because it is potentially a significant and time consuming exercise. There is potentially a large number of cases. We will have to set out clearly what the ground rules are for dealing with all those cases and to give the information to the individuals who may be involved. The question of the role of voluntary disclosure is one of the aspects we are looking at in that context. We are also going to have to tease out some legal issues ...

We have not issued a definitive statement. Early in the new year when we have completed our analysis we will be in a position to indicate clearly what procedures we will follow ... but we have not done so yet.

Mr. Dermot Quigley, Chairman,
The Revenue Commissioners
Hearings, 30 November 2000

The depositors who participated in the DIRT scandal now find themselves compromised. They evaded DIRT during the relevant period. Their partners in the exercise – the deposit-takers – have been subject to a look-back audit, the first of its kind in the history of the State. The audit has provided an assessment of the scale of the deception. The offending deposit takers – as is required by law – have now paid the due retention tax.

More importantly however, for those depositors who participated in the scandal there is the position in which they find themselves *vis a vis* the Revenue – it now has the information and the records.

It has already been established that many such depositors used bogus non-resident accounts to hide undeclared income and wealth – or put another way, many of those hiding income and wealth from the Revenue used bogus non-resident accounts as one device to achieve this¹³. Miltown Malbay¹⁴ is the most dramatic case in point.

¹³ The bogus non-resident account was only one such device, as was outlined in the internal discussion paper prepared by Mr. Sean Moriarty of the Revenue in 1992, *Tax Evasion – the Role of Concealed Deposit Accounts and other Forms of Investment*. Mr. Moriarty's paper is perforce tentative and even incomplete. This is in the very nature of the subject matter he was examining: income and capital being hidden from the Revenue. On the other hand Mr. Moriarty's paper does sketch in, however tentatively, a graphic context to the DIRT scandal as it operated in the late 1980s and early 1990s. An edited version of Mr. Moriarty's paper is appended to the C&AG's Report at G.13.1 – 12.

¹⁴ This is the investigation, pursued successfully by Revenue's Special Inquiry Branch (SIB) in 1991/92, then headed by Mr. James Livingston. It was discovered that there existed in Bank of Ireland's Miltown Malbay branch a large number of bogus non-resident accounts that were also used to hide undeclared income and capital. In January 1992 as events unfolded and the results of SIB's operation fed back to Dublin, Mr. PS O Donghaile of Revenue Investigation Branch observed "*Revenue were alarmed at the findings as it was now clear that the bank had colluded with the taxpayers in tax evasion on a large scale.*" The settlement of the Miltown Malbay case yielded just over £0.2m in DIRT arrears but produced more than £2m in total arrears, interest and penalties, i.e. £1.8m in other taxes evaded. See ... *C&AG Report and 1999 Hearings... for discussion of the Miltown Malbay case.*

However Miltown Malbay is not unique¹⁵. And now, as a result of conducting the look-back audit Revenue has access to information on many thousands of errant accounts – ownership, amounts on deposit, deposits made over the years, uses made of the resources and so on. Of course many of the accounts are errant only in that DIRT was evaded. On the other hand many may turn out to have been engaged in underlying evasion – hiding undeclared income and wealth from any taxation – as well. The Chairman of the Revenue set out the implications of the situation in remarks in evidence to the Sub-Committee such as the comments quoted at the beginning of this section of this chapter.

Deposit-takers and Depositors – “A land of two laws”?

One aspect of the look-back audit and this consequential dimension to the DIRT scandal (i.e. underlying evasion) has been clarified for the Sub-Committee by Revenue and other witnesses. Offending deposit-takers – the banks and building societies that facilitated depositors – were treated relatively leniently. Relative, that is, to the penalty regime facing those depositors whom as well as evading DIRT, hid income and wealth and may now find themselves subject to Revenue examination and audit.

Errant depositors face a very different regime to that faced by their partners, the equally offending deposit-takers.

There is actually a monetary value that can be put on the relatively lenient penalty regime applied to the deposit-takers, based on the law as it stands. The Sub-Committee has established a range for this monetary gain for the deposit-takers (and the loss to the exchequer) of this different, for them beneficial, treatment.

The cash benefit to offending banks and building societies could be as high as £400m and is likely to be at least £150m. In other words, the deposit-takers might have faced a total demand from the Revenue of at least £323m and perhaps as much as £573m instead of the £173m agreed with the Commissioners in “full and final settlement”. The offending deposit-takers have saved themselves at least 86 per cent and possibly as much as 231 per cent of the amount they paid to Revenue – because they did not face the same penalty regime as now confronts those offending depositors.

Revenue has argued strongly that the calculation on which the estimate range is based is entirely hypothetical. Critically, it ignores the law as it stands. This is true – as far as it goes. The figure calculated by Revenue as the offending deposit takers’ liability arising from the look-back audit is based on an interpretation of the law as it stands and on legal advice in relation to the law as is.

However three points might be made. First of all, accepting the legal advice, the law as it stands treats two groups of taxpayer, partners in an offence of evasion, enormously

¹⁵ For an indication of this see Chapter 7 of the Report of the Comptroller and Auditor General as part of this inquiry, for example the discussion of cases at AIB – Kilrush (p75), AIB – Castlebar (p76) and NIB – Artane/O Connell Street, Dublin (p84).

differently¹⁶. Indeed the law appears to treat the two groups disproportionately, unequally and unfairly. Secondly, the legal advice might have been tested and finally, the law can be changed.

For the moment though we are faced with potentially differential treatment of the two classes of offender in this case, the deposit takers and the depositors, to the significant financial advantage of the deposit-takers. The ordinary citizen or the disinterested observer might well ask "How can this be? How can there be 'two different laws' for two types of defendant in respect of the same offence?" It is an interesting question – how can the law treat differently two groups who – during the relevant period – engaged equally with each other to construct, implement and operate a widespread tax evasion scheme?

The answer lies ultimately in the distinction currently made in law between what may be termed *fiduciary failure* and what we will refer to as *underlying evasion*. By fiduciary failure we mean a failure by an institution to comply fully with its duties as tax collector (for example in respect of PAYE, PRSI and, in the case of deposit-takers, DIRT). Underlying evasion is self-explanatory – it is the hiding of income or wealth from its tax liability.

Deposit-takers who participated with and facilitated depositors even 'only' to evade DIRT were deemed to have been guilty simply of fiduciary failure - the failure to act properly as a collector of a tax on behalf of the State. Offending depositors who are found to have been facilitated and used bogus non-resident accounts as part of a wider tax evasion plan will be considered to have engaged in tax evasion as such – underlying evasion.

Because offending deposit-takers were deemed after the look-back audit to have failed their fiduciary responsibility they were treated principally according to the provisions of

¹⁶ This is actually acknowledged and recognised by Revenue:

Deputy Doherty: *We have heard repeatedly here that if there was material risk for a financial institution one would have to take account of the consequences of that, or would one? On the other hand, let us suppose an individual has a liability and there is material risk to his or her business and 40 jobs might be in danger. Let us suppose the liability was incurred in a period when the tax culture was different from now ... Do you think these individuals should be treated similarly to the financial institutions?*

Mr. Quigley: *We are considering that position and we have not decided. I appreciate the serious issues involved for individuals. That is why we have not rushed to ... We have to set out clearly what the procedure will be here and what the implication will be.*

The only factor I mention is the amnesty. It would be only appropriate for me to mention it in this context. Although there are potentially large numbers of individuals in that situation, close to 40,000 people availed of the incentive amnesty. To the extent that people availed of the amnesty and put to right at the 15 per cent rate without any interest or penalties the income which was liable to tax, that would be the end of the matter. Those people are entitled the amnesty treatment and any rules that we set out or any interest and penalties which would apply under the law would not interfere with those cases, so there is quite a complex situation in dealing with the nexus, if you like, of the potential large number of cases and the operation of the 1993 amnesty.

Sections 1052 and 1060 of the TCA. Because depositors who were facilitated, and in addition hid income, are deemed to have engaged in evasion, they will face the provisions of section 1053 of the TCA. The key difference between section 1052 and 1060 on the one hand and treatment under section 1053 on the other is in respect of penalties. Fiduciary failure (dealt with in section 1052 and 1060) attracts a mild penalty compared to the penalties regime faced by those classed as having engaged in underlying evasion (section 1053 cases).

The principal differences in the two penalties regimes that concern us here are in respect of the lapse of time or the Statute of Limitations; the formula for calculating penalties; and thirdly, the manner in which sampling and extrapolation was used in determining the deposit-takers' liability for penalties. There is also a further, incidental issue, the different treatment of individuals and corporate bodies in section 1052 cases.

In the case of fiduciary failure the governing provision is section 1052, which establishes that the penalty shall be in the nature of a fixed fine per incident of failure to comply. In the case of DIRT, which is paid twice yearly, a deposit-taker may therefore commit two offences per year per case. However with section 1052 offences the Statute of Limitations also comes into play through the interaction of the section with section 1060 of the TCA. Section 1060 specifies that the recovery of a fine or penalty must be instituted within six years of the date on which the fine or penalty was incurred. The effect of this interaction is that Revenue, for the purposes of calculating deposit-takers' penalties, could go back no further than six years from 2000, i.e. 1994— even though the relevant period was thirteen years.

When it comes to depositors who evaded DIRT and also hid income and capital the governing provision is section 1053 of the TCA. In this case Revenue faces no such time constraint as occurs in section 1052 cases when calculating penalties.

Deputy Doherty: *How far back do you propose to go ...?*

Mr. Quigley: *In this case we ---*

Deputy Doherty: *A statute of limitations might apply.*

Mr. Quigley: *No, in this case we could go right back. If there is any question of neglect of fraud we could go back.*

A second aspect of the legal regime that benefited the deposit-takers was the operation of sampling. Clearly, Revenue could not possibly examine each and every deposit account in all of the deposit-taking institutions. The law provides in such an instance that Revenue may simply draw a representative sample of accounts – in effect conduct a survey of the deposits. The law further allows Revenue to extrapolate the results of this survey for the purposes of calculating the tax liability. In other words the non-compliance rate discovered in the survey can be applied across the board for the purposes of estimating the DIRT liability of the deposit-takers. Using this technique, the banks and building societies were deemed to have underpaid DIRT to the tune of £70.5m. However while Revenue was allowed to extrapolate for the purposes of estimating tax liability and the consequential interest thereon, it was debarred under the law from using the extrapolation technique to calculate the number of instances of fiduciary failure (for

the purpose of calculating the penalties). Only the actual cases discovered by the sampling and relating to the last six years could be counted for the purposes of calculating the penalty.

As to the level of fine in the case of fiduciary failure, the law provides for a fine of £750 per incident – in the case of individuals. In the case of corporate bodies however it is a different story.

Chairman: ... *I have one other question ... The present Act, the Taxes Consolidation Act, provides for penalties of £750. Why did you apply this £500?*

Mr. Quigley: *No, chairman. The £750 does not apply in the case we are talking about, where you are dealing with a corporate body. There is a reduction to £500 which is provided for in the Act.*

(...)

... Section 1052 defines the penalty and says the penalty, at the end of subsection (1), will be £750, but that provision is subject to subsection (2) and to section 1054. If you turn to section 1054 you will see, in subsection (2) where the person mentioned in section 1052 is a body of persons "the body of persons shall be liable to" and so on and in subsection (2)(a)(ii), "in any other case a penalty of £500 ... " It is my understanding that this is the relevant penalty in this case, ...

Hearings of 1 December 2000

As a result of the lapse of time, the bar on the use of extrapolation for the purposes of calculating penalties and the lower rate of fine for bodies corporate, the deposit-takers faced a total penalties bill of just £3m.

In addition to these considerations, the Revenue Commissioners also in the end decided to adopt a 'primary facts' approach to the calculation of liabilities. There were many, many actual cases discovered by inspectors in conducting the sampling and the look back audit of breaches of the law in respect of the operation of non-resident accounts. On the basis of strict application and narrow interpretation the assessments raised by Revenue would have been larger than they were (with ramifications for interest and penalties). This possibility posed major problems for deposit-takers and they argued strongly for a 'primary facts' approach. Where documentation was incomplete and in breach but where the deposit taker could show that the underlying account was genuinely non-resident to the satisfaction of the inspector then the account was excluded from consideration.

"... There was a question of late dating of documents, there was a question of some part of the declaration not being fully completed and so on. There was the case which made the newspaper headlines, when the IFSC issue was to the fore, that people were going to be penalised, banks were going to be penalised because it said "London" and it didn't say "London, England". We had a commonsense approach on that.

(...)

... I take responsibility for it – I would have been quite reticent about what I was saying because I wanted to see what was going to happen, whether we

would receive the co-operation in the conduct of the audit, whether we would secure the amounts of tax which were owing. ... when we got into it ... that the so-called substance over form was going to be an issue, we took our time and we made a decision in the Revenue board at the appropriate time for the guidance of our auditors when we felt that there was being co-operation ...

Dermot Quigley

Chairman of the Revenue Commissioners
Hearings, 30 November 2000 (pp70,71)

The Sub-Committee required Revenue to provide an estimate of the 'cost' of the penalties regime the deposit-takers benefited from. Had there been no application of the Statute of Limitations and had extrapolation been permitted for the purposes of levying penalties, then penalties could have amounted to a maximum of £400 million. and at least £150 million.

Mr. Quigley: *The penalty of £3 million was calculated in respect of the accounts in the sample ... for the five years, 1994, 1995 to 1998, 1999 considered to be bogus. If there had been no time limit, if there were an even spread of bogusness throughout all accounts and if extrapolation were possible, the estimated total ... would be in the region of £400 million. This would have resulted in a hypothetical penalty of 600 per cent of the DIRT paid. The calculations assume an even spread of bogusness which is not what emerged in the audits. If a lower rate of bogusness is assumed for smaller value accounts, the figure would reduce to between £150million and £300 million.*

Finally, Revenue pursued a "no prosecutions" policy with the deposit-takers in reaching a settlement. This decision was based on a pragmatic approach of getting in the money rather than going down the litigation and prosecution route with the associated prospect of protracted and costly proceedings.

Deputy Rabbitte: *Are any prosecutions contemplated as a result?*

Mr. Quigley: *No prosecutions are envisaged as a result, or contemplated as a result. ... we had a decision to make here. It's not possible, as the DPP confirmed this morning, it's not possible to run in parallel investigations with a view to prosecution and investigations or audit activity with a view to recovery of tax.*

... if we had been in prosecution mode ... we would not be talking about the receipt of £173 million for the Exchequer ...

It is perhaps appropriate to lay out in tabular form the differential in the approaches taken and prospectively to be taken in respect of offenders in the DIRT scandal as a result of the application of these section 1052 (in conjunction with section 1060) and section 1053 of the TCA.

Table 3.4**Differences in treatment under sections 1052 and 1053 of the Taxes Consolidation Act, 1997**

	Section 1052: Penalties for failure to make certain returns etc. The regime applied to the banks.	Section 1053: Penalty for fraudulently or negligently making incorrect returns etc. The regime that will apply to relevant depositors.
1	A less severe regime relative to fraud and neglect.	A more severe regime than applies to fiduciary failure.
2	Penalties are subject to lapse of time considerations under the Statute of Limitations (i.e. six year time limit).	There is no time limit in the calculation of penalties, the Commissioners may take the full duration of the offence into their calculation.
3	Total penalties are calculated on a flat charge basis (i.e. number of identified cases and offences x £500 for every six months).	Penalties are calculated with reference to tax liability assessed (i.e. up to 100 per cent of tax in case of negligence and 200 per cent in case of fraud).
4	In the DIRT case, banks (i.e. bodies corporate) were charged at a lesser rate than individuals guilty of same offence - £500/incident every six months	Individuals are charged £750 per incidence every six months.
5	Sampling may be used to identify scale of problem and extrapolated to calculate tax liability. It was used with the banks.	Individuals may be subject to a comprehensive audit of bank accounts' and underlying sources of income.
6	Sampling results shall not be extrapolated to determine penalties quantum.	Comprehensive audit of individual cases – see also 3 above.
7	A 'Primary facts' approach was adopted in the inspection of the banks	The law is rigorously applied. However mitigation may also enter into the final settlement.
8	Interest – a statutory formulaic calculation.	Interest – a statutory formulaic calculation.

The Sub-Committee sought to establish the rationale for this differential approach in the law to tax evasion offenders. The Department of Finance was asked to supply to the Sub-Committee an explanation of the different regimes contained in sections 1052 and 1053 of the TCA. Mr. John Hurley, Secretary General at the Department of Finance, provided the explanation in oral evidence on 1 December 2000. We quote the relevant passage in full:

Mr. Hurley: ... *On the question of the penalties regime, penalties for non-compliance with DIRT obligations are fixed sum amounts. Somewhat similar fixed sum amounts or, for instance, penalties apply in the case of certain other retention taxes, for example, PAYE, that is where an employer acts as a collection agent. There are no tax geared penalties where a financial institution has failed, through fault or neglect, to pay the correct amount of DIRT. Tax geared penalties can apply where the offence involves the fraudulent or negligent delivery of incorrect returns of the taxpayer's own liabilities.*

From what we can gather, this distinction in the penalty regime has existed since the 1960s and came about as a result of the Ó Dálaigh report at that time. This report addressed, among other matters, the need to review the

penalty regime. In particular it recommended relating certain penalties to tax unpaid where the correct returns related to the taxpayer's own income.

Before that change was made, the penalty related to the entire tax, not just the unpaid tax. That was an improvement from the taxpayer's point of view. The Ó Dálaigh regime set other penalties at a maximum sum. The latter was changed, as we understand it, into a fixed sum to avoid trial of such cases by jury and the inconvenience and cost associated with that.

Legislation was passed as a result of the report. That legislation now forms part of the Taxes Consolidation Acts, 1997, and in particular sections 105(2) and 105(3) referred to yesterday. The rationale appears to be that in the case of one's own tax liability, one should take full responsibility for its discharge since one profits directly from failure to pay. In the case of a deduction scheme, this is a process type function where one is acting as the collection agent of someone else's tax liability. Whether this is a fully satisfactory rationale can be questioned. It can lead to the sort of anomalies in treatment which the sub-committee members referred to yesterday. There is a case for taking a fresh look at this, especially in the light of what the Revenue look-back audit has thrown up. After the report of the Revenue Commissioners was published and we in the Department learned of the difficulties with the extrapolation of penalties which had emerged, we brought this matter to the attention of the Government and the Government has decided it will examine the structure and form of penalties which apply to the DIRT regime for the future, in particular in the light of whatever views the sub-committee will express.

Hearings, 1 December 2000

The Sub-Committee finds the distinction and grounds for the distinction made in sections 1052 and 1053 questionable in the extreme. In the view of the Sub-Committee the distinction between being a 'collector' and a 'primary taxpayer' reflects nothing more than an administrative procedure and convenience. It is of enormous benefit to the State and to taxpayers as well to have the likes of income tax, social insurance, sales and interest taxes administered and collected through systems of withholding taxes such as PAYE, Relevant Contracts Withholding Tax (RCWT, the tax regime applied to registered subcontractors in sectors such as the building industry), PRSI, VAT and DIRT etc. However the Sub-Committee sees little logic in taking this administratively convenient procedure and applying to collecting breaches a lesser punitive regime than evasion as such. The fiduciary duty is an important and onerous one in society and this should be recognised in the treatment of fiduciary failure.

The observer may ask 'what if the scale of the fiduciary failure is a giant multiple of the scale of individual evasion? Can the legislation as it stands cope fairly and equitably with such a nuance?' Clearly, the answer is 'no' – on the basis of the legal advice to Revenue.

That one profits from a failure to discharge one's own tax liability fully is true. However the extension to the proposition that there is no profit in the failure to discharge one's

fiduciary responsibility as a collector is nonsense. In this regard it is relevant to note that section 220 of the Finance Bill, 2001 amends the PAYE collection provision¹⁷ “to combat certain practices by employers in delaying payment of PAYE”. Certainly, in the mind of the Sub-Committee in the case of the DIRT scandal the commitment of the deposit-takers to the system of bogus non-resident accounts was in part because of the competition between banks for resources, i.e. deposits, to fund growth (including profit growth).

The approach enshrined in sections 1052 and 1053 amounts to erecting a legal distinction on what is no more than an administrative convenience. It also creates the potential for disproportionality and unfairness in the law.

There is another smaller aspect to the situation. This is the fact that as the law stands and taking the fiduciary issue alone, bodies corporate operating under the privilege of limited liability are, if offenders, fined less than natural personas as offenders. This is another nonsense and should be corrected immediately.

Recommendations of the Sub-Committee

The Sub-Committee recommends –

That the Minister for Finance in the next Finance Bill, or as soon as is feasible, make such provisions as are necessary to give effect to the following:

- ***Review the distinction in law for penalty purposes between failure to collect and failure to declare;***
- ***Equalise the treatment for fiduciary failure and failure to declare in respect of the operation of the Statute of Limitations; and***
- ***Eliminate the distinction between bodies corporate and individuals as provided for in respect of section 1052 penalties.***

The assessment and collection of tax on the underlying undeclared income in bogus non-resident accounts will, it seems, be a major undertaking involving significant resources, time and effort. There will be significant implications for Revenue’s overall tax collection and audit programme. The Revenue Commissioners will need to consider how best to approach this task in a fair, effective and practical manner without jeopardising their ongoing tax collection programmes under other tax heads.

The Sub-Committee therefore recommends –

that the Revenue Commissioners give consideration to dealing with the assessment and collection of the underlying tax in a pragmatic and effective manner while safeguarding the overall tax revenue of the State.

¹⁷ The purpose of the provision is outlined in the Explanatory Memorandum accompanying the Finance Bill, 2001 (see pages 44 and 45 of the Memorandum).

“Care and management”

“All duties of tax shall be under the care and management of the Revenue Commissioners.”

Section 849(2) Taxes Consolidation Act, 1997

“... this phrase – you find it in every Finance Act – that the collection of tax or whatever is “under the care and management of the Revenue”, I am not entirely sure what that means. I do not know if anybody knows exactly what it means, but that does give them some discretion ...”

Mr. John O Callaghan, Appeal Commissioner
Hearings, 18 January 2001

Under the Tax Acts the Revenue Commissioners are responsible for the “care and management” of the tax system. The concept of care and management is both well known and long established. Yet the term is also imprecisely, if at all, operationally defined as Appeal Commissioner Mr. John O Callaghan, a former practicing accountant, observed at the Hearings.

Section 849(3) of the Taxes Consolidation Act (TCA) states that

“The Revenue Commissioners may do all such acts as may be deemed necessary and expedient for raising, collecting, receiving and accounting for tax in the like and in as full and ample a manner as they are authorised to do in relation to any other duties under their care and management and, unless the Minister for Finance otherwise directs, shall appoint such officers and other persons for collecting, receiving, managing and accounting for any such duties of tax as are not required to be appointed by some other authority.”

The purpose of the “care and management” provisions in part must be to assign to the Revenue Commissioners a professional duty of care in respect of the tax system and tax revenues. In part also – and in the exercise of the duty of care – the concept of care and management does also give to the Commissioners as a practical matter “some discretion”, to use Mr. John O Callaghan’s phrase. For example there is discretion in choosing between the prosecution route and the collection route. This was, as we have seen, a feature of the resolution of the DIRT issue with the financial institutions after the conduct of the look-back audit.

Another example is the Write-off Guidelines by the Office of the Collector General issued in December 1997 and approved by the Board of Revenue in February 1998. These Guidelines provide criteria for the write-off of taxes as uncollectible tax from among the cases dealt with as part of their normal work. Then there is the use of mitigation, for example, in determining the actual quantum of penalties:

Chairman: *This is over and above interest.*

Mr. Quigley: *The interest is statutory interest; that's right, it's over and above that.*

Chairman: *So that we are clear, in income tax cases, recovery of the full income tax foregone would be sought, plus interest, plus a penalty of up to 100 per cent.*

Mr. Quigley: *Yes.*

(...)

Deputy Durkan: *Do you have any discretion ...?*

Mr. Quigley: *In the normal course under our code of conduct, ... we have the possibility of mitigation. ...*

Deputy Durkan: *... Do you regard it as a voluntary disclosure if somebody comes in and says, "I have sinned", or do you detect some irregularity and then there is a voluntary disclosure?*

Mr. Quigley: *Take it, say, for a commonplace occurrence; take it for an audit. We send a notification ... that we are going to do an audit in 14 days time. ... If, before the actual audit operation-investigation starts, that person declares that there are certain matters which have not been reflected in the accounts or whatever, that would be a voluntary disclosure, but there are nuances here ... I am just not being definitive ...*

The primary function of the Revenue is the collection of tax. The use of various practices such as no prosecution, write-off and mitigation on a case-by-case basis according to clear rules and making the best use of limited resources does not contradict this primary function.

On the other hand there is the case of SIM 263. This is the general instruction issued from the Chief Inspector's Office in 1986 in the wake of the enactment of the Finance Act of that year. The Act contained a provision that allowed for inspection by Revenue of declarations in the case of non-resident accounts. Shortly after enactment, the general instruction issued. It effectively undid the new legal provision by ordering that no inspections take place until further notice. SIM 263 was never countermanded and thus the law enacted by the Oireachtas was set aside in practice by the Revenue Commissioners.

The Sub-Committee examined the origins and history of SIM 263 at length in the 1999 Hearings. In the end, no coherent explanation for the operation of this instruction was actually divined by the Sub-Committee. However at times the explanation for the failure to countermand SIM 263 seemed to verge, in quite a confused way it has to be said, on some sense of 'the national interest' impinging upon the "care and management" provision. A good example of this confused coupling is in the evidence of Mr. Sean Moriarty on the mornings of 3 and 8 September 1999 on the operation of SIM 263:

Deputy Ardagh: *Yes. Can I just get on to SIM 263 - do you believe that the declarations should have been examined?*

Mr. Moriarty: *From the operational point of view, yes. But I have to say I was aware of, and certainly a little sympathetic to----- I didn't fully*

understand the wider policy implications. I was aware that they were taken seriously, and, I have to say, taken seriously by people whose only interest lay in the performance of the Irish economy - people with absolutely no interest in conveying any kind of benefit on the banks or any of their customers, who were acting, as they saw it, very much in the national interest. And I accepted the bona fides of those people. I assumed that that was their motivation. I assumed that their assessment of the situations must have had some benefit because-----

Hearings, Friday 3 September 1999

Morning Session

In the above statement we have evidence of the confusion which existed with operational requirements clashing with "the national interest" (belief in the capital flight theory). On the other hand, in later evidence Mr. Moriarty was very clear, as an officer with long experience of care and management, as to what the phrase did and did not mean – in his mind at least:

Mr. Moriarty: *If, by any chance, any of us had come up with a proposal that involved, for example, the disregarding of tax that had crystallised, it was clearly due on paper, it certainly couldn't have been ... no decision could have been taken by us and in my opinion no such decision could have been taken by the board as well because there is some suggestion, for example, as to how far what was described as the care and management provisions might extend. Now certainly my understanding, and I've been through a career-long experience of what care and management might mean, it can never allow the board to disregard tax which is due and payable where the capacity to pay exists. It's certainly used from time to time and the previous chief inspector, for example, would have given example unconsciously yesterday of a situation where he issued an instruction that in PAYE taxpayers, if you come up with an underpayment of under - I can't remember, £500 or £600, don't bother to collect it. And the rationale where care and management is used is normally that the cost of collection, or the deployment of resource involved, isn't a commercial use of time. Now, in this situation, the one remarkable thing about this scenario is that there could be no such thing as incapacity to pay in the case of the banks. So in my view, ...in my understanding of the care and management, this could never have extended to arrears of tax which had clearly crystallised ... were due and payable and the capacity to pay existed.*

Hearings, 8 September 1999,

Morning Session

Against that we have this short, telling extract from the examination of Mr. Sean O Connell, a senior officer at Revenue in 1987 and now retired:

Deputy Ardagh: *Did SIM.263 then, rather than come from all of the experienced inspectors and the need for it, emanate from the top rather than from operational experience?*

Mr. S. O'Connell: *I think..... I would say it emanated probably from the Finance Act of that year. It would have been the normal thing for that section to do, to issue instructions on the Finance Act of that year.*

Deputy Ardagh: *But, where in the Act would it have been? The law effectively was that declarations were to be examined and there is nothing in the Act that would say that declarations are not to be examined.*

Mr. S. O'Connell: *No, but the Revenue would have some discretion as to when and where they would go.*

On the same question the present Chairman of the Revenue Commissioners attempted to explain the incident within much the same framework of national interest, limited efficacy and discretion:

Mr. Quigley: *Well, we've already indicated in evidence that the SIM 263 was written in the chief inspector's office but it would be unfair to tie it to one individual. I mean, that SIM issued possibly as a holding operation initially, as has been suggested, but then you have to ask the question, why were inspections not undertaken in any period subsequently? That's the question you're putting to me and what I'm saying is that there were a number of factors. While I can't find the written down basis of the decisions there must have been a number of factors involved, including the limited efficacy of such a power and on the other hand the danger, the risk that the use on a broad brush basis of the inspection of declarations could cause serious difficulty.*

Hearings, 9 September 1999

Afternoon Session

In the view of the Sub-Committee there was, at the level of the Board of Revenue, an inappropriate and unprofessional approach to group responsibility in the 1980s. The damage done to the fair and efficient working of Revenue and the pressures imposed on officials were enormous.

The Sub-Committee accepts that the situation is in the process of being rectified. The Public Service Management Act, 1997 has done much to force through professionalisation and clarity in the Civil Service and the wider public policy system. In Revenue, structures are being put in place, professionalism and management are valued and there is a policy of openness and transparency being developed. Guidelines, codes of practice, guidance notes – internal and public – have been developed.

Precisely in this spirit of progress, it is the view of the Sub-Committee that there is as part of the reform process, a need to define broadly the scope and limits of “care and management” – without hampering Revenue in its primary function or limiting its capacity to most effectively manage limited resources in that context.

It appears to the Sub-Committee that at a very broad level, Mr. Moriarty got it right when he stated that care and management was something that came into play in day to day terms in the context of individual cases. As he went on to say, it could not (in

his mind at least) extend to a tax the liability for which had crystallised and in respect of which there was no question whatsoever of the taxpayer's inability to pay. The Sub-Committee is of the same mind as Mr. Moriarty on this point. The mitigating use (in the broad sense of the word) of the duty of care and management must be in the context of the specific case and inability to pay. Most certainly there should never be a question of using care and management in a broad brush, policy manner – as would appear to have happened (in some minds at least) in the case of SIM 263.

None of this precludes the coming into play in Revenue of 'policy' factors and wider economic considerations. The law as it stands allows for that – through Ministerial instruction. However the Sub-Committee can again definitively state that during this investigation it found no evidence of Ministerial involvement in the SIM 263 decision.

Recommendation of the Sub-Committee

The Sub-Committee recommends –

- **That the Revenue Commissioners formally put in place a register that documents all guidelines, codes of practice, instruction memoranda of the Chief Inspector and other such materials;**
- **That this register and the materials documented be available to the Comptroller and Auditor General for examination as part of his annual audit and on any other occasion necessary for the purposes of bringing it to the attention of the Dail and Committee of Public Accounts.**

Appendix to Chapter Three

Sections 1052, 1053, 1054 and 1060

of the

Taxes Consolidation Act, 1997

Introduction

In this Appendix we reproduce sections 1052, 1053, 1054 and 1063 of the Taxes Consolidation Act, 1997.

Sections 1052, 1053, 1054 and 1063 belong to Part 47 – Penalties, Revenue Offences, Interest on Overdue Tax and other Sanctions, Chapter 1, Income tax and corporation tax penalties.

Section 1052 (the first section of this Part of the Act) deals with penalties for failure to make certain returns. The penalties (fines) provided for are for what might be termed “technical” offences – failure to fill in a form, failure to have the form returned on time or any other act of non-compliance scheduled in the relevant schedule to the Act (Schedule 29).

The penalty imposed is in the form of a flat fine per recorded instance and is set at £750 – subject to the provisions of sub-section (2) and also section 1054. In the case of the calculation of penalties for the deposit-takers, there was deemed by the Revenue to be an interaction between sections 1052 and 1054 as a result of which the penalty faced by the deposit-takers reduced from £750 per recorded incident to £500 per incident.

The lapse of time may also come into play in section 1052 cases. The time limit for the recovery of fines and penalties is dealt with in section 1063. In the case of the deposit-takers and the look back audit it was the interaction between section 1052 (and 1054) and section 1063 that limited revenue to six years in calculating the quantum of penalty.

Section 1053 sets out the regime to apply in the case of fraudulently or negligently making incorrect returns. In the case of negligence the penalty is 100 per cent and in the case of fraud it is 200 per cent of the amount of the tax.

Penalties for failure to make certain returns, etc

1052.—(1) Where any person—

(a) has been required, by notice or precept given under or for the purposes of any of the provisions specified in column 1 or 2 of Schedule 29, to deliver any return, statement, declaration, list or other document, to furnish any particulars, to produce any document, or to make anything available for inspection, and that person fails to comply with the notice or precept, or

(b) fails to do any act, to furnish any particulars or to deliver any account in accordance with any of the provisions specified in column 3 of that Schedule, that person shall, subject to subsection (2) and to section 1054, be liable to a penalty of £750.

(2) Where the notice referred to in subsection (1) was given under or for the purposes of any of the provisions specified in column 1 of Schedule 29 and the failure continues after the end of the year of assessment following that during which the notice was given, the penalty mentioned in subsection (1) shall be £1,200.

(3) Subsections (1) and (2) shall apply subject to sections 877(5)(b) and 897(5).

(4) In proceedings for the recovery of a penalty incurred under this section or under section 1053—

(a) a certificate signed by an officer of the Revenue Commissioners, or, in the case of such proceedings in relation to a return referred to in section 879 or 880, by an inspector, which certifies that he or she has examined his or her relevant records and that it appears from those records that a stated notice or precept was duly given to the defendant on a stated day shall be evidence until the contrary is proved that the defendant received that notice or precept in the ordinary course;

(b) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period a stated notice or precept has not been complied with by the defendant shall be evidence until the contrary is proved that the defendant did not during that period comply with that notice or precept;

(c) in the case of such proceedings in relation to a return referred to in section 879 or 880, a certificate signed by an inspector which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period a stated return was not received from the defendant shall be evidence until the contrary is proved that the defendant did not during that period deliver that return;

(d) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period the defendant has failed to do a stated act, furnish stated particulars or deliver a stated account in accordance with any of the provisions specified in column 3 of Schedule 29 shall be evidence until the contrary is proved that the defendant did so fail;

(e) a certificate certifying as provided for in paragraph (a), (b), (c) or (d) and purporting to be signed by an officer of the Revenue Commissioners or, as the case may be, by an inspector may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by such officer or, as the case may be, such inspector.

Penalty for fraudulently or negligently making incorrect returns, etc

1053.—(1) Where any person fraudulently or negligently—

(a) delivers any incorrect return or statement of a kind mentioned in any of the provisions specified in column 1 of Schedule 29,

(b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief, or

(c) submits to the Revenue Commissioners, the Appeal Commissioners or an inspector any incorrect accounts in connection with the ascertainment of that person's liability to income tax,

that person shall, subject to section 1054, be liable to a penalty of—

(i) £100, and

(ii) the amount or, in the case of fraud, twice the amount of the difference specified in subsection (5).

(2) Where any person fraudulently or negligently furnishes, gives, produces or makes any incorrect return, information, certificate, document, record, statement, particulars, account or declaration of a kind mentioned in any of the provisions specified in column 2 or 3 of Schedule 29, that person shall, subject to section 1054, be liable to a penalty of £100 or, in the case of fraud, £250.

(3) Where any return, statement, declaration or accounts mentioned in subsection (1) was or were made or submitted by a person, neither fraudulently nor negligently, and it comes to that person's notice (or, if the person has died, to the notice of his or her personal representatives) that it was or they were incorrect, then, unless the error is remedied without unreasonable delay, the return, statement, declaration or accounts shall be treated for the purposes of this section as having been negligently made or submitted by that person.

(4) Subject to section 1060(2), proceedings for the recovery of any penalty under subsection (1) or (2) shall not be out of time because they are commenced after the time allowed by section 1063.

(5) The difference referred to in subsection (1)(ii) shall be the difference between—

(a) the amount of income tax payable for the relevant years of assessment by the person concerned (including any amount deducted at source and not repayable), and

(b) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by that person had been correct.

(6) The relevant years of assessment for the purposes of subsection (5) shall be, in relation to anything delivered, made or submitted in any year of assessment, that year, the next year and any

preceding year of assessment, and the references in that subsection to the amount of income tax payable shall not, in relation to anything done in connection with a partnership, include any tax not chargeable in the partnership name.

(7) For the purposes of this section, any accounts submitted on behalf of a person shall be deemed to have been submitted by the person unless that person proves that they were submitted without that person's consent or knowledge.

Penalty for fraudulently or negligently making incorrect returns, etc
1053.—(1) Where any person fraudulently or negligently—

(a) delivers any incorrect return or statement of a kind mentioned in any of the provisions specified in column 1 of Schedule 29,

(b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief, or

(c) submits to the Revenue Commissioners, the Appeal Commissioners or an inspector any incorrect accounts in connection with the ascertainment of that person's liability to income tax,

that person shall, subject to section 1054, be liable to a penalty of—

(i) £100, and

(ii) the amount or, in the case of fraud, twice the amount of the difference specified in subsection (5).

(2) Where any person fraudulently or negligently furnishes, gives, produces or makes any incorrect return, information, certificate, document, record, statement, particulars, account or declaration of a kind mentioned in any of the provisions specified in column 2 or 3 of Schedule 29, that person shall, subject to section 1054, be liable to a penalty of £100 or, in the case of fraud, £250.

(3) Where any return, statement, declaration or accounts mentioned in subsection (1) was or were made or submitted by a person, neither fraudulently nor negligently, and it comes to that person's notice (or, if the person has died, to the notice of his or her personal representatives) that it was or they were incorrect, then, unless the error is remedied without unreasonable delay, the return, statement, declaration or accounts shall be treated for the purposes of this section as having been negligently made or submitted by that person.

(4) Subject to section 1060(2), proceedings for the recovery of any penalty under subsection (1) or (2) shall not be out of time because they are commenced after the time allowed by section 1063.

(5) The difference referred to in subsection (1)(ii) shall be the difference between—

(a) the amount of income tax payable for the relevant years of assessment by the person concerned (including any amount deducted at source and not repayable), and

(b) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by that person had been correct.

(6) The relevant years of assessment for the purposes of subsection (5) shall be, in relation to anything delivered, made or submitted in any year of assessment, that year, the next year and any preceding year of assessment, and the references in that subsection to the amount of income tax payable shall not, in relation to anything done in connection with a partnership, include any tax not chargeable in the partnership name.

(7) For the purposes of this section, any accounts submitted on behalf of a person shall be deemed to have been submitted by the person unless that person proves that they were submitted without that person's consent or knowledge.

Increased penalties in case of body of persons

1054.—(1) In this section, "secretary" includes persons mentioned in section 1044(2).

(2) Where the person mentioned in section 1052 is a body of persons—

(a) the body of persons shall be liable to—

(i) in a case where the notice was given under or for the purposes of any of the provisions specified in column 1 of Schedule 29 and the failure continues after the end of the year of assessment following that during which the notice was given, a penalty of £1,000, and

(ii) in any other case, a penalty of £500 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, a further penalty of £50 for each day on which the failure so continues, and

(b) the secretary shall be liable to—

(i) in a case where the notice was given under or for the purposes of any of the provisions specified in column 1 of Schedule 29 and the failure continues after the end of the year of assessment following that during which the notice was given, a separate penalty of £200, and

(ii) in any other case, a separate penalty of £100.

(3) Where the person mentioned in section 1053 is a body of persons—

(a) in the case of such fraud or negligence as is mentioned in section 1053(1)—

(i) the body of persons shall be liable to a penalty of—

(I) £500 or, in the case of fraud, £1,000, and

(II) the amount or, in the case of fraud, twice the amount of the difference specified in section 1053(5), and

(ii) the secretary shall be liable to a separate penalty of £100 or, in the case of fraud, £200, and

(b) in the case of any such fraud or negligence as is mentioned in section 1053(2)—

(i) the body of persons shall be liable to a penalty of £500 or, in the case of fraud, £1,000, and

(ii) the secretary shall be liable to a separate penalty of £100 or, in the case of fraud, £200.

(4) This section shall apply subject to sections 877(5)(b) and 897(5), but otherwise shall apply notwithstanding anything in the Income Tax Acts.

Time limit for recovery of fines and penalties

1063.—Proceedings for the recovery of any fine or penalty incurred under the Tax Acts in relation to or in connection with income tax or corporation tax may, subject to section 1060, be begun at any time within 6 years after the date on which such fine or penalty was incurred.

Chapter 4

Oireachtas Reform & An Oireachtas Commission

"The quality of fiscal law and regulation is the responsibility of the legislature and deserves a rigorous and constructive approach in the Oireachtas."

Dr. Hederman O'Brien, submission to the Steering Group on the publication of the Blue Book, Correspondence File, submission dated 21 October 2000.

The observation of Dr. Miriam Hederman O'Brien with which we preface this chapter captures our central concern as a Sub-Committee of the Committee of Public Accounts (PAC) and as members of the PAC. The Committee of Public Accounts is essentially concerned with the parliamentary scrutiny and oversight of the Public Financial Procedures of Ireland – those procedures and actions of Government and public administration relating to the raising of public monies (taxation and debt) and expenditures.

In essence the principal focus of the PAC is 'after the fact' and also excludes 'policy' considerations although it does include consideration of value for money issues. In other words its focus is essentially audit including value for money (VFM) audit¹⁸. How

¹⁸ For an official account of the Irish system of Public Financial Procedures and the place and role of the Committee of Public Accounts in this system see the procedural handbook of the Department of Finance, Public Financial Procedures. While the role of the PAC in practice tends to be in the main after the fact and excludes 'policy' evaluation as such the evidence of the Office of the C&AG on VFM Audits to a recent sitting of the full Committee is relevant:

Deputy Rabbitte: *Is a value for money audit, by definition, something which is carried out post hoc?*

Mr Buckley: *Yes, it is in the nature of a review. It is a matter of looking back at the economy and efficiency with which an organisation has used its resources. That is how it is defined in terms of the Act. However, a good value for money report will obviously also look at good practice across the board and opportunities for better value for money. In that sense, it will use yardsticks and criteria which will almost inevitably draw you into a forward-looking situation. Legalistically, though, it is set up in terms of looking back. In practice, in order to do it, you have to set up evaluative criteria which effectively involve looking forward at how things might be done better.*

Deputy Rabbitte: *Would it be intruding into a policy matter to do a value for money audit on, say, a gargantuan public sector project, such as a stadium or similar type complex? You could not do that until we have discovered that it is not making money and not viable?*

Mr. Buckley: *No, I would not quite go along with that. You have to distinguish between the different types of public operation under review. If you are looking at a programme or a managerial operation, that is quite different from looking at what you are describing, namely a project. A project has a certain life cycle. You might in fact look at the need, the planning and the whole life cycle of the project. In doing a value for money audit, you follow the life cycle right through from*

therefore do we get from that particular function to this topic – parliamentary reform? It is perhaps again worth rehearsing the purpose of and background to the DIRT inquiry.

The PAC inquiry into the operation of DIRT during the relevant period was an exercise the purpose of which was to establish the facts in relation to the operation of DIRT during the period in question. Was the tax being collected in full? Or was the tax being evaded on a significant scale? If evasion was the order of the day, who knew about it and what did they know? Were the banks – given their role in the administration and collection of DIRT – “in on the act”? What did the relevant public authorities know and what did they do?

As is now well known our inquiry established that there was a widespread scandal and that the relevant public authorities – in particular the Department of Finance and the Revenue Commissioners – were generally aware of a problem of tax evasion. However the authorities did maintain belief in a theory (capital flight) that made them concerned not to “rock the boat”. This was particularly the case during the economic crisis of the 1980s.

The Dáil (including the PAC) also failed for many years to detect in a material way, the scale and detail of the problem in its role of enacting legislation and scrutinising the effect of legislation enacted.

What we have at the heart of the DIRT scandal is an example of a breakdown of government in the broadest sense including the role of parliament. The inquiry of the PAC into DIRT evasion and the various Tribunals established by the Houses of the

figuring out the need, through to the planning, through to the actual carrying out of the project, through to the review to see did you get what you actually bargained for in the end. You could in fact look at a public-private partnership operation or any project - a computer project or a building or anything like that - at any stage in its life cycle, using the value for money criteria.

Deputy Rabbitte: *But you would be measuring it against policy parameters set down, rather than evaluating its contribution to society or its operational viability or loss-making capacity or whatever?*

Mr. Buckley: *No, I would not think that would be so. All evaluation involves looking at what is, versus what might or should be. The concept of what should be is not necessarily dictated totally by the policy parameters which have been set. It is dictated more by what you might call reality. It puts you in a pretty lonely world as an auditor but you must look at things on the strength of the best advice in the business. In the building industry the position of a quantity surveyor might be a comparison. What they see as the best criteria to use at the planning stage, execution stage or at any stage, is the advice to follow. This is quite technical, but the matter is not as simple as saying there is a policy, and therefore that policy dictates everything an auditor might think.*

Deputy Rabbitte: *It is fascinating and not too technical at all. Thank you very much Mr. Buckley.*

Mr. Purcell: *I want to piggy back on something that Mr. Buckley said because ultimately it is at my discretion that we carry out a value for money examination or not. I go along with what Mr. Buckley says. At any stage one can look at the planning of a particular project before it sees the light of day, and check to see if it adheres to what is regarded as best practice. I feel I have the authority to form a view on the quality of the information underlying key decisions made, regarding the comprehensiveness and accuracy of the information. That is not outside our remit but clearly a decision to put up a stadium, or to query such a decision, would be outside that remit and I would be precluded from that*

Oireachtas in recent years as well as other inquiries such as those instituted by the Ombudsman arise from such breakdowns becoming apparent. These various types of inquiry are exercises in establishing precise facts in particular circumstances with a view to undertaking reforms that reduce the prospect of repetition and generally improve the performance of government in the broad sense.

Parliament is, to return again to the terminology of Ronald Dworkin, a “department of politics” with the term politics being used in this context in a particular way. In our system of parliamentary democracy and government we can think of parliament, the executive, the system of administration (what is widely referred to as “the permanent government”), the judiciary and the courts as constituting various “departments of politics”. This is not to say that parliament is the instrument of the executive or the administration. The opposite is the case. The “departments of politics” constitute an interactive system of institutions, rules, procedures, laws and norms that function as “checks and balances” based on principles of separation of powers. This system is intended to work to ensure accountability and scrutiny; checks on the abuse of power, mismanagement and misconduct; secure ethical behaviour, integrity of action and rights of redress – “good government” in the broad sense.

What the DIRT investigation has highlighted is a breakdown – over a sustained period of years – of good government in this sense.

Part of this failure was due to a breakdown in parliamentary scrutiny. One factor in the failure was the inadequate resourcing of the Houses and Members of the Oireachtas. Part of the solution is parliamentary reform. And part of the project of parliamentary reform is to put on a clear, statutory footing the relationship – and the separation – between parliament on the one hand and the executive and public administration on the other.

Such clarification of the relationship between the legislature and the executive and its implications for the role of the legislature from the point of view of improved accountability and scrutiny is appropriate. It is appropriate not least because of the sheer scale of public expenditure today and the scale, complexity and centrality to all of our lives of public services. To borrow from the appropriate language of Séamus Brennan TD, the Government Chief Whip and Minister of State to the Taoiseach in his evidence to the Sub-Committee on 30 November 2000, we need to “put the Oireachtas on a very sound footing for the 21st century”.

The Sub-Committee engaged with the issue of parliamentary reform from the perspective and the duty of the PAC – scrutiny of the systems of public expenditure and taxation from the audit standpoint. It is from this perspective that the Sub-Committee made its recommendations on parliamentary reform.

Principal among these was the recommendation to establish an Oireachtas Commission, putting in place a statutory separation of powers between parliament and executive.

Extract from the First Report

The Sub-Committee recommends -

- *The establishment of an independent permanent Oireachtas Commission, similar to the UK Parliamentary Commission. The Commission should be chaired by the Ceann Comhairle and oversee and control the funding, staffing and organisation of the Houses of the Oireachtas;*
- *That the Committee system should be funded from a separate Vote and that the Ceann Comhairle should be accountable to the Oireachtas for the assistance to and approval of the Oireachtas Commission;*
- *That the Vote for the Houses of the Oireachtas be increased substantially for the year 2000 and future years;*
- *That the preparation of the Vote for the Oireachtas Commission be independent of the Department of Finance and should be proposed to the Dáil by the Ceann Comhairle.*

The Sub Committee recommended also that an Oireachtas Law Agent be appointed to act as legal advisor to The Houses of The Oireachtas. Furthermore it recommended that provision in law be made so that The Houses of the Oireachtas could, from time to time, appoint a Parliamentary Inspector with powers similar to those of a High Court Inspector, to carry out investigations into matters of concern to The Oireachtas.

The Sub Committee is pleased to report that significant progress has been made in all of these areas as evidenced by the progress reports from the Chief Whip, various Officers of The Oireachtas, including the Clerk of the Dáil and the Secretary General of the Department of Finance. In particular the Sub-Committee notes the formal statement made by the Government Chief Whip and Minister of State to the Taoiseach (Deputy Séamus Brennan) at its Hearing of 30 November, 2000.

"The recommendations of the committee in relation to Dáil reform contain many excellent suggestions. I want to confirm to you that these have been considered by the Government and fully taken on board in a very wide-ranging review of existing parliamentary structures and procedures. I am happy to be able to tell you officially and formally today that the Government has decided to proceed with the establishment of an Oireachtas Commission. This will require legislation by the Minister for Finance. I think it is an historic step which will give the Oireachtas a degree of independence and autonomy not experienced since its foundation. Your committee is to be again commended on producing that recommendation on which the Government has now acted.

"The Government has also agreed formally ... the appointment by the Houses of the Oireachtas of a parliamentary inspector from time to time ... This will

also have to be set out in legislation. The Government has asked me to confirm to the committee that both these decisions have been taken on foot of your recommendations."

A Parliamentary Law Officer has been appointed and took up her position as and from the 15th of June 2000. The Parliamentary Law Officer has responsibility for advising the Houses of the Oireachtas and their Committees on legal matters which come to their attention.

The Government has decided to proceed with the establishment of an Oireachtas Commission. This will require legislation to be introduced by the Minister for Finance which will provide The Oireachtas with a degree of independence and autonomy which it has not experienced heretofore.

The Secretary General of the Department of Finance has stated in his evidence to the Sub Committee on the 18 January 2001 that following consultation with all relevant parties, preliminary draft heads of legislation are currently being prepared and that a Draft Bill will be put before the Dáil by Summer 2001. With the establishment of the Independent Commission, The Oireachtas will have control of its own budget and again the Sub Committee welcomes this proposal and anticipates the legislation.

The Government has formally taken the decision to introduce legislation allowing for the appointment of a Parliamentary Inspector to The Houses of The Oireachtas from time to time as the case may be. The Parliamentary Inspector will have powers similar to a court appointed Inspector to investigate matters of public interest on behalf of The Houses of the Oireachtas.

The Secretary General of the Department of Finance has given evidence that following consultation with all relevant parties, preliminary draft heads of legislation have been prepared. These are based primarily on precedents provided from the Companies Act 1990 and The Comptroller and Auditor General and committees of the houses of The Oireachtas (Special Provisions Act) 1998. The Draft Bill will be put before the Dail by Summer 2001.

With the establishment of the independent Oireachtas Commission, the Sub Committee believes that it is vital that it has true autonomy and independence. In particular, financial independence, will ensure that the Houses are, in fact, independent and not simply dependent on the Department of Finance for funding as has been the position to date. The separation of powers under the constitution is essential to the democratic process.

In all of this the Sub-Committee believes that it is essential that all Members of the Houses of the Oireachtas as public representatives and legislators are properly resourced. Members who are Ministers of Government have complete access to the full expertise of the Departments that they head as well as to external professional advisors and consultants from time to time.

Other Members, be they opposition front benchers, Government backbenchers or independents, are not at all adequately resourced. They do not have access to the Civil Service machine or to professional assistants. They may have limited access to party experts and advisors – to the extent that they exist. They may also be able to draw on voluntary assistance and advice. However their position bears no comparison with that pertaining in many other European States. Outside of the DIRT Inquiry the relevant exchange took place at the meeting of the Committee of Public Accounts proper on 22 February 2001 between Deputy Conor Lenihan and Mr. Kieran Coughlan, Clerk of the Dáil.

Deputy C. Lenihan: *Is it still the case that we are the worst resourced parliament in Europe?*

Mr. Coughlan: *That is right.*

Deputy C. Lenihan: *I know you compared it to Belgium.*

Mr. Coughlan: *We were less than 50% in terms of resources per Member and for staff.*

Deputy C. Lenihan: *Less than 50%?*

Mr. Coughlan: *Yes, 50% less than the EU parliaments in budget per Member and staff per Member.*

Deputy C. Lenihan: *Where are we on a general European comparison as opposed to the Belgian comparison where are we? Are we bottom of the league again?*

Mr. Coughlan: *We are.*

Deputy C. Lenihan: *Of all the EU?*

Mr. Coughlan: *Of the EU yes.*

Deputy C. Lenihan: *Are there further comparisons in terms of OECD or anything like that?*

Mr. Coughlan: *We have the Northern Assembly and the Scottish Parliament and Australia and what you regard as the parliaments of the major democracies.*

Deputy C. Lenihan: *In the world in other words.*

Mr. Coughlan: *Well I would not stretch it as far as the world. Europe is where we interact in that sense.*

Critical to the appropriate resolution of the funding issue is the international benchmarking exercise commissioned by the Department of Finance. External consultants are undertaking this study. There is at this point, as a result of conducting this Inquiry, a substantial body of knowledge, experience and information among members and within the secretariat and among advisors involved in this Inquiry on the issue.

In our First Report we adverted to the situation in which the Sub-Committee found itself in undertaking this Inquiry. We had “to repeatedly seek sanction from the Department of Finance for staffing and resources and for other, even minor, expenditure”. The Minister and the Department always facilitated the Sub-Committee.

Our experience in undertaking this phase of our inquiry was much the same – again we were confronted with insufficient resources while we also always found good will at the Department of Finance. However as we pointed out in our First Report, this does not take from the fact that we were dependent on the good will of Government even if always forthcoming.

Recommendation of the Sub-Committee

The Sub-Committee recommends that –

The external consultants undertaking the international benchmarking of the Houses of the Oireachtas seek the views of the members of the Sub-Committee, the secretariat and consultants and advisors involved in this Inquiry on the question of resourcing Committees of the Oireachtas.

The main argument for the strengthening of the Houses of the Oireachtas is that it enhances public accountability. A vigorously active and independent parliament with the powers to investigate matters of serious public importance will ensure that the systemic abuses and the breakdown of good government highlighted by this Inquiry, the Tribunals and other inquiries, make it much less likely that it will happen again.

Of course much work remains to be done in fleshing out the detail of the reform package. This detail – the role and composition of the Commission, the relationship between the Commission and the Department of Finance, the appropriate level of funding for the Commission and the Houses of the Oireachtas and so on – remains to be worked out.

However it also appears to the Sub-Committee that the work is in train. The legislation is being drafted. An international study to allow objective benchmarking of the funding and staffing of the Houses of the Oireachtas is under way. The parliamentary law officer has been appointed.

From its own point of view the Sub-Committee believes that the ambition contained in the remark of Ms Hederman O'Brien with which we introduced this chapter – to which the Sub-Committee also subscribes – is now in prospect of being realised. However there is a need to maintain the momentum of reform.

Recommendation of the Sub-Committee

The Sub-Committee recommends that –

- ***the legislation giving effect to the establishment of an Oireachtas Commission be enacted in time to have 1 January 2002 as the commencement and vesting day for the Commission; and***
- ***the funding formula established for the Oireachtas Commission includes provision for the resourcing of individual Members and Oireachtas Committees in line with the best practice in other EU Member States.***

In our First Report we made wide-ranging recommendations in respect of the functioning of the Houses and the Committees of the Oireachtas as well as the future conduct of

parliamentary inquiries by means of select committee. These included *inter alia* recommendations that:

- *Urgent consideration be given to an increasing role for Oireachtas Committees in the passage of legislation, especially as a means of avoiding hasty scrutiny;*
- *Meetings of Committees should not be scheduled to run in parallel with Plenary Sessions of the Oireachtas;*
- *Each Chairman of an Oireachtas Committee is fully briefed on the modalities of Parliamentary Inquiries;*
- *A Handbook of Parliamentary Inquiries be prepared by the Secretariat of Committees; and*
- *Powers of discovery for Committees be amended so that any documentary Discovery made by any Parliamentary Inspector is automatically Discovered to the Committee;*
- *General powers of Direction of Witnesses be included in the Resolution of the Oireachtas establishing a Parliamentary Inquiry;*
- *The procedures for taking of evidence before a Parliamentary Inquiry provides for groups of Witnesses to be taken;*
- *All Witnesses appearing before a Committee to which the Compellability Act, 1997 applies should be under Direction;*
- *All business, including ordinary business of the Committee of Public Accounts should be under direction;*
- *All Parliamentary Inquiries be conducted by a Sub-Committee of manageable size; Provisions should be made to have all further Parliamentary Inquiries and Tribunals of Inquiry broadcast live on television; and*
- *A comparative study be undertaken by the Department of Finance and the Attorney General's Office into Parliamentary Inquiries and Tribunals of Inquiry in the light of this Inquiry and to report back to the Oireachtas by 1 December 2000.*

Some of the actions recommended in respect of parliamentary reform have been acted upon. Others are being implemented on an *ad hoc* basis as the need arises. Other actions have yet to be implemented and of course, the Government is preparing the appropriate legislation to give effect to its reform package – including the establishment of the Oireachtas Commission recommended in our First Report.

Recommendation of the Sub-Committee

The Sub-Committee recommends that –

- *The Oireachtas Commission on its establishment immediately develop a work programme and an action plan; and*
- *develop as part of its work programme or action plan as appropriate proposals to give effect to the recommendations on parliamentary reform contained in the First Report and this Report and still awaiting implementation.*

The Parliamentary Archives Issue

There is what some might consider a small issue and an issue of a technical nature that has been highlighted by the work of the Sub-Committee.

During the Sub-Committee's Hearings it became apparent that a significant body of documentation was being discovered, submitted to, and generated by the Sub Committee. As this was the first such exercise the Sub-Committee was therefore minded to create an archive of the inquiry in order to ensure preservation of the documentation so that such information would be available to historians, students and the general public as well as for any future inquiry as reference material.

The Sub-Committee was concerned to learn, in the course of making provision for the archiving of its material, that no provision exists analogous to the National Archive in respect of the maintenance and management of the records of the Houses of the Oireachtas and their Committees.

The Sub-Committee heard evidence from the Director of the National Archives on the 18 January 2001, with a view to examining the difficulty and making proposals for preservation of such documentation/archives. The Director confirmed that the Oireachtas is not covered by The National Archives Act 1986 and the regulations made thereunder.

It would appear from the evidence given before the Sub-Committee that the reason why the papers of the Houses of the Oireachtas were excluded from the National Archive legislation was a concern, having regard to Article 15.10 of the Constitution, which states that "each house shall make its own Rules and Standing Orders ..., and shall have power to ... protect its official documents and the private papers of its members ..."

The Sub-Committee is extremely concerned that the archives of the Houses of the Oireachtas and other attendant documents be preserved. The Director of the National Archive stated that if sufficient resources were provided to him and his staff he would have no difficulty with the National Archives becoming the Archive for the Oireachtas and that the Director and his staff would take on responsibility for the Oireachtas files and documentation in order to preserve them for the future.

In those circumstances it would appear that the most appropriate way to make provision for the proper management of, and access to, the records of both Houses is that each House should, by Standing Order, make appropriate provision analogous to the National Archive legislation for the maintenance of its records, and for allowing, subject to appropriate exemptions, public access thereto.

Recommendation of the Sub-Committee

The Sub-Committee therefore recommends that appropriate steps be taken to bring before both Houses of the Oireachtas proposed amendments to Standing Orders which should include the following provisions:

- ***That subject to each House retaining overall control over its papers, such papers should be made available to the public on foot of a scheme to be incorporated by reference to Standing Orders.***
- ***The scheme should be modelled on the National Archive legislation and should provide that the Officers of the National Archive should manage such papers on like terms to those upon which they manage government papers generally.***
- ***Specific provision should be made for the control over papers of Committees of either, or both, Houses so that such papers may, on the dissolution of the Dáil, remain within the control of a Committee or Joint Committee of the new Oireachtas which has a like remit.***
- ***In particular, an appropriate mechanism should be contained within such a scheme to deal with the handing over to the Archive of relevant papers upon the expiry of thirty years, and for dealing with the circumstances in which papers need not be handed over for an extended period.***

Chapter 5

Parliamentary Inquiries¹⁹

"The plain fact is that we have never succeeded in finding the perfect form of inquiry."

*Edward Heath MP, House of Commons, Debates, 8 July 1982
Debate on the appointment of the Falklands Islands Review*

"...many people sitting on a bar-stool would say "surely the DIRT inquiry shows us that there is a different and better way". Yes, it has shown up very important things but it doesn't mean that it simply can be transferred *holus-bolus* and applied to areas which are much more contentious."

*Mr. Michael McDowell, Attorney General, 28 November 2000
Evidence in a personal capacity to the Sub-Committee, on the question of
tribunals versus parliamentary inquiries*

It would appear that the pursuit of the formula for the perfect form of public inquiry is something of a political and legal equivalent of the knightly pursuit of the holy grail. Furthermore the to and fro between parliamentary forms of inquiry and, usually judicially based, tribunals of inquiry and between statutory and non-statutory forms of inquiry are apparent constants of modern political and legal debate going back to the late nineteenth century. In addition, on the question of the parliamentary inquiry as opposed to the tribunal model, it is not even a straight choice, necessarily, certainly in Ireland – as the Attorney General made clear in his evidence to the Sub-Committee:

¹⁹ Our deliberations on the subject of this chapter drew heavily on the study provided by the Attorney General (AG) to the Sub-Committee for its information and the oral evidence of the AG in a personal capacity and other witnesses to the sub-committee on this issue and related matters. The study by the AG – *Comparative Study into Parliamentary Inquiries and Tribunals of Inquiry* – was in response to a recommendation of the First Report and it proved enormously useful. It outlined [the] statute law and principal cases relevant to tribunals in Ireland. It further provided a wide ranging discussion of legal considerations regarding parliamentary inquiries. It reproduces in appendices the report of the 1966 UK Royal Commission on Tribunals of Inquiry (the Salmon Report) and materials relating to the legal controversy generated in Britain by the Arms for Iraq inquiry (1992 - 1996) conducted by the Rt. Hon. Sir Richard Scott (the Scott Inquiry) and the procedures of that inquiry. Scott did not operate under the 1921 Act - it was an *ad hoc*, non-statutory inquiry - and might be described as inquisitorial in its purest form. It generated significant controversy in British legal circles with the main protagonists on either side being Sir Richard Scott and Lord Howe of Aberavon (the former Sir Geoffrey Howe, a QC and deeply involved in a number of Tribunals – including Aberfan – as well as a former British Foreign Secretary and as such a party in the Scott Inquiry).

"In short, I do not believe - and in the absence of a binding Supreme Court decision on the issue - that it is possible to state with total confidence as a matter of law that the establishment of a tribunal is always a mere policy choice, open as an alternative to conducting an inquiry by parliamentary committee. Nor is a parliamentary committee necessarily always available as an alternative to the establishment of a tribunal of inquiry."

Mr. Michael McDowell, Attorney General, 28 November 2000
Evidence to the Sub-Committee, on tribunals versus parliamentary inquiries

In our First Report we made a recommendation that

"... the Department of Justice, Equality and Law Reform and the Office of the Attorney General carry out a study on the lessons to be learned on the work of this Sub-Committee, to compare and contrast the functions and role of the Parliamentary Inquiry and the Tribunal of Inquiry for the future and suggesting what improvements are required in the role, practice and procedure of the two types of investigation ..."

It was further recommended that

"A comparative study be undertaken by the Department of Finance and the Attorney General's Office into Parliamentary Inquiries and Tribunals of Inquiry in the light of this Inquiry and to report back to the Oireachtas by 1 December 2000."

The Attorney General and the Department of Finance did jointly undertake the study (with the AG dealing with the legal study and the Department undertaking a cost comparison).

However much bristling with difficulty the issues raised by this topic are, allowing that the choices are not always straightforward and accepting the need for flexibility, the Sub-Committee is of the view that there is a complex issue to be examined and that a recommendation falls to be made. To this end we set out in the following paragraphs some history, discussion, arguments and questions in respect of issues arising. We conclude with our recommendation.

Background

In Ireland we have a parliamentary and a legal system developed from the British parliamentary model and the common law tradition. We do of course have variations on the themes – a written Constitution that *inter alia* defines the respective roles of the Houses of the Oireachtas; locates the Constitution in principles of natural law; and provides for a Supreme Court with a constitutional role – judicial activism. However nothing in these variations of ours inhibits the use in Ireland of either the parliamentary type of inquiry or the inquisitorial tribunal of inquiry, in particular the tribunal of inquiry conducted under the (British) statute, the Tribunals of Inquiry (Evidence) Act, 1921.

The origins of the modern (inquisitorial) tribunal of inquiry as instituted by the British parliamentary model and within the common law framework can actually be traced back to the Irish Question as it manifested itself in British politics in the latter years of the nineteenth century.

Some History

The immediate issue was the publication in *The Times* of London in March 1887 of most serious allegations against Charles Stewart Parnell MP, leader of the Irish Parliamentary Party in the House of Commons (*'Parnellism and Crime'*). The political context was the Coercion Bill then before parliament. The most critical allegation was that Parnell was privately sympathetic to the 1882 Phoenix Park murders. This allegation was based on a series of letters that purported to be in Parnell's hand (the 'Pigott letters' named after the man, Richard Pigott, who was ultimately shown to be the author).

Mr. Parnell's response to the allegations was to contest the authenticity of the letters underpinning *The Times* articles. He requested the establishment of a parliamentary inquiry (a select committee), the then long established procedure for inquiring into matters giving rise to grave public disquiet.

The Government did not agree to Parnell's request. Its response was to establish a statutory commission of inquiry²⁰. This was not so much motivated by a desire for justice by the Government as a technique that would put the whole nationalist movement effectively on trial and, it was hoped, damage it beyond recovery while justifying the Coercion Bill.

However the tactic backfired. The Parnell commission reported in 1889, vindicating the man and showing the 'Pigott letters' to be fake. The commission even proved to be the forerunner of the modern tribunal of inquiry. Following on the work of the Parnell commission a view developed in Britain that the statutory inquiry held great advantages over the parliamentary model of the select committee from the point of view of dealing with matters giving rise to grave public disquiet. This view very much became the convention, the dominant view, in British politics following the 1912 Marconi controversy²¹.

²⁰The Parnell Commission was established following the passing of the Special Commission Act, 1888. The commission lasted from 17 September 1888 to 22 November 1889. It sat in the Royal Courts of Justice and the tribunal comprised three commissioners, the Rt. Hon. Sir James Hannen, Mr. Justice Day and Mr. Justice AL Smith. The commissioners were granted special powers and also had "all such powers, rights and privileges as are vested in Her Majesty's High Court of Justice, or in any judge thereof, on the occasion of any action ..."

²¹The Marconi controversy arose from the development of the technology of wireless telegraphy (today known as radio). The use to which radio might be put was a matter of controversy. There were competing claims. Popular broadcasting was one possibility and had its supporters. However the British Imperial high command saw radio as an essentially military technology, facilitating imperial and military communications. It was decided, at the behest of the high command's case, to construct a global network of transmitters to establish an imperial communications system. It was further decided to award the contract

To inquire into the Marconi allegations, parliament reverted to the select committee system. The outcome was inconclusive: the committee divided on party lines and there were majority and minority reports based on party affiliation, government and opposition. The select committee form of inquiry was now totally discredited and when next there was a grave matter of controversy - the Ministry of Munitions scandal of 1921 - the parliamentary response was to enact the Tribunals of Inquiry (Evidence) Act, 1921. The events are described in the report of the British Royal Commission on Tribunals of Inquiry conducted in 1965-66, chaired by Lord Justice Salmon (the 'Salmon Report'):

"When in 1921 grave allegations were made by a Member of Parliament against officials in the Ministry of Munitions, the favourable impression made by the Parnell Commission and the unpleasant flavour left behind by the Marconi Committee of Inquiry were remembered. It was felt that the investigation by Parliamentary Committees of Inquiry of alleged public misconduct was entirely discredited and that accordingly new machinery should be created more appropriate to deal not only with the current matter but with any similar matter which might arise in the future. Thus the Tribunals of Inquiry (Evidence) Act, 1921 was born."

*Report of the Royal Commission on Tribunals of Inquiry, paragraph 13
page 12*

The 1921 enactment²² remains to this day the principal Act governing statutory tribunals of inquiry in Ireland and the UK. In Ireland the Act has been amended on a number of occasions, all of them specific to the establishment of particular Tribunals and to matters arising from their establishment under the principal Act.

The following paragraphs outlining principal features of the principal Act and Irish amendments draw on the report of the AG to the Sub-Committee.

Tribunals of Inquiry (Evidence) Act, 1921

Section 1(1) of the 1921 Act provides for the parliamentary procedure whereby a Tribunal is established. The criterion is "for inquiring into a definite matter ... of urgent public importance." This criterion and adherence to it in the framing of the terms of reference is a pre-eminent feature as to whether or not a Tribunal will be successful in its purpose.

Section 1(1) further provides for the enforcement of the attendance of witnesses and the examining of witnesses on oath and for the compelling of the production of documents. It also refers to a tribunal's power to take evidence from witnesses abroad. The section

to the Marconi company. Allegations were then made that this decision was not open and fair, that Marconi had an inside track. Pressures for a public inquiry were acceded to.

²² The text of the Act, a relatively short piece of legislation, is included as an appendix in the Salmon Report.

further provides that a Tribunal established under the Act “shall have all such powers, rights and privileges as are vested in the High Court ... or a judge of such court.”

Section 1(2) provides for mechanisms where a witness does not comply with a summons to appear before the Tribunal or refuses to take an oath or produce a document before the Tribunal.

Section 1(3) provides that a witness before a 1921 Act Tribunal is entitled to the same immunities and privileges as if he or she were a witness before the High Court.

Section 2 provides for the hearing in public of such a Tribunal except where the Tribunal is of the opinion that “it is in the public interest expedient so to do for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given.” The section also provides for a power to authorise the representation before the Tribunal of any person appearing before the Tribunal by counsel or solicitor or otherwise, or to refuse to allow such representation.

Tribunals of Inquiry (Evidence) (Amendment) Act, 1979

Among the matters dealt with in this enactment are provisions that allow that a Tribunal does not necessarily have to consist of a judge. A “lay person” may be the Sole Member and a Tribunal may also consist of a lay person sitting with “assessors” persons of particular expertise relevant to the subject matter of the Tribunal.

The Act also provides for the non-admissibility of evidence given in subsequent criminal proceedings.

Tribunals of Inquiry (Evidence) (Amendment) Act, 1997

A key feature of this Act is the extending of powers of a Tribunal in relation to making orders for costs where the Tribunal is of the opinion that having regard to the findings of the Tribunal and all other relevant matters an individual has failed to co-operate with or provide assistance or knowingly has given false or misleading information to the Tribunal. The Act was enacted after the Dunnes Payments Tribunal.

Tribunals of Inquiry (Evidence) (Amendment) Act, 1998

Among other things the Act permits amendment of the instrument by which a Tribunal is appointed pursuant to resolutions of both Houses of the Oireachtas.

The Act was enacted in order to permit amendment of the instrument and terms of reference of the Flood Tribunal.

Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998

This Act was enacted in order to allow a further amendment to the instrument and terms of reference of the Flood Tribunal.

The Act permits amendment of the instrument by which a Tribunal is appointed at the behest of a Minister of the Government.

There is also a volume of case law relevant to Tribunals of Inquiry and the 1921 Act (as amended) also has been subjected to a number of test cases to Supreme Court level. The Attorney General in his study submitted to the Sub-Committee summarised the position.

In the following paragraphs the Sub-Committee summarises the AG's Study's discussion of two of the most pertinent cases, the *In re Haughey* judgement and the case of *Lawlor v Flood*. The relevant sections of the Attorney General's submission are reproduced in the following paragraphs.

***In re Haughey* [1971] IR 217**

On 1 December 1970 the PAC was ordered by Dáil Éireann to examine specially the expenditure of a certain grant-in-aid for Northern Ireland relief and related matters. On 23 December the Oireachtas passed the Committee of Public Accounts of Dáil Éireann (Privilege and Procedure) Act, 1970. This provided that if any person being a witness before the Committee should refuse to answer any question to which the Committee might legally require an answer the Chairman might certify the offence to the High Court. The High Court might furthermore "after such inquiry as it thinks proper to make, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court."

Hearsay evidence containing serious accusations against Mr. Padraig Haughey was received by the Committee. Mr. Haughey then attended as a witness, made a statement and then refused to answer any questions. The Committee then certified to the High Court that an offence under the Act had been committed by Mr. Haughey. After a hearing of the motion Mr. Haughey was sentenced to six months imprisonment.

The matter was appealed to the Supreme Court. The Supreme Court, allowing the appeal, held that the offence created by section 3(4) of the Act was not the offence of contempt of Court. It was an ordinary criminal offence which, by nature of the penalty authorised on conviction, was not a minor offence within the meaning of Article 38.2 of the Constitution. Accordingly, the person charged was entitled to trial by jury.

Of greatest significance for future Tribunals the Supreme Court further held that there were two other aspects that furnished an additional ground for setting aside his conviction and sentence. First of all the evidence against Mr. Haughey had been given on affidavit instead of orally as is required in a criminal trial. Secondly Mr. Haughey had been denied an opportunity to cross-examine the witness who gave evidence against him.

It was held that the role of Mr. Haughey before the PAC was not that of a witness but that of a party accused of serious offences, whose conduct had become the subject matter of the Committee's inquiry. Accordingly the enforcement of any rule of procedure which would deprive Mr. Haughey of his right to cross examine, by counsel, his accusers and to address, by counsel, the Committee in his defence would violate the rights guaranteed by Article 40.3 of the Constitution.

In re Haughey has been widely cited. It has been cited as permitting legal representation of any witness who attends before a Tribunal whose good name may be in peril. However the judgement of Mr. Justice Murphy in the case of *Lawlor v Flood* might indicate the future interpretation of the *In re Haughey* principles.

Lawlor v Flood [1999] 3 IR 107

The case arose out of the Flood Tribunal. The Tribunals of Inquiry (Evidence) (Amendment) Act, 1979 provided that a Tribunal may make such orders as it considers necessary for the purposes of its functions. For these purposes it was provided that a Tribunal had all the powers, privileges and rights of the High Court or a High Court judge in respect of the making of such orders.

As part of the preliminary stage of his inquiry, Mr. Justice Flood made three orders directing Liam Lawlor TD to attend for questioning before Counsel for the Tribunal to make discovery and produce all documents relating to his accounts between 1987 and 1994 and to furnish an affidavit giving details of any company with which he was involved between 1987 and 1994.

Mr. Lawlor sought to quash these orders. Before the High Court he was partially successful in getting a judicial review although the order for discovery was upheld.

On appeal to the Supreme Court it was held, in dismissing the appeal that in order to interpret properly the effects of the terms of section 4 of the 1979 Act, it must be construed in the light of the entire of the Act and the entire legislative framework of which it forms part – i.e. the Tribunals of Inquiry (Evidence) Acts, 1921-1998 as amended.

The Supreme Court held that the examination of witnesses, particularly those who are not willing to co-operate during the initial stages of a Tribunal was not a matter, which in the absence of express statutory authority could be delegated by the Tribunal Chairman to any other person or body, including to counsel for the Tribunal.

In the judgement of Mr. Justice Murphy the issue as to whether the rules of natural and constitutional justice apply to the same extent to a party involved in the preliminary stages of the investigation was raised. In relation to *In re Haughey* Mr Justice Murphy stated that

“The question remains as to the extent to which the rules of natural and constitutional justice are applicable to an inquiry governed by the provisions of the Acts of 1921 and 1979. It can be said with confidence based on principle and the precedent of *In re Haughey* that where the proceedings of such a tribunal evolve into a case against a particular person rather than an inquiry into his conduct, that the appropriate rules apply. In my view it is important to recognise that the panoply of rights, as it has been described, to which Mr. Padraig Haughey became entitled as held by this Court *In re Haughey* arose not because a preliminary investigation had been carried out

and concluded or because a witness was required to give evidence on oath but because the procedures of the Committee of Public Accounts put Mr. Padraig Haughey in a position where he was being accused of serious misconduct.

The situation was summarised by O Dalaigh C.J. at p.262 in the following terms:

“Therefore, the position of Mr. Haughey was that at a public session of the Committee held on the 9th February, 1971, he had been accused of conduct which reflected on his character and good name and that the accusations made against him were made upon the hearsay evidence of a witness who asserted he was not at liberty, and therefore was not prepared, to furnish the Committee with the names of Mr. Haughey’s real accusers. The question which arises in these circumstances is what rights, if any, is Mr. Haughey entitled to assert in defence of his character and good name?”

It was in those circumstances that counsel on behalf of Mr. Padraig Haughey contended that their client was entitled to have his accusers cross-examined and that he should be entitled to address, by his counsel, the Committee in his defence. The Attorney General’s argument in response was that Mr. Padraig Haughey was seeking rights which would not be available to a witness in the High Court. That argument was rejected on the grounds that Mr. Haughey was no mere witness. Again it was the then Chief Justice who said that

“The true analogy, in terms of High Court procedure, is not that of a witness but a party. Mr. Haughey’s conduct is the very subject matter of the Committee’s examination and is to be the subject matter of the Committee’s report.”

Arising from the decided case law the Attorney General’s study suggested a number of points which might be considered for reform. These are, the AG stresses, suggestions made without the benefit of the full analysis necessary.

The agenda set out by the Attorney General is reproduced in the following Table.
Table 5.1

Agenda for reform of the 1921 Act as amended.
Some suggestions from the Attorney General

Item	Cases, issues and options
1.	Lawlor v Flood. Consideration might be given to amend the 1979 Act and in particular section 4 of the Act. In the Lawlor case it was held that an examination of witnesses, particularly those who are not willing to co-operate during initial stages was not a matter which <u>in the absence of express statutory authority</u> could be delegated by a Sole Member of the Tribunal to the Counsel for the Tribunal. The question arises whether the legislation should be amended to permit such delegation. An alternative approach would be to appoint a Senior Counsel or Junior Counsel to sit on the Tribunal itself who may carry out such functions.
2.	General point. The Tribunals of Inquiry (Evidence) (Amendment) Acts, 1921 – 1998 may benefit from expressly setting out what a Tribunal is permitted to do in its preliminary investigative stage. It may be stated in the

	legislation that a preliminary investigative stage is required before going into public sittings. Further mechanisms may be put in place so that Tribunals of Inquiry may employ specialist expertise to carry out certain investigations prior to public sittings. It may be desirable for such mechanisms to be expressed in the legislation. The exact parameters of such mechanisms remain to be fully examined and would of course be subject to constitutional guarantees as to fair procedures and rights to privacy.
3.	1979 Act. It may be desirable to amend section 5 of the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979 to extend immunity to evidence proffered at the preliminary stage of the inquiry.
4.	Lawlor v Flood. A statutory declaration in the Inquiries legislation as to the extent of the <i>In re Haughey</i> principles as they apply to Tribunals of Inquiry and their consequences as to costs of legal representation may be desirable. In the light of the judgement of Mr. Justice Murphy in the Supreme Court in the case of <i>Lawlor v Flood</i> , clarification as to the remit of the <i>In re Haughey</i> principles may be of benefit. However consideration of this perhaps should await the outcome of a decision of the Superior Courts in an appropriate case.

Source: *Comparative Study of Parliamentary Inquiries and Tribunals of Inquiry*, Office of the Attorney General. Study made on the recommendation of the Sub-Committee on Certain Revenue Matters. See pages 23 and 24 of the Study.

The Sub-Committee broadly endorses this agenda of the Attorney General, recognising the limitations mentioned by him. However the Sub-Committee would also pose some issues of its own. In respect of the issue of a preliminary investigative stage and putting in place mechanisms so that Tribunals might employ specialist expertise to carry out certain investigations prior to public sittings, the Sub-Committee would ask whether the law should provide for appointment of tribunal inspectors with powers similar to High court (and the C&AG in the DIRT Inquiry) to accumulate evidence in private and to prepare for the Tribunal a written report on the evidence as a basis for its public hearings and further investigation.

The Sub-Committee would further ask whether it is wise that a Tribunal should ever consist of a sole member bearing in mind where it becomes impossible for the sole member to continue it may be impossible for the tribunal to be completed.

In relation to procedure, the Sub-Committee would further ask

- whether Tribunals of inquiry should publish a work schedule and timetable at the outset of the Public Hearings; and
- whether provision should be made for the grouping of witnesses together which might speed up enquiries and help to resolve conflicts of evidence between witnesses and also to remove any suggestion of witnesses being “in the dock”.

There is finally the thorny issue of the cost of Tribunals – in particular the role of legal costs. The Sub-Committee notes the observations of the Attorney General in his oral evidence that Tribunals, wherever they are held, tend to be costly exercises. Nonetheless and conscious of the constitutional rights of witnesses the Sub-Committee would ask whether the number of legal advisors involved in tribunals might be restricted and whether or not they can be hired by way of contract rather than the daily fee.

Inquiries into matters giving rise to public disquiet

The principle of there being a facility to conduct inquiries into matters that give rise to public disquiet is long accepted. As has been mentioned the main method of inquiry in

the British parliamentary model was for centuries the select parliamentary committee as it was known – the parliamentary form of inquiry as we would refer today to the procedure.

However there are other modes of inquiry. For example, in Ireland and Britain there are facilities, indeed requirements, to undertake inquiries into for example, rail, shipping and air accidents. In addition, in both jurisdictions, there is statutory provision for inquiries into matters of public controversy or matters giving rise to disquiet relating to the corporate sector under the Companies Acts. There is also the statutory power of the Ombudsman to investigate citizens' complaints against the public services and to publish reports on such inquiries²³. Furthermore there is the use of non-statutory inquiries or tribunals. Irish examples would include the inquiry into sex abuse in swimming and the Kilkenny incest inquiry. British examples of this type of procedure would include the Profumo inquiry²⁴ and the Arms for Iraq inquiry.

The nature of Inquiries

It is important to appreciate the particular nature of the inquiry as a procedure and in particular how it differs fundamentally from a court of law, certainly in the common law jurisdictions. The distinction is between the adversarial and inquisitorial approaches.

The inquiry – whether a Tribunal of Inquiry, a Parliamentary Inquiry or other form of statutory or non-statutory inquiry – is essentially an inquisitorial exercise. It is generally fact-finding in nature although it may simply be to elicit evidence.

"In an inquisitorial Inquiry there are no litigants. There are simply witnesses who have, or may have, knowledge of some matters under investigation. The witnesses have no "case" to promote. It is true that they may have an interest in protecting their reputations, and an interest in answering as cogently and comprehensively as possible allegations made against them. But they have no "case" in the adversarial sense. Similarly, there is no "case" against any witnesses. There may be damaging factual evidence given by others which the witness disputes. There may be opinion evidence given by others which disparages the witness. In these events the witness may need an opportunity to give his own evidence in

²³ A recent and graphic example of this type of Investigation is that of the Ombudsman into Nursing Home Subventions, the report on which was published in January 2000 – An Inquiry by the Ombudsman of Complaints Regarding Payment of Nursing Home Subventions by Health Boards – A Report to the Dail and Seanad in accordance with Section 6(7) of the Ombudsman Act, 1980.

²⁴ In 1963 Mr. John Profumo MP Secretary of State for War was accused of having had a liason with Christine Keeler. Mr. Profumo denied there was any truth in the story. He did so in a personal statement in the House of Commons. Later he admitted that his statement was untrue and he was forced to resign from his position and from Parliament. There followed an enormous public controversy and grave public disquiet. This centred on the alleged threat to national security in that Mr. Profumo had been sharing Christine Keeler as a mistress with the Soviet naval attache. The government of the day decided to establish a non-statutory, *ad hoc* tribunal sitting behind closed doors, whose sole Member was Lord Denning, Master of the Rolls acting in effect as detective, inquisitor, advocate and judge. The Denning report was generally accepted by the public despite his inquiry's unusual procedure. It was seen as a "brilliant exception" to what one might expect from an *ad hoc* secret inquiry.

refutation. But still he is not answering a case against himself in the adversarial sense. He is simply a witness giving his own evidence in circumstances in which he has a personal interest in being believed."

*Rt. Hon. Sir Richard Scott, Vice-Chancellor of the Supreme Court,
sole member of the Arms for Iraq Inquiry.*

*'Procedures at Inquiries - the Duty to be Fair'.
The Law Quarterly Review, Vol. 111, October 1995*

The essential points are that witnesses have no case to promote or any case to answer - in the adversarial sense. They may wish to refute the evidence of others but simply, they have a personal interest in being believed. However this formulation of Sir Richard Scott is a purist, even, it might be said, an extreme position. There is also the reality that the line between the witness having "a personal interest in being believed" and finding himself or herself answering a case "in the adversarial sense" - being an accused party in the language of *In re Haughey* - is a fine line that may easily be crossed.

It is this danger that a witness becomes an accused - and crucially in other than a court of law - that has caused concern about tribunals. These reservations extend to parliamentary inquiries - as *In re Haughey* indicates. The report of the Salmon commission was very clear on the issue:

"The exceptional inquisitorial powers conferred upon a Tribunal of Inquiry under the Act of 1921 necessarily exposes the ordinary citizen to the risk of having aspects of his private life uncovered which would otherwise remain private, and to the risk of having baseless allegations made against him. This may cause distress and injury to reputation. For these reasons, we are strongly of the opinion that the inquisitorial machinery set up under the Act of 1921 should never be used for matters of local or minor public importance but always be confined to matters of vital public importance concerning which there is something in the nature of a nation-wide crisis of confidence. In such cases we consider that no other method of investigation would be adequate."

*Royal Commission on Tribunals of Inquiry (The Salmon Commission),
1966, para. 27*

One learned commentator who has had detailed involvement in a number of Tribunals is Lord Howe of Aberavon (formerly Sir Geoffrey Howe). Lord Howe was leading counsel for a number of Coal Board officials at the Aberfan Inquiry (1966 - 1967) and later (1969) chaired a Tribunal of Inquiry into allegations of cruelty at a Cardiff hospital and went on to become Solicitor General in the early 1970s. He was also a witness at the Scott Inquiry.

Of his involvement in the Aberfan inquiry, Lord Howe has written "I was deeply moved by the sombre experience. I was fulfilling the most fundamental role of an advocate, acting as an insulator between those accused and the avenging fury of the public ... I

learned too the capacity of even a conscientiously conducted Public Inquiry to inflict injustice on those whose conduct it has to examine.”

This capacity of even a well conducted inquiry recurs in Lord Howe’s comments on the Cardiff inquiry (which he chaired). “Even with the lessons of Aberfan in mind I doubt if we entirely avoided inflicting injustice on some members of the hospital staff. It can happen so easily with a tribunal whose chairman is obliged to combine the role of judge and prosecutor.” He has also commented in regard to Cardiff, “of the tenacity with which officialdom can strive to avoid publicity for manifest mis-management.”²⁵

In the view of the Sub-Committee the concerns expressed by commentators such as Lord Howe are legitimate – whether in relation to tribunals or select committees. There are real issues in respect of “inflicting injustice”, “the avenging fury of the public”, the right of citizens to their good name and delay in dealing with allegations. Equally however there is the tenacity of officialdom and what the Salmon Commission referred to as the need “to preserve the purity and integrity of our public life without which a successful democracy is impossible.”

Furthermore, certainly in Ireland the main concern of Lord Howe – the right to representation – is recognised in procedures as is the lesser concern for him, the right to cross-examine.

The inquisitorial procedure is not so alien to the British and Irish systems – viz. the 1921 Act and its rationale, to find a credible inquisitorial procedure, and in our case, the case law relevant to tribunals of inquiry.

The appropriate agenda is to find a credible inquisitorial procedure, delimit the role of the procedure, whether in its select committee or tribunal form, and to ensure that the procedure is placed within the system of checks and balances that constitutes the political system in the broadest sense.

Parliamentary inquiries

There is some irony perhaps in the standing of the parliamentary committee of inquiry in Ireland today – given the origins of the statutory tribunal of inquiry as we have it in Ireland and the UK today (Parnell, Marconi and the 1921 Ministry of Munitions scandal). In Ireland today, the specific inquiry into DIRT has achieved for the parliamentary inquiry a public standing while there is some sense of unease about tribunals, not least from the point of view of duration and cost. Comparisons are being made. In the view of the Sub-Committee care is warranted in entering into such comparisons. The Sub-Committee would be the first to recognise that there were many special, possibly unique, features to our work – for example the fact that our main public hearings were scheduled

²⁵ This and the preceeding quotations from Lord Howe are taken from his paper, *Procedure at the Scott Inquiry*, published in the Autumn 1996 edition of the journal, *Public Law*. See the Study of the Attorney General, *Comparative Study into Parliamentary Inquiries and Tribunals of Inquiry*, prepared for the Sub-Committee.

during an extended parliamentary recess and also that no party the subject of inquiry actually litigated. Also relevant is the unique position of the PAC as an Oireachtas Committee that does not question policy and in the relationship that it has with the Office of the Comptroller and Auditor General and the role and powers of that Office.

In his oral evidence, in particular in his opening statement, the Attorney General ranged widely on the topic of choice of mode of inquiry. In the following paragraphs we draw heavily on that evidence and pose a series of questions. The context always is that of the inquisitorial inquiry with powers of compellability. The discussion is illustrative rather than exhaustive and is intended to support and guide the recommendation of the Sub-Committee.

The Attorney General dealt with the roles of the Houses of the Oireachtas under the Constitution. He drew attention to the differences between the Dail and the Seanad. The Dail is a House of Representatives, holding the Government to account and with control of the money supply and scrutiny of public expenditure. In particular the AG observed that "Seanad Eireann, by contrast (with the Dail), appears to be substantially a legislative Chamber, albeit with constitutional functions in relation to the removal of the President and members of the Judiciary." Does this limit the Seanad and Senators in the process of parliamentary inquiry? What matters might be appropriate to Dail inquiry, to Seanad inquiry and to joint inquiry?

Mr. McDowell speculated that it may be that the power to establish committees of inquiry invested with compellability powers may be exercisable only "ancillary to the constitutional function of each House." Is this likely to be so and if so, is it possible or appropriate to establish, even broadly and subject to the right to judicial adjudication, the outer working limits of "ancillary"?

The Sub-Committee is in agreement with the Attorney General in the view that he expressed that "a matter which was entirely private ... such as a family matter, a dispute between shareholders of a company or neighbouring landowners, or a matter solely affecting a citizen's reputation, is not something on which an Oireachtas Committee can exercise compulsory powers over non-Oireachtas members just to satisfy its own or the public's curiosity." Do we need, even for working purposes and again subject to right of appeal to the courts, some definition of "entirely private" and "solely"?

The legal ambit of inquiry by tribunal, the Attorney General observed, "may be larger than that available to a parliamentary committee and the subject matter of a tribunal of inquiry with compulsory powers may well, as a matter of law, turn out to be potentially wider than that which may be inquired into by a Committee".

Stringent efforts were made by the PAC to ensure that its Sub-Committee behaved objectively and with impartiality. The AG observed that, in his view, it seemed very doubtful that a bank could successfully object in law to an inquiry such as the DIRT investigation being carried out by such a committee as the Sub-Committee even if one or more of its members had clearly expressed views on the banks or on relevant tax issues.

As Mr. McDowell pointed out TDs “are elected expressly by reference to their policy positions on matters likely to come before them – or if they aren’t, they ought to be ...”. They are “entitled to bring their prejudices with them into a committee room and still to function as members of a parliamentary committee of inquiry.” The Sub-Committee finds the Attorney General’s comments reassuring. However are there working limits to this position that can be established?

A process of compulsory inquiry leading to findings of fact that could seriously affect the personal reputation of those subject to inquiry ought to be conducted in a manner calculated to uphold their rights. What procedures, if any, need to be put in place and on what basis – statutory or otherwise – to ensure that witnesses and bodies compelled are being compelled in a genuine spirit of inquiry as opposed to the advancement by Members of their own political interest or confirming their own prejudices?

Members of the Houses of the Oireachtas have a burdensome range of responsibilities as public representatives, as legislators and in their duty to scrutinise and hold to account the executive. Regard must also be had to the limited life of the Dail and resource constraints. Whether Members of the Oireachtas can, in every case, reasonably be expected to apply sustained, detailed and scrupulous examinations of the subject matter of inquiry is a matter of real concern. Are there formal rules or tests that might be applied in deciding upon or choosing between the parliamentary and tribunal modes of inquiry?

There are perhaps a small number of broad themes that lie behind the questions posed in the above paragraphs. Among these is the ultimate right of appeal by parties to judicial adjudication. At the extreme, there is the emphasis by Hederman J in the case of *Goodman International* and Mr. Justice Hamilton, that if the Oireachtas abused its powers to establish statutory inquiries the courts would restrain it from doing so. The courts are one of the departments of politics, an essential ingredient in the system of checks and balances and the separation of powers in pursuit of good government.

Another theme is that of credibility and trust. It was put clearly by the Attorney General. It is “that any inquiry, if it is to have any use in terms of its outcome being respected by the public, must be one in which the inquirers seem disinterested or at least trustworthy on the issue and seem to be clear of any strong motivation which would undermine the worth of the inquiry.”

A third consideration is that it is actually impossible to set out indisputable legislative criteria that “force you into one thing rather than another” as it was put by the Attorney General. We are dealing with judgement calls – although the law, rules and guidelines may provide us with help and assistance.

This inquiry demonstrates that the select committee system can function effectively as a form of public inquiry into a matter of grave public disquiet. It functioned effectively and efficiently and it did not break down on party lines. In the view of the Sub-Committee its cohesion in this regard is in part due to the non-involvement of the

Committee of Public Accounts in policy assessment. We do note the view of the Attorney General that, in law, there is no bar on a select committee, using powers of compellability, inquiring into policy issues.

Attorney General: ... can I put a mild question mark over one portion of your report where you said that policy issues are not suitable for determination by Oireachtas Committees using compellability powers. I don't know whether I would go one hundred per cent along with you on that. I think there are some issues such as, for instance, take an issue – health insurance and the various policy options that are there – it might well be necessary in those circumstances to oblige people to come and testify before a Committee of the Houses of the Oireachtas even if all of the Members of the House had different, competing policy positions as to what the outcome should be. ...

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This may well be. However there is a practical political matter in the view of the Sub-Committee. Our system of parliamentary democracy and parliamentary party politics involves there being a very close relationship between the executive and the legislature. Constitutionally and formally, we do have the separation of powers. However, the Government of the day, whatever its hue or hues, maintains a capacity to dispose (as well as propose) through controlling a majority in the House. This feature of our system has prompted commentators to characterise our parliamentary system as a “fused executive-legislature” or even “an executive state”²⁶. In other words, in everyday parliamentary-political life the separation of powers is not quite complete. Despite the fact, as the AG put it, “that sometimes you can be entirely political and entirely honourable and the public will accept that a report that arises out of a political process has value ...” the reality is that, on the more political issues, breakdown along party lines is a natural prospect.

We need also to keep in mind what was noted by the Court in the case of Goodman International and Mr. Justice Hamilton, that in any parliamentary democracy it is essential that Parliament should have powers to initiate inquiries. Furthermore, we may take some comfort in the view of the Attorney General in his oral evidence given in a private capacity ~~evidence~~, that he is sceptical “when people say that people using compellability powers should be entirely neutral. I think that sometimes you can be entirely political and entirely honourable and the public will accept that and will accept that a report that arises out of a political process has value ...” As against this the AG did go on to remark that when it came to an individual being a defendant before an

²⁶ The term fused executive-legislature is that of two legal commentators, Hogan and Morgan, in their book, Administrative Law in Ireland. Very many political analysts have commented on this aspect of the Irish system of parliamentary government. So also have politicians. Discussion of the theme may be found in Chapter 8 of the Report of the Ombudsman on Nursing Home Subventions. This chapter has been reproduced in edited form as an Appendix to Chapter Four of this report.

Oireachtas Committee, party political issues were clearly relevant to “the choice of venue”.

Recommendation of the Sub-Committee

The Sub-Committee recommends that –

the Government establish a commission to examine and review

- *the Tribunals of Inquiry (Evidence) Act, 1921 as amended;*
- *the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 and the Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998;*
- *the respective roles of Parliamentary Inquiries and Tribunals of Inquiry established under the Tribunals of Inquiry (Evidence) Act, 1921 as amended, in particular and in respect of the choice of mode of inquiry,*

- *the fact that parliamentary inquiries are “ancillary” to the constitutional function of each House*
- *the limitations of the parliamentary inquiry in respect of matters which are “entirely private” or overwhelmingly political;*
- *the issue of credibility and trust – the need to have the outcome respected by the public – in the context of the political nature of the Oireachtas;*
- *such rules and statutory provisions as might be appropriate to assist and guide the choice of mode;*
- *relevant constitutional considerations; and*
- *the points raised in this Chapter;*

and in respect of the procedures of inquiries,

- *preliminary phases;*
- *procedures for the taking of evidence; and*
- *the broadcasting of public Hearings.*

and to make recommendations.

Chapter 6

Summary of Recommendations

CHAPTER 2 RECOMMENDATIONS

The Sub-committee recommends that –

The Department of Finance and the Department of Enterprise, Trade and Employment report to the Committee of Public Accounts by the beginning of June 2001 the status of the SRA Bill and the estimated timescale for publication and enactment. The Sub-committee urges that the Bill be enacted as soon as possible.

The Sub-Committee recommends that –

The recommendations of this Sub-Committee in this Chapter are brought to the attention of the Moriarty Tribunal.

The Sub-Committee recommends that –

The that Revenue Commissioners develop and prepare annually and publish

- *In respect of all of the taxes under their care and management, measures of*
 - *the tax base;*
 - *the amounts of tax charged;*
 - *the Budget forecast;*
 - *the tax collected;*
 - *variances and explanations;*
 - *underlying tax debt; and*
 - *changes achieved in the level and age structure of tax debt (taxes outstanding) for the individual taxes;*
- *In respect of tax debt, measures of risk and policy on the containment of risk within acceptable limits; and*
- *Performance against independently derived and externally approved and audited performance benchmarks, the benchmarks to reflect the medium term strategic management objectives of the Commissioners;*
- *The benchmarks to be periodically reviewed and to be approved by the Minister for Finance.*

The overarching desire of the Sub-Committee is to ensure that a formal, independent structure exists to ensure good governance and the protection of the interests of taxpayers generally and the Irish public. The Sub-Committee therefore recommends that –

- *The roles of chairman and chief executive at the Office of the Revenue Commissioners be separated; that*

- *The Board of the Revenue shall comprise three executive and three non-executive Directors and that the Chairman be drawn from the non-executive directors; and*
- *That the chief executive and accounting officer be the same person.*

The Sub Committee recommends that –

the Department of Finance in conjunction with the Office of the Attorney General undertake a more detailed study of the benefits of

- *a Revenue Court and*
- *a fiscal prosecutor*

And report to the Public Accounts Committee by 31 March 2002.

The Sub-Committee recommends –

that the Minister for Finance, as part of the Bill intended to put the Revenue Commissioners on a statutory footing, a new statutory footing should also be made for the Office of the Appeal Commissioners and the provisions to take account of

- *the transparent method of appointment of Appeal Commissioners;*
- *a mechanism for the removal of an Appeal Commissioner;*
- *the range of expertise that resides collectively among the Appeal Commissioners; and*
- *an expansion of the role of the Office of the Appeal Commissioners to comment on their experience of interpreting areas of tax law and of dealing with administrative acts by Revenue which come within the ambit of appeal.*
- *commissions an objective benchmarking exercise, similar to the exercise to be undertaken for the Houses of the Oireachtas in the context of preparing for the establishment of the Oireachtas Commission, with the purpose of objectively determining a realistic budget to run a modern Office of the Appeals Commissioners; and*
- *invites submissions from relevant parties such as the judiciary, the Revenue Commissioners, the relevant professions and their representative bodies as well as the public prior to the preparation of the legislation.*

The Sub-Committee recommends –

that the Minister for Finance

- *appoint a third Appeal Commissioner and one of the three to be Chairman and Head of Office;*
- *provides, if necessary by way of Supplementary Vote, sufficient resources to permit the re-grading of the existing administrative staff and an initial increase in staffing levels and to enable the Appeal Commissioners to prepare an annual report for last year, embark on a programme of publication of adjudications and the development of their web site*

The Sub-Committee recommends that –

the Oversight Board for the accountancy profession be fully funded by the Exchequer;

- *The review of oversight be conducted in five years rather than in ten years as proposed; and*

- *the staffing, financial resourcing and mission of the Oversight Board for the Accountancy Profession should be such that the Board can engage in regular review of standards and practice at firm level as well as evaluation of the policy and behaviour of the professional associations, the necessary legislation to be enacted by 1 January 2002.**

CHAPTER 3 RECOMMENDATIONS

The Sub-Committee recommends that –

The Minister for Finance provides for the inclusion in the next Finance Bill or as soon as is feasible, a measure that will ensure that for the future, the cost of a Revenue Inquiry under Section 904A of the Taxes Consolidation Act, 1997 as amended, or similar type Revenue inquiries elsewhere provided for, may be required to be borne by the person or body being examined where warranted.

For purposes of clarification, “where warranted” means where such an inquiry is undertaken,

- *on the basis of prima facie evidence of breaches or fraud;*
- *the inquiry involves significant (resource) opportunity cost; and*
- *the original suspicions are largely confirmed.*

The Sub-Committee recommends –

That the Minister for Finance in the next Finance Bill, or as soon as is feasible, make such provisions as are necessary to give effect to the following:

- *Review the distinction in law for penalty purposes between failure to collect and failure to declare;*
- *Equalise the treatment for fiduciary failure and failure to declare in respect of the operation of the Statute of Limitations; and*
- *Eliminate the distinction between bodies corporate and individuals as provided for in respect of section 1052 penalties.*

The Sub-Committee therefore recommends –

that the Revenue Commissioners give consideration to dealing with the assessment and collection of the underlying tax in a pragmatic and effective manner while safeguarding the overall tax revenue of the State.

The Sub-Committee recommends –

- *That the Revenue Commissioners formally put in place a register that documents all guidelines, codes of practice, instruction memoranda of the Chief Inspector and other such materials;*
- *That this register and the materials documented be available to the Comptroller and Auditor General for examination as part of his annual audit and on any other occasion necessary for the purposes of bringing it to the attention of the Dail and Committee of Public Accounts.*

CHAPTER 4 RECOMMENDATIONS

The Sub-Committee recommends that –

The external consultants undertaking the international benchmarking of the Houses of the Oireachtas seek the views of the members of the Sub-Committee, the secretariat and consultants and advisors involved in this Inquiry on the question of resourcing Committees of the Oireachtas.

The Sub-Committee recommends that –

- *the legislation giving effect to the establishment of an Oireachtas Commission be enacted in time to have 1 January 2002 as the commencement and vesting day for the Commission; and*
- *the funding formula established for the Oireachtas Commission includes provision for the resourcing of individual Members and Oireachtas Committees in line with the best practice in other EU Member States.*

The Sub-Committee recommends that –

- *The Oireachtas Commission on its establishment immediately develop a work programme and an action plan; and*
- *develop as part of its work programme or action plan as appropriate proposals to give effect to the recommendations on parliamentary reform contained in the First Report and this Report and still awaiting implementation.*

The Sub-Committee therefore recommends that appropriate steps be taken to bring before both Houses of the Oireachtas proposed amendments to Standing Orders which should include the following provisions:

- *That subject to each House retaining overall control over its papers, such papers should be made available to the public on foot of a scheme to be incorporated by reference to Standing Orders.*
- *The scheme should be modelled on the National Archive legislation and should provide that the Officers of the National Archive should manage such papers on like terms to those upon which they manage government papers generally.*
- *Specific provision should be made for the control over papers of Committees of either, or both, Houses so that such papers may, on the dissolution of the Dáil, remain within the control of a Committee or Joint Committee of the new Oireachtas which has a like remit.*
- *In particular, an appropriate mechanism should be contained within such a scheme to deal with the handing over to the Archive of relevant papers upon the expiry of thirty years, and for dealing with the circumstances in which papers need not be handed over for an extended period.*

CHAPTER 5 RECOMMENDATIONS

The Sub-Committee recommends that –

the Government establish a commission to examine and review

- *the Tribunals of Inquiry (Evidence) Act, 1921 as amended;*
- *the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 and the Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998;*
- *the respective roles of Parliamentary Inquiries and Tribunals of Inquiry established under the Tribunals of Inquiry (Evidence) Act, 1921 as amended, in particular and in respect of the choice of mode of inquiry,*
 - *the fact that parliamentary inquiries are “ancillary” to the constitutional function of each House*
 - *the limitations of the parliamentary inquiry in respect of matters which are “entirely private” or overwhelmingly political;*
 - *the issue of credibility and trust – the need to have the outcome respected by the public – in the context of the political nature of the Oireachtas;*
 - *such rules and statutory provisions as might be appropriate to assist and guide the choice of mode;*
 - *relevant constitutional considerations; and*
 - *the points raised in this Chapter;*

and in respect of the procedures of inquiries,

- *preliminary phases;*
- *procedures for the taking of evidence; and*
- *the broadcasting of public Hearings.*

and to make recommendations.

FINAL RECOMMENDATION

The Sub-Committee recommends that –

- *The Committee of Public Accounts now disbands the Sub-Committee on Certain Revenue Matters; and*
- *that it seeks from the relevant Departments and agencies of the State, for the next eighteen months, six monthly progress reports on the implementation of the recommendations of the Sub-Committee.*

Appendix

Houses of the Oireachtas

17 DECEMBER 1998

Fógraí Tairisceana : Notices of Motions

a16. "Go mbeartaíonn Dáil Éireann, tar éis eolas a bheith faighte aici ar fhianaise *prima facie* ar bhaol substaintiúil d'ioncam an Stáit trí Thuarascálacha Eatramhacha an Choiste um Chuntais Phoiblí ar Chuntais Leithreasa 1997,

A.faoi alt 2(1) den Acht um an Ard-Reachtaire Cuntas agus Ciste agus um Choistí Thithe an Oireachtais (Forálacha Speisialta), 1998 ('an tAcht Forálacha Speisialta'), agus i bhfeidhmiú na gcumhachtaí a thugtar leis an Acht sin, go n-iarrfar ar an Ard-Reachtaire Cuntas agus Ciste ('an tArd-Reachtaire'):

(1)cibé scrúduithe agus imscrúduithe a dhéanamh a mheasann sé is cuí ar na gnóthaí agus ar na leabhair chuntais agus na taifid eile in aon fhoirm agus na doiciméid eile i leith na tréimhse 1 Eanáir 1986 go 1 Nollaig 1998 de chuid foras airgeadais arna míniú in Alt 1 den Acht Forálacha Speisialta, ar forais iad ar ceanglaíodh orthu le Caibidil IV de Chuid I den Acht Airgeadais, 1986, agus le Caibidil 4 de Chuid 8 den Acht Comhdhlúite Cánacha, 1997, méideanna a asbhaint in ionannas cánach ioncaim as íocaíochtaí méideanna i leith úis arna ndéanamh acu le linn na tréimhse réamhráite ar thaiscí áirithe airgid a bhí leo agus na méideanna in ionannas cánach ioncaim a íoc leis an Ard-Bhailitheoir agus tuairisceáin a dhéanamh chuig an Ard-Bhailitheoir ar na méideanna réamhráite úis agus na méideanna réamhráite in ionannas cánach ioncaim agus ar ceanglaíodh orthu le halt 175 den Acht Cánach Ioncaim, 1967, agus le halt 891 den Acht Comhdhlúite Cánacha, 1997, tuairisceáin áirithe eile a dhéanamh chuig cigire cánach i leith úis ab iníoctha acu gan cáin ioncaim a asbhaint,

That Dáil Éireann, having been apprised of *prima facie* evidence of a substantial risk to the revenues of the State by means of the Interim Reports of the Committee of Public Accounts on the Appropriation Accounts 1997,

resolves that:

A.under section 2(1) of the Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions), Act, 1998 ('the Special Provisions Act'), and in exercise of the powers conferred by that Act, the Comptroller and Auditor General ('the Comptroller') be requested to:

(1)carry out such examinations and investigations as he considers appropriate of the affairs and the books of account and other records in any form and other documents in respect of the period 1 January 1986 to 1 December 1998 of financial institutions as defined in Section 1 of the Special Provisions Act, being institutions that were required by Chapter IV of Part I of the Finance Act, 1986, and Chapter 4 of Part 8 of the Taxes Consolidation Act, 1997, to deduct amounts representing income tax from payments of amounts in respect of interest made by them during the period aforesaid on certain deposits of money with them and to pay the amounts representing income tax to the Collector-General and to make returns to the Collector-General of the amounts aforesaid of interest and the amounts aforesaid representing income tax and were required by section 175 of the Income Tax Act, 1967, and section 891 of the Taxes Consolidation Act, 1997, to make certain other returns to an inspector of taxes in respect of interest payable by them without deduction of income tax,

(2)cibé scrúduithe faoi alt 3(7) d'Acht an Ard-Reachtair Cuntas agus Ciste (Leasú), 1993, agus cibé scrúduithe agus imscrúduithe eile a mheasann sé is cuí a dhéanamh,

(3)má mheasann an tArd-Reachtair gur gá déanamh amhlaidh chun a fheidhmeanna nó a feidhmeanna a chomhlíonadh faoin Acht Forálacha Speisialta, iniúchóir a cheapadh chun cibé scrúduithe agus imscrúduithe a mheasann an t-iniúchóir is cuí, chun a chumasú don Ard-Reachtair a fheidhmeanna a chomhlíonadh faoin Acht Forálacha Speisialta, a dhéanamh thar a cheann agus faoi réir a rialaithe agus a mhaoirseachta agus ar cibé téarmaí agus coinníollacha eile (más ann), agus faoin réir, a chinneadh an tArd-Reachtair nó a shonróidh an Ard-Chúirt faoi alt 14 den Acht Forálacha Speisialta, ar scrúduithe agus imscrúduithe iad ar chuntais nó taiscí arna sealbhú sna forais airgeadais réamhráite le linn na tréimhse a shonraítear thuas agus ar ghnóthaí agus ar leabhair chuntais agus ar thaifid eile in aon fhoirm agus ar dhoiciméid eile na bhforas sin i leith na tréimhse sin a mhéid a bhaineann siad leis na cuntais agus na taiscí sin; agus déanfaidh an t-iniúchóir a cheapfar amhlaidh na scrúduithe agus na himscrúduithe réamhráite, agus

(4)scrúdú a dhéanamh ar aon tuarascáil faoi alt 2(2) den Acht Forálacha Speisialta a thabharfaidh iniúchóir arna cheapadh faoi alt 2(1) den Acht sin dó agus má mheasann sé gur cuí déanamh amhlaidh, an tuarascáil a phlé leis an iniúchóir agus é a cheistiú i ndáil le haon ní áirithe sa tuarascáil, nó a éireoidh i dtaca léi, nó i ndáil leis an tuarascáil i gcoitinne

(i) chun a fháil amach -

(I)an bhfuil na leabhair chuntais, na taifid agus na doiciméid réamhráite iomlán agus cruinn a mhéid a bhaineann siad leis na taiscí, leis an ús agus leis na méideanna in

(2)carry out such examinations under section 3(7) of the Comptroller and Auditor General (Amendment) Act, 1993, and such other examinations and investigations as he considers appropriate,

(3)if the Comptroller considers it necessary to do so for the purpose of the performance of his or her functions under the Special Provisions Act, appoint an auditor to carry out on his behalf and subject to his control and supervision and upon and subject to such other terms and conditions (if any) as the Comptroller may determine or the High Court may specify under section 14 of the Special Provisions Act such examinations and investigations as the auditor considers appropriate, for the purpose of enabling the Comptroller to perform his functions under the Special Provisions Act, of accounts or deposits held in the financial institutions aforesaid during the period specified above, and of the affairs and the books of account and other records in any form and other documents of those institutions in respect of that period in so far as they relate to such accounts and deposits; and the auditor so appointed shall carry out the examinations and investigations aforesaid, and

(4)examine any report under section 2(2) of the Special Provisions Act furnished to him by an auditor appointed under section 2(1) of that Act and, if he considers it appropriate to do so, discuss the report with the auditor and question him in relation to any particular matter in, or arising in connection with, the report, or in relation to the report generally,

in order -

(i) to ascertain -

- ionannas cánach ioncaim réamhráite agus an ndéanann na cinn sin a bhféadann cigire cánach iniúchadh a dhéanamh orthu pictiúr iomlán agus fíor a chur ar fáil dó i dtaobh cé chomh mór a chomhlíon na forais sin Caibidil IV de Chuid I den Acht Airgeadais 1986, agus Caibidil 4 de Chuid 8 den Acht Comhdhlúite Cánacha, 1997, agus na hailt sin 175 agus 891 i leith na dtaiscí, an úis, na méideanna in ionannas cánach ioncaim agus na dtuairisceán réamhráite,
- (II) an ndearna na Coimisinéirí Ioncaim bearta cuí chun iad féin a shásamh i dtaobh ar chomhlíon na forais sin an Chaibidil sin IV, an Chaibidil sin 4 agus na hailt sin 175 agus 891 i leith na dtaiscí, an úis, na méideanna in ionannas cánach ioncaim agus na dtuairisceán réamhráite,
- (III) ar chomhlíon na forais sin aon fhorálacha iomchuí eile de na hAchtanna Cánach (de réir bhrí an Achta Cánach Corparáide, 1978, agus an Achta Comhdhlúite Cánacha, 1997) i leith na nithe réamhráite, agus
- (IV) má tá easnamh sa mhéid a d'íoc na forais sin faoin gCaibidil sin IV agus faoin gCaibidil sin 4 i leith na méideanna sin in ionannas cánach ioncaim, cad iad fáthanna agus imthosca an easnaimh,
- (ii) chun a fháil amach an bhfuil córais, nósanna imeachta agus cleachtais bunaithe atá dóthanach chun seiceáil éifeachtach a áirithiú ar mheasúnú, agus ar bhailiú agus ar leithroinnt chuí na méideanna réamhráite in ionannas cánach ioncaim ag na Coimisinéirí Ioncaim agus ar íoc an chéanna ag na forais airgeadais réamhráite leis na Coimisinéirí Ioncaim, agus
- (iii) chun é féin a shásamh i dtaobh an dóthanach an modh ina ndearnadh na
- (I) whether the books of account, records and documents aforesaid are complete and accurate in so far as they relate to the deposits, the interest, and the amounts representing income tax, aforesaid and whether those of them that may be inspected by an inspector of taxes provide for him a full and true picture of the extent of those institutions' compliance with Chapter IV of Part I of the Finance Act, 1986, and Chapter 4 of Part 8 of the Taxes Consolidation Act, 1997, and the said sections 175 and 891 in respect of the deposits, the interest, the amounts representing income tax, and the returns, aforesaid,
- (II) whether the Revenue Commissioners have taken appropriate steps to satisfy themselves as to whether those institutions have complied with the said Chapter IV, the said Chapter 4 and the said sections 175 and 891 in respect of the deposits, the interest, the accounts representing income tax, and the returns, aforesaid,
- (III) whether those institutions have complied with any other relevant provisions of the Tax Acts (within the meaning of the Corporation Tax Act, 1978, and the Taxes Consolidation Act, 1997) in respect of the matters aforesaid, and
- (IV) if there is a shortfall in the amount paid by those institutions under the said Chapter IV and the said Chapter 4 in respect of the said amounts representing income tax, the reasons for and the circumstances of the shortfall,
- (ii) ascertain whether systems, procedures and practices have been established that are adequate to secure an effective check on the assessment and collection and proper allocation of the amounts aforesaid representing income tax by the Revenue Commissioners and its payment by the financial institutions, aforesaid, to the Revenue Commissioners, and

córais, na nósanna imeachta agus na cleachtais réamhráite a úsáid agus a chur i bhfeidhm i ndáil leis an ús agus leis na méideanna sin in ionannas cánach ioncaim,

(5)chun an fhaisnéis a bhí ar eolas nó ar dócha go mbeifí ag súil í a bheith ar eolas nó ar fáil do na forais airgeadais réamhráite, do na Coimisinéirí Ioncaim, don Roinn Airgeadais agus do Bhanc Ceannais na hÉireann a fháil, a bhaineann leis an gcleachtas cuntais neamhchónaitheacha bréige a úsáid chun Cáin Choinneála ar Ús Taisce (is é sin le rá na méideanna in ionannas cánach ioncaim dá dtagraítear thuas) a imghabháil agus chun a fháil amach cén úsáid a baineadh as an gcéanna,

(6)chun a chinntiú maidir le haon tuarascáil a thabharfaidh sé de bhun an Acht Forálacha Speisialta

- (a) go leagtar amach inti cibé fíorais agus fianaise a mheasfaidh sé is cuí; agus
- (b) go n-éascóidh sí cur i gcrích éifeachtach, éifeachtúil agus dlúsúil na n-éisteachtaí ag an gCoiste um Chuntais Phoiblí, mar a mhnítear san Acht Forálacha Speisialta, maidir leis na nithe réamhráite.

B.gur ceart don Ard-Reachtair dá rogha féin, an t-ord agus an modh a ndéanfar a chuid scrúduithe agus imscrúduithe ar na forais airgeadais agus ar na nithe eile réamhráite a chinneadh;

C.gur ceart don Ard-Reachtair a fheidhmeanna a chomhlíonadh faoin Acht Forálacha Speisialta agus faoin Rún seo ar mhodh chomh heacnamaíoch agus chomh dlúsúil agus a bheidh i gcomhréir leis an gceart;

D.gur ceart do Dháil Éireann cabhrú leis an Ard-Reachtair ar gach bealach is féidir chun gur féidir na scrúduithe agus na himscrúduithe réamhráite a chur i gcrích a luaithe is féidir;

(iii)to satisfy himself as to whether the manner in which the systems, procedures and practices aforesaid have been employed and applied in relation to such interest and amounts representing income tax is adequate,

(5)ascertain the information known or which might reasonably be expected to have been known or available to the financial institutions, aforesaid, the Revenue Commissioners, the Department of Finance and the Central Bank of Ireland concerning the practice of using bogus non-residential accounts for the purpose of evading Deposit Interest Retention Tax (that is to say the amounts representing income tax referred to above), and the use made thereof,

(6)ensure that any report furnished by him pursuant to the Special Provisions Act

- (a) sets out such facts and evidence as he deems appropriate; and
- (b) facilitates the efficient, effective and expeditious completion of the hearings by the Committee of Public Accounts as defined in the Special Provisions Act into the matters aforesaid.

B.the Comptroller should, at his discretion, determine the order and manner in which his examinations and investigations of the financial institutions and the other matters aforesaid, will be carried out;

C.the Comptroller should perform his functions under the Special Provisions Act and this Resolution in as economical and expeditious a manner as is consistent with fairness;

D.the Comptroller should be facilitated in every way possible by Dáil Éireann so as to enable the examinations and

E.gur ceart do Chléireach Dháil Éireann, a luaithe is indéanta tar éis aon tuarascáil den sórt sin ón Ard-Reachtaire a fháil, í a leagan faoi bhráid Dháil Éireann; agus

F.go ndéanfaidh an Coiste um Chuntais Phoiblí, tar éis a scrúdaithe ar aon tuarascáil den sórt sin a dúradh ón Ard-Reachtaire a chinneadh conas leanúint ar aghaidh ina taobh, na nithe dá dtagraítear in aon tuarascáil den sórt sin a bhreithniú agus, má mheasann sé gur cuí déanamh amhlaidh, tuilleadh fianaise a éisteacht de réir fhorálacha an Achta um Choistí Thithe an Oireachtais (Inordaitheacht, Pribhléidí agus Díolúintí Finnéithe), 1997, agus an Achta Forálacha Speisialta, agus tuarascáil nó tuarascálacha a thabhairt do Dháil Éireann agus is ceart dó a chinntí agus a chonclúidí agus a mholtaí, más ann, a chur san áireamh in aon cheann amháin nó níos mó de na tuarascálacha sin.

investigations aforesaid to be completed at the earliest possible times;

E.the Clerk of Dáil Éireann should, as soon as is practicable after the receipt by him of any such report aforesaid, of the Comptroller, lay it before Dáil Éireann; and

F.the Committee of Public Accounts, following its examination of any such report as aforesaid, of the Comptroller, should determine how to proceed thereon, consider the matters referred to in any such report and, if it considers it necessary to do so, hear further evidence in accordance with the provisions of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997, and the Special Provisions Act, and make a report or reports to Dáil Éireann and should include in any one or more of those reports its findings and conclusions, and its recommendations, if any."

— *An tAire Airgeadais.*

1 APRIL 1999

d6. "Go leasófar Buan-Ordú 149 de Bhuan-Orduithe Dháil Éireann i dtaobh Gnó Phoiblí—

(a) tríd an bhfomhír seo a leanas a chur isteach i ndiaidh fhomhír (b), i mír (4):

'(bi) an chumhacht chun Fochoisti mar a mhínítear i mBuan-Ordú 78A(3);', agus

(b) i mír (9), trí 'agus aon Fhochoiste a cheapfaidh sé' a chur isteach i ndiaidh 'an Coiste' áit a bhfuil sé don dara huair.

—*Séamus Ó Braonáin, Aire Stáit ag Roinn an Taoisigh.*

That Standing Order 149 of the Standing Orders of Dáil Éireann relative to Public Business be amended—

(a) in paragraph (4), by the insertion of the following subparagraph after subparagraph (b):

'(bi) power to appoint sub-Committees as defined in Standing Order 78A(3);', and

(b) in paragraph (9), by the insertion of 'and any sub-Committee which it may appoint' after 'Committee' where it secondly occurs."

ORDERS OF REFERENCE – SUB-COMMITTEE

That:-

- (a) a sub-Committee (to be called the Public Accounts sub-Committee on certain Revenue matters) be established for the purpose laid down in the resolution passed in Dáil Éireann on 17 December 1998, and report to the House thereon;
- (b) the sub-Committee shall consist of 6 Members;
- (c) the quorum of the sub-Committee, which shall consist of 3 members, shall be present for the duration of all meetings of the sub-Committee,
 - (ci) in the event of a member of the sub-Committee being absent from any meeting or part thereof where evidence is heard, which is controversial on the facts, that member shall refrain from expressing opinion or in any way make judgement upon any aspect of that evidence or related evidence;
- (d) in relation to the matter specifically referred to in paragraph (a) above, the sub-Committee shall have only those functions of the Committee set out in the resolution of Dáil Éireann specified therein;
- (e) the sub-Committee shall have the powers of the main Committee specified in Standing Order 149(4), but excluding Standing Order 149 (4)(b)(i) including the powers to print and publish evidence, to travel and to engage consultants be exercised by it and the Committee approves access to the Committee budget for those purposes.

Jim Mitchell T.D.
Chairman

ORDERS OF REFERENCE – COMMITTEE OF PUBLIC ACCOUNTS

1. **STANDING ORDER AND TERMS OF REFERENCE - FIRST REPORT OF THE STANDING SUB-COMMITTEE ON DÁIL REFORM ON ESTABLISHMENT OF COMMITTEES IN THE 28th DÁIL**

Standing Order 149

"(1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee of Public Accounts, to examine and report to the Dáil upon:

- (a) the accounts showing the appropriation of the sums granted by the Dáil to meet the public expenditure and such other accounts as they see fit, (not being accounts of persons included in the Second Schedule of the Comptroller and Auditor General (Amendment) Act, 1993) which are audited by the Comptroller and Auditor General and presented to the Dáil, together with any reports by the Comptroller and Auditor General thereon:

Provided that in relation to accounts other than Appropriation Accounts, only accounts for a financial year beginning not earlier than 1 January 1994, shall be examined by the Committee:

- (b) the Comptroller and Auditor General's reports on his or her examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and
 - (c) other reports carried out by the Comptroller and Auditor General under the Act.
- (2) The Committee may suggest alterations and improvements in the form of the Estimates submitted to the Dáil.
- (3) The Committee may proceed with its examination of an account or a report of the Comptroller and Auditor General at any time after that account or report is presented to Dáil Éireann and
- (4) The Committee shall have the following powers:
- (a) power to send for persons, papers and records as defined in Standing Order 79;
 - (b) power to take oral and written evidence as defined in Standing Order 78A(1)
 - (c) power to engage consultants as defined in Standing Order 78A(8); and
 - (d) power to travel as defined in Standing Order 78A(9).
- (5) Every report which the Committee proposes to make shall, on adoption by the

Committee, be laid before the Dáil forthwith whereupon the Committee shall be empowered to print and publish such report together with such related documents as it thinks fit.

- (6) The Committee shall present an annual progress report to Dáil Éireann on its activities and plans.
- (7) The Committee shall refrain from-
 - (a) enquiring into in public session, or publishing, confidential information regarding the activities and plans of a Government Department or Office, or of a body which is subject to audit, examination or inspection by the Comptroller and Auditor General, if so requested either by a member of the Government, or the body concerned; and
 - (b) enquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policies.
- (8) The Committee may, without prejudice to the independence of the Comptroller and Auditor General in determining the work to be carried out by his or her Office or the manner in which it is carried out, in private communication, make such suggestions to the Comptroller and Auditor General regarding that work as it see fit.
- (9) The Committee shall consist of twelve members, none of whom shall be a member of the Government or a Minister of State, and four of whom shall constitute a quorum. The Committee shall be constituted so as to be impartially representative of the Dáil".

Motion setting up the Committee of Public Accounts

14/10/97

"Go ndéanfar de bhun Bhuan-Ordú Uimh. 149 de na Buan-Orduithe i dtaobh Gnó Phoiblí, an Coiste um Chuntais Phoiblí a cheapadh.

That, in pursuance of Standing Order No. 149 of the Standing Orders relative to Public Business, the Committee of Public Accounts be appointed."

Motion appointing Members of the Committee of Public Accounts

16/10/97

"go ndéanfar na comhaltaí seo a leanas a cheapadh ar an gCoiste um Chuntais Phoiblí:—

that the following members be appointed to the Committee of Public Accounts:—

Deputies Seán Ardagh, Beverly Cooper-Flynn, John Dennehy, Seán Doherty, Bernard J. Durkan, Denis Foley, Thomas Gildea, Conor Lenihan, Pádraig McCormack, Jim Mitchell, Pat Rabbitte and Emmet Stagg"

Motion appointing Deputy Michael Bell in substitution for Deputy Emmet Stagg

20/11/97

"go ndéanfar an Teachta Emmet Stagg a urscaoileadh ón gCoiste um Chuntais Phoiblí agus go gceapfar an Teachta Micheál de Bheil ina ionad;

that Deputy Emmet Stagg be discharged from the Committee of Public Accounts and Deputy Michael Bell be appointed in substitution for him"

Resolution passed by the Dáil on 1 April, 1999.

"Go leasófar Buan-Ordú 149 de Bhuan-Orduithe Dháil Éireann i dtaobh Gnó Phoiblí-

That Standing Order 149 of the Standing Orders of Dáil Éireann relative to Public business be amended-

- (a) tríd an bhfomhír seo a leanas a chur isteach i ndiaidh fhomhír (b), i mír (4):
- '(bi) an chumhacht chun Fochoisti mar a mhínítear i mBuan-Ordú 78A(3);', agus
- (b) i mír (9), trí 'agus aon Fhochoiste a cheapfaidh sé' a chur isteach i ndiaidh 'an Coiste' áit a bhfuil sé don dara huair.

- (a) in paragraph (4), by the insertion of the following subparagraph after subparagraph (b):
- '(bi) power to appoint sub-Committees as defined in Standing Order 78A(3);' and
- (b) in paragraph (9), by the insertion of 'and any sub-Committee which it may appoint' after 'Committee' where it secondly occurs."

Motion appointing Deputy Batt O'Keeffe

11 April 2000

" go ndéanfar an Teachta Parthalán Ó Caoimh a cheapadh ar an roghchoiste um Chuntais Phoiblí.

that Deputy Batt O'Keeffe be appointed to the Select Committee of Public Accounts."

WITNESSES EXAMINED (BY DAY/DATE)

(Note: Names in italics indicate witnesses who had already appeared)

TUESDAY, 20/6/00

Morning Session:

Deputy Seamus Brennan, Minister of State at the Department of the Taoiseach and Government Chief Whip
Mr. Dermot Mc Carthy, Secretary General to the Government
Mr. Kieran Coughlan, Clerk of the Dáil
Mr. John Hurley, Secretary General, Department of Finance
Mr. Tom Considine, Secretary General, Department of Finance
Mr. Eric Embleton, Assistant Secretary, Department of Finance
Mr. Donal McNally, Assistant Secretary, Department of Finance
Mr. Colm Breslin, Principal Officer, Department of Finance
Mr. Finbar Kelly, Assistant Principal Officer, Department of Finance
Mr. Jimmy McMeel, Assistant Principal Officer, Department of Finance
Mr. Dermot Quigley, Chairman, Office of the Revenue Commissioners
Mr. John Purcell, Comptroller and Auditor General
Mr. Brian Andrews, Chief Executive of the Civil Service and Local Appointments Commissioners
Mr. Paul Haran, Secretary General, Department of Enterprise, Trade and Employment
Mr. Paul Appleby, Company Law Division, Department of Enterprise, Trade and Employment
Mr. Maurice O' Connell, Governor, Central Bank
Ms. Mary O' Dea, Deputy Head of Banking Supervision, Central Bank
Senator Joe O' Toole, Chairman, Audit Review Group

Afternoon Session:

Mr. Seán O' Riordáin, General Secretary of Association of Higher Civil and Public Servants
Mr. Dan Murphy, General Secretary of the Public Service Executive Union
Mr. Peter McLoone, General Secretary of IMPACT
Mr. Tom Considine, Secretary General Department of Finance
Mr. Eric Embleton, Assistant Secretary, Department of Finance
Mr. Dermot Quigley, Chairman, Revenue Commissioners
Mr. John Hurley, Secretary General, Department of Finance

TUESDAY, 11/7/00

Morning Session

Deputy Mary Harney, Tánaiste and Minister for Enterprise, Trade and Employment
Mr. Conor O' Mahony, Assistant Principal Officer, Department of Finance
Mr. Liam Murphy, Principal Officer Department of Finance
Mr. Maurice O' Connell, Governor, Central Bank
Ms. Mary O' Dea, Deputy Head of banking Supervision in the Central Bank
Mr. Colm Breslin, Principal Officer, Department of Finance

Senator Joe O' Toole, Chairman of the Audit Review Group

Mr. Paul Haran, Secretary General, Department of Enterprise, Trade and Employment

Mr. Paul Appleby, Assistant Secretary, Department of Enterprise, Trade and Employment

TUESDAY, 28/11/00

Morning Session

Mr Michael McDowell, Attorney General (I)

Ms. Finola Flanagan, Director General, Office of the Attorney General (I)

Mr. Liam Daly, Deputy Director General of the Attorney Generals Office (I)

Mr. Robert Curran, Second Secretary General, Department of Finance

Mr. John Thompson, Principal Officer, Department of Finance

Mr. Finbarr Kelly, Assistant Principal, Department of Finance

Mr. Noel O' Gorman, Second Secretary General, Department of Finance

Mr. Liam Murphy, Principal Officer, Department of Finance

Ms. Brenda McVeigh, Assistant Principal, Department of Finance

Mr. Conor O' Mahony, Assistant Principal, Department of Finance

Mr. Paul Haran, Secretary General, Department of Enterprise, Trade and Employment

Mr. John Corcoran, Assistant Secretary, Department of Enterprise, Trade and Employment

Mr. Maurice O' Connell, Governor, Central Bank

Ms. Mary O' Dea, Deputy Head of banking Supervision in the Central Bank

Mr. Jim Kelly, Principal Inspector of Taxes, Revenue Commissioners

Mr. John Purcell, Comptroller and Auditor General

Mr. David Doyle, Assistant Secretary, Department of Finance

Mr. Martin Moloney, Assistant Principal, Department of Finance

Afternoon Session

Mr. Paul Haran, Secretary General, Department of Enterprise, Trade and Employment

Mr. Noel O' Gorman, Second Secretary General, Department of Finance

Mr. Maurice O' Connell, Governor, Central Bank

Mr. Liam Murphy, Principal Officer, Department of Finance

Mr. David Doyle, Assistant Secretary, Department of Finance

Mr. John Corcoran, Assistant Secretary, Department of Enterprise, Trade and Employment

Ms. Mary O' Dea, Deputy Head of banking Supervision in the Central Bank

Mr. Martin Moloney, Assistant Principal, Department of Finance

THURSDAY, 30/11/00

Morning Session

Mr. James Hamilton, Director of Public Prosecutions (I)

Mr. Dermot Quigley, Chairman of the Revenue Commissioners

Ms. Frances Cooke, Revenue Solicitor (I)

Mr. Tom Considine, Secretary General, Department of Finance

Mr. Eric Embleton, Assistant Secretary, Department of Finance

Mr. Joe McGovern, Assistant Secretary, Department of Finance

Mr. Seán O' Riordán, General Secretary of Association of Higher Civil and Public Servants

Mr. Dan Murphy, General Secretary of the Public Service Executive Union

Mr. Peter McLoone, General Secretary of IMPACT

Mr. Dermot Quigley, Chairman, Revenue Commissioners

Afternoon Session

Deputy Seamus Brennan, Minister of State at the Department of the Taoiseach

Mr. Dermot McCarthy, Secretary General to the Government

Mr. Kieran Coughlan, Clerk of the Dáil

Ms. Lia O' Hegarty, Parliamentary Legal Advisor

Mr. Colm Gallagher, Assistant Secretary, Department of Finance

Mr. Brian Andrews, Chief Executive of the Civil Service and Local Appointments Commissioners

Mr. Paul Byrne, Principal Officer, Department of Finance

Mr. Tom Considine, Secretary General, Department of Finance

Mr. Noel O' Gorman, Second Secretary General, Department of Finance

Mr. John Purcell, Comptroller and Auditor General

Dr. Liam O' Reilly, Assistant Director General, Central Bank

Mr. John Hurley, Secretary General, Department of Finance

Mr. Donal McNally, Second Secretary General, Department of Finance

Mr. Christopher Clayton, Chief Inspector of Taxes, Revenue Commissioners

Mr. Eamonn O' Dea, Senior Inspector of Taxes, Revenue Commissioners

Mr. Eamonn De Buitleir, Senior Inspector of Taxes, Revenue Commissioners

Mr. P. O' Connor, Chairman, ACC Bank plc

Mr. Colm Darling, Chief Executive Officer, ACC Bank plc

Mr. Lochlann Quinn, Chairman, AIB Bank Group

Mr. Thomas P. Mulcahy, Chief Executive Officer, AIB Bank Group

Mr. Laurence Crowley, Governor, Bank of Ireland Group

Mr. Maurice Keane, Chief Executive Officer, Bank of Ireland Group

Mr. Roy Douglas, Chairman, Irish Life and Permanent

Mr. David Went, Chief Executive Officer, Irish Life and Permanent

Sir. George Quigley, Chairman, Ulster Bank Group

Mr. M. Wilson, Chief Executive Officer, Ulster Bank Group

Mr. John Trethowan, Director of Investigations, National Irish Bank

Mr. Colm Dundas, Senior Compliance Manager, National Irish Bank

Mr. David Richards, National Irish Bank

Mr. Brian Joyce, Chairman EBS

Mr. Patrick O' Reilly, Chief Executive Officer, EBS

Mr. John Callaghan, Chairman, First Active

Mr. Cormac McCarthy, Group Managing Director, First Active

Dr. Michael Walsh, Deputy for Chairman, Irish Nationwide

Mr. Michael Fingleton, Managing Director, Irish Nationwide

Mr. John Purcell, Irish Nationwide

Mr. F. Golden, Chairman, TSB Bank

Mr. Harry Lorton, Chief Executive Officer, TSB Bank

Mr. Daniel O' Connor, Chairman, GE Capital Woodchester Ltd

Mr. M. Cullen, GE Capital Woodchester Ltd

FRIDAY, 1/12/00

Morning Session

Sir David Fell, Chairman, National Irish Bank
Mr. Don Price, Chief Executive, National Irish Bank
Mr. Dermot Quigley Chairman, Revenue Commissioners
Mr. John Hurley, Secretary General, Department of Finance
Mr. Brian Joyce, Chairman, EBS
Mr. Patrick O' Reilly, Chief Executive Officer, EBS
Mr. John Callaghan, First Active Building Society
Mr. Cormac McCarthy, Group Managing Director, First Active Building Society
Mr. Michael Fingleton, Irish Nationwide Building Society
Mr. Michael Walsh, Deputy for Chairman, Irish Nationwide Building Society
Mr. J. Purcell, Irish Nationwide
Mr. F. Golden, Chairman, TSB
Mr. Harry Lorton, Chief Executive Officer, TSB Bank
Mr. Daniel O' Connor, Chairman, GE Capital Woodchester Ltd
Mr. M. Cullen, GE Capital Woodchester Ltd
Dr. Liam O' Reilly, Assistant Director General, Central Bank
Ms. Mary O' Dea, Central Bank
Mr. Padraic O' Connor, Chairman, ACC Bank plc
Mr. Colm Darling, Chief Executive Officer, ACC Bank plc
Mr. Lochlann Quinn, Chairman, AIB Bank Group
Mr. Thomas P. Mulcahy, Chief Executive Officer, AIB Bank Group
Mr. Lawrence Crowley, Governor, Bank of Ireland Group
Mr. Maurice Keane, Chief Executive Officer, Bank of Ireland Group
Mr. Roy Douglas, Chairman, Irish Life and Permanent
Mr. David Went, Chief Executive Officer, Irish Life and Permanent
Sir George Quigley, Chairman, Ulster Bank Group
Mr. Martin Wilson, Chief Executive Officer, Ulster Bank Group
Mr. Eamonn De Buitleir, Senior Inspector of Taxes, Revenue Commissioners
Mr. John Purcell, Comptroller and Auditor General

Afternoon Session

Mr. Eamonn De Buitleir, Senior Inspector of Taxes, Revenue Commissioners
Mr. Padraic O' Connor, Chairman, ACC Bank plc
Sir George Quigley, Chairman, Ulster Bank Group
Mr. Martin Wilson, Chief Executive Officer, Ulster Bank Group
Sir David Fell, Chairman, National Irish Bank
Mr. Don Price, Chief Executive, National Irish Bank
Mr. Roy Douglas, Chairman, Irish Life and Permanent
Mr. David Went, Chief Executive Officer, Irish Life and Permanent
Mr. Maurice Keane, Chief Executive Officer, Irish Life and Permanent
Mr. Laurence Crowley, Governor, Bank of Ireland Group
Mr. Lochlann Quinn, AIB Bank Group
Mr. Thomas P. Mulcahy, Chief Executive Officer, AIB Bank Group

THURSDAY, 18/0101

Morning Session

Dr. David Craig, Director of the National Archives (I)
Mr. John O'Callaghan, Office of the Appeal Commissioners (I)
Mr. Ronan Kelly, Office of the Appeal Commissioners (I)
Mr. Paddy Keating IMPACT
Mr. John Whelan C & AG (Observer)

Afternoon Session

Mr. John O'Callaghan, Office of the Appeal Commissioners (I)
Mr. Ronan Kelly, Office of the Appeal Commissioners (I)
Mr. Paddy Keating, IMPACT
Mr. Tom Considine, Secretary General, Department of Finance
Mr. Dermot Quigley, Revenue Commissioners
Mr. Dan Murphy, General Secretary of the Public Service Executive Union,
Mr. Seán O' Riordán, General Secretary of Association of Higher Civil and Public Servants
Mr. Eric Embleton, Assistant Secretary, Department of Finance
Mr. Liam Murphy, Principal Officer, Department of Finance
Mr. Joe McGovern, Assistant Secretary, Department of Finance
Mr. Kieran Coughlan, Clerk of the Dáil
Mr. Finbarr Kelly, Assistant Principal, Department of Finance
Mr. Colm Gallagher, Assistant Secretary, Department of Finance
Mr. John Whelan, C & AG (Observer)

DÉ CÉADAÍN, 13 DEIREADH FÓMHAIR, 1999

WEDNESDAY, 13 OCTOBER, 1999

1. Chruinnigh an Fochoiste ar 4.30 pm.

1. The Sub-Committee met at 4.30 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí Ó Foghlú (*i gCeannas*),
Ardachaidh, Ó Dochartaigh,
Mac Dhurcáin.

Deputies Foley (*in the Chair*),
Ardagh, Doherty, Durkan.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 4.35 p.m.,
Sine die.

The Sub-Committee adjourned at 4.35 p.m., *Sine die*.

Afternoon Session

Mr. Eamonn De Budeib, Senior Inspector of Taxes, Revenue Commissioners

Mr. Patrick O'Connor, Chairman, ACC Bank plc

Sir George Quigley, Chairman, Ulster Bank Group

Mr. Martin Wilson, Chief Executive Officer, Ulster Bank Group

Sir David Fell, Chairman, National Irish Bank

Mr. Don Price, Chief Executive, National Irish Bank

Mr. Roy Douglas, Chairman, Irish Life and Permanent

Mr. David Went, Chief Executive Officer, Irish Life and Permanent

Mr. Maurice Keane, Chief Executive Officer, Irish Life and Permanent

Mr. Laurence Crowley, Governor, Bank of Ireland Group

Mr. Lochlann Quinn, AIB Bank Group

Mr. Thomas P. Mulcahy, Chief Executive Officer, AIB Bank Group

DÉARDAOIN, 21 DEIREADH FÓMHAIR, 1999

THURSDAY, 21 OCTOBER, 1999

- | | | | |
|----|--|----|--|
| 1. | Chruinnigh an Fochoiste ar 11.30 a.m. | 1. | The Sub-Committee met at 11.30 a.m. |
| 2. | Comhaltaí i Láthair:-

Na Teachtaí S. Mistéal (<i>i gCeannas</i>),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Foghlú. | 2. | Members Present:-

Deputies J .Mitchell (<i>in the Chair</i>),
Ardagh, Doherty, Durkan, Foley. |
| 3. | Chuaigh an Fochoiste i suí príobháideach.

Rinne an Fochoiste breithniú. | 3. | The Sub-Committee went into private
session.

The Sub-Committee deliberated. |
| 4. | Athlá.

Chuaigh an Fochoiste ar athló ar 1.20
p.m., <i>Sine die</i> . | 4. | Adjournment.

The Sub-Committee adjourned at 1.20
p.m., <i>Sine die</i> . |

DÉ CÉADAON, 17 SAMHAIN, 1999

WEDNESDAY, 17 NOVEMBER, 1999

1. Chruinnigh an Fochoiste ar 4.00 p.m.

2. **Comhaltaí i Láthair:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Foghlú, Ó Coinín.

3. Chuaigh an Fochoiste i suí príobháideach.

Rinne an Fochoiste breithniú.

4. **Athlá.**

Chuaigh an Fochoiste ar athló ar 5.20
p.m., *Sine die*.

1. The Sub-Committee met at 4.00 p.m.

2. **Members Present:-**

Deputies J. Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Foley,
Rabbitte.

3. The Sub-Committee went into private
session.

The Sub-Committee deliberated.

4. **Adjournment.**

The Sub-Committee adjourned at 5.20
p.m., *Sine die*.

DÉ CÉADAIOIN, 15 NOLLAIG, 1999

WEDNESDAY, 15 DECEMBER, 1999

1. Chruinnigh an Fochoiste ar 11.40 a.m.

1. The Sub-Committee met at 11.40 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Foghlú, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Foley,
Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 11.55
a.m., *Sine die*.

The Sub-Committee adjourned at 11.55
a.m, *Sine die*.

DÉARDAOIN, 1 MEITHEAMH, 2000

THURSDAY, 1 JUNE, 2000

1. Chruinnigh an Fochoiste ar 2.30 p.m.

1. The Sub-Committee met at 2.30 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 4.10 p.m., go dtí 9.30 a.m., 20 Meitheamh, 2000.

The Sub-Committee adjourned at 4.10 p.m., until 9.30 a.m., 20 June, 2000.

DÉARDAOIN, 15 MEITHEAMH, 2000

THURSDAY, 15 JUNE, 2000

1. Chruinnigh an Fochoiste ar 12.05 p.m.

1. The Sub-Committee met at 12.05 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac Dhurcáí,
Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 12.55
p.m., go dtí 9.15 a.m., 20 Meitheamh,
2000.

The Sub-Committee adjourned at 12.55
p.m., until 9.15 a.m., 20 June, 2000.

DÉ MÁIRT, 20 MEITHEAMH, 2000

TUESDAY, 20 JUNE, 2000

1. Chruinnigh an Fochoiste ar 9.15 a.m.

1. The Sub-Committee met at 9.15 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J. Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

Chuaigh an Fochoiste i suí poiblí.

The Sub-Committee went into public session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 6.00
p.m., go dtí 11 Iúil, 2000.

The Sub-Committee adjourned at 6.00
p.m., until 11 July, 2000.

DÉARDAOIN, 6 IÚIL, 2000

THURSDAY, 6 JULY, 2000

1. Chruinnigh an Fochoiste ar 9.55 a.m.

1. The Sub-Committee met at 9.55 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 10.15
a.m., go dtí 10.00 a.m., 11 Iúil, 2000.

The Sub-Committee adjourned at 10.15
a.m., until 10.00 a.m., 11 July, 2000.

DÉ MÁIRT, 11 IÚIL, 2000

TUESDAY, 11 JULY, 2000

1. Chruinnigh an Fochoiste ar 10.05 a.m.

1. The Sub-Committee met at 10.05 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

Chuaigh an Fochoiste i suí poiblí.

The Sub-Committee went into public session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

Chuaigh an Fochoiste i suí príobháideach.

The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 1.05 p.m.,
Sine die.

The Sub-Committee adjourned at 1.05 p.m.,
Sine die.

DÉ MÁIRT, 5 MEÁN FÓMHAIR, 2000

TUESDAY, 5 SEPTEMBER, 2000

1. Chruinnigh an Fochoiste ar 11.15 p.m.

1. The Sub-Committee met at 12.15 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhurcáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 1.20 p.m.,
go dtí 3 Deireadh Fómhair, 2000.

The Sub-Committee adjourned at 1.20 p.m.,
until 3 October, 2000.

DÉ MÁIRT, 3 DEIREADH FÓMHAIR, 2000

TUESDAY, 3 OCTOBER, 2000

1. Chruinnigh an Fochoiste ar 2.40 p.m.

1. The Sub-Committee met at 2.40 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí Mac Dhurcáin (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Ó Coinín.

Deputies Durkan (*in the Chair*), Ardagh,
Doherty, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 3.50 p.m.,
go dtí 9.00a.m., 12 Deireadh Fómhair,
2000.

The Sub-Committee adjourned at 3.50 p.m.,
until 9.00a.m., 12 October, 2000.

DÉARDAOIN, 12 DEIREADH FÓMHAIR, 2000

THURSDAY, 12 OCTOBER, 2000

1. Chruinnigh an Fochoiste ar 9.50 a.m.

1. The Sub-Committee met at 9.50 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí Mac Dhurcáin (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Ó Coinín.

Deputies Durkan (*in the Chair*), Ardagh,
Doherty, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 10.15 a.m.,
go dtí 19 Deireadh Fómhair, 2000.

The Sub-Committee adjourned at 10.15
a.m., until 19 October, 2000.

DÉARDAOIN, 19 DEIREADH FÓMHAIR, 2000

THURSDAY, 19 OCTOBER, 2000

- | | | | |
|----|---|----|--|
| 1. | Chruinnigh an Fochoiste ar 3.10 p.m. | 1. | The Sub-Committee met at 3.10 p.m. |
| 2. | Comhaltaí i Láthair:-

Na Teachtaí Mac Dhurcáin (<i>i gCeannas</i>),
Ardachaidh, Ó Dochartaigh, Ó Coinín. | 2. | Members Present:-

Deputies Durkan (<i>in the Chair</i>), Ardagh,
Doherty, Rabbitte. |
| 3. | Chuaigh an Fochoiste i suí príobháideach.

Rinne an Fochoiste breithniú. | 3. | The Sub-Committee went into private session.

The Sub-Committee deliberated. |
| 4. | Athlá.

Chuaigh an Fochoiste ar athló ar 4.40 p.m.,
<i>Sine die.</i> | 4. | Adjournment.

The Sub-Committee adjourned at 4.40 p.m.,
<i>Sine die.</i> |

DÉ CÉADAOIN, 1 SAMHAIN, 2000

WEDNESDAY, 1 NOVEMBER, 2000

1. Chruinnigh an Fochoiste ar 5.15 p.m.

1. The Sub-Committee met at 5.15 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 5.50
p.m., *Sine die*.

The Sub-Committee adjourned at 5.50 p.m.,
Sine die.

DÉ CÉADAOIN, 22 SAMHAIN, 2000

WEDNESDAY, 22 NOVEMBER, 2000

1. Chruinnigh an Fochoiste ar 10.10 a.m.

1. The Sub-Committee met at 10.10 a.m.

2. **Comhaltai i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 10.45 a.m., go dtí 4.00 p.m., 27 Samhain, 2000.

The Sub-Committee adjourned at 10.45 a.m., until 4.00 p.m., 27 November, 2000.

DÉ LUAIN, 27 SAMHAIN, 2000

MONDAY, 27 NOVEMBER, 2000

1. Chruinnigh an Fochoiste ar 4.10 p.m.

1. The Sub-Committee met at 4.10 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 6.00
p.m., go dtí 28 Samhain, 2000.

The Sub-Committee adjourned at 6.00 p.m.,
until 28 November, 2000.

DÉ MÁIRT, 28 SAMHAIN, 2000

TUESDAY, 28 NOVEMBER, 2000

1. Chruinnigh an Fochoiste ar 10.40 a.m.

1. The Sub-Committee met at 10.40 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

Chuaigh an Fochoiste i suí poiblí.

The Sub-Committee went into public session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

Chuaigh an Fochoiste i suí príobháideach.

The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

Chuaigh an Fochoiste i suí poiblí.

The Sub-Committee went into public session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 5.20 p.m., go dtí 30 Samhain, 2000.

The Sub-Committee adjourned at 5.20 p.m., until 30 November, 2000.

DÉARDAOIN, 30 SAMHAIN, 2000

THURSDAY, 30 NOVEMBER, 2000

1. Chruinnigh an Fochoiste ar 10.35 a.m.

1. The Sub-Committee met at 10.35 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

Chuaigh an Fochoiste i suí poiblí.

The Sub-Committee went into public session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 5.45
p.m., go dtí 1 Nollaig, 2000.

The Sub-Committee adjourned at 5.45 p.m.,
until 1 December, 2000.

DÉ hAOINE, 1 NOLLAIG, 2000

FRIDAY, 1 DECEMBER, 2000

1. Chruinnigh an Fochoiste ar 10.30 a.m.

1. The Sub-Committee met at 10.30 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

Chuaigh an Fochoiste i suí poiblí.

The Sub-Committee went into public session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

Chuaigh an Fochoiste i suí príobháideach.

The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 5.00 p.m., *Sine die*.

The Sub-Committee adjourned at 5.00 p.m.,
Sine die.

DÉ CÉADAOIN, 13 NOLLAIG, 2000

WEDNESDAY, 13 DECEMBER, 2000

1. Chruinnigh an Fochoiste ar 5.15 p.m.

1. The Sub-Committee met at 5.15 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 6.15
p.m., go dtí 18 Eanáir, 2001.

The Sub-Committee adjourned at 6.15 p.m.,
until 18 January, 2001.

DÉARDAOIN, 18 Eanáir, 2001

THURSDAY, 18 JANUARY, 2001

1. Chruinnigh an Fochoiste ar 10.15 a.m.

1. The Sub-Committee met at 10.15 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

Chuaigh an Fochoiste i suí poiblí.

The Sub-Committee went into public session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 6.20 p.m., go dtí 30 Eanáir, 2001.

The Sub-Committee adjourned at 6.20 p.m., until 30 January, 2001.

DÉ MÁIRT, 30 Eanáir, 2001

TUESDAY, 30 JANUARY, 2001

1. Chruinnigh an Fochoiste ar 5.40 p.m.

1. The Sub-Committee met at 5.40 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí Ó Coinín (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin.

Deputies Rabbitte (*in the Chair*),
Ardagh, Doherty, Durkan.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 6.25
p.m., go dtí 9 Feabhra, 2001.

The Sub-Committee adjourned at 6.25 p.m.,
until 9 February, 2001.

DÉ LUAIN, 12 FEABHRA, 2001

MONDAY, 12 FEBRUARY, 2001

1. Chruinnigh an Fochoiste ar 11.40 a.m.

1. The Sub-Committee met at 11.40 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ó Dochartaigh, Mac Dhurcáin, Ó Coinín.

Deputies J. Mitchell (*in the Chair*),
Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 1.20
p.m., go dtí 19 Feabhra, 2001.

The Sub-Committee adjourned at 1.20 p.m.,
until 19 February, 2001.

DÉ LUAIN, 19 FEABHRA, 2001

MONDAY, 19 FEBRUARY, 2001

1. Chruinnigh an Fochoiste ar 4.25 p.m.

1. The Sub-Committee met at 4.25 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ó Dochartaigh, Mac Dhurcáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 5.45 p.m., go dtí 4.00p.m., 5 Márta, 2001.

The Sub-Committee adjourned at 5.45 p.m., until 4.00p.m., 5 March, 2001.

DÉ MÁIRT, 6 MÁRTA, 2001

TUESDAY, 6 MARCH, 2001

1. Chruinnigh an Fochoiste ar 9.40 a.m.

2. **Comhaltaí i Láthair:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhurcáin, Ó Coinín.

3. Chuaigh an Fochoiste i suí príobháideach.

Rinne an Fochoiste breithniú.

4. **Athlá.**

Chuaigh an Fochoiste ar athló ar 11.50
a.m., go dtí 10.00 a.m., 23 Márta, 2001.

1. The Sub-Committee met at 9.40 a.m.

2. **Members Present:-**

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. The Sub-Committee went into private
session.

The Sub-Committee deliberated.

4. **Adjournment.**

The Sub-Committee adjourned at 11.50
a.m., until 10.00 a.m., 23 March, 2001.

DÉ AOINE, 23 MÁRTA, 2001

FRIDAY, 23 MARCH, 2001

1. Chruinnigh an Fochoiste ar 10.25 a.m.

1. The Sub-Committee met at 10.25 a.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac
Dhircáin, Ó Coinín.

Deputies J .Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. **Athlá.**

4. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 5.45
p.m., go dtí 30 Márta, 2001.

The Sub-Committee adjourned at 5.45 p.m.,
until 30 March, 2001.

DÉ hAOINE, 30 MÁRTA, 2001

FRIDAY, 30 MARCH, 2001

1. Chruinnigh an Fochoiste ar 2.30 p.m.

1. The Sub-Committee met at 2.30 p.m.

2. **Comhaltaí i Láthair:-**

2. **Members Present:-**

Na Teachtaí S. Mistéal (*i gCeannas*),
Ardachaidh, Ó Dochartaigh, Mac Dhurcáin,
Ó Coinín.

Deputies J. Mitchell (*in the Chair*),
Ardagh, Doherty, Durkan, Rabbitte.

3. Chuaigh an Fochoiste i suí príobháideach.

3. The Sub-Committee went into private session.

Rinne an Fochoiste breithniú.

The Sub-Committee deliberated.

4. De réir a Orduithe Tagartha, déanann an Fochoiste um Nithe Áirthe a bhaineann le hIoncam leis seo an Tuarascáil Deiridh ón bhFiosrúchán Parlaiminteach faoi Cháin Choinneála ar Ús Taisce a ghlacadh de réir rúin dar dháta an 17 Nollaig, 1998 ó Dháil Éireann mar Thuarascáil Deiridh uaidh chuig an gCoiste um Chuntais Phoiblí ag éirí as an Tuarascáil ón Ard-Reachtair Cuntas agus Ciste maidir le Riaradh Cánach Coinneála ar Ús Taisce agus Nithe Gaolmhara le linn na tréimhse 1 Eanáir, 1986 go 1 Nollaig, 1998.

4. In accordance with its Orders of Reference, the Sub-Committee on Certain Revenue Matters hereby adopts the Final Report of the Parliamentary Inquiry into D.I.R.T. in accordance with the resolution of Dáil Éireann dated 17th December, 1998 as its Final Report to the Committee of Public Accounts arising from the Comptroller and Auditor General's Report into the Administration of Deposit Interest Retention Tax and Related Matters during the period 1 January, 1986 to 1 December, 1998.

5. **Athlá.**

5. **Adjournment.**

Chuaigh an Fochoiste ar athló ar 9.00 p.m.

The Sub-Committee adjourned at 9.00 p.m.

**LIST OF ISSUES FOR MEETINGS OF 28TH NOVEMBER 2000, 30TH NOVEMBER 2000
AND 1ST DECEMBER 2000 AND 18 JANUARY 2001.**

ISSUE A

The Sub-Committee recommends -

that the Minister for Finance in the Finance Bill, 2000 or as soon as is feasible make such provisions as are necessary to give effect to the following:

- There shall be a requirement on the Revenue Commissioners to undertake a full look-back audit to April 1986 of each financial institution to assess DIRT liability;
- The cost of the look-back be borne by the financial institutions being audited;
- The full interest and penalties be paid in respect of DIRT arrears assessed irrespective of any currently existing statutory time limits;
- That for the purposes of this review, Revenue may delegate the work in whole or in part to suitably qualified outside persons and/or may engage such consultants as it finds necessary to assist in the review;
- The look-back be completed by 1 September 2000;
- The Revenue be empowered and required to report for public information only, before 1 November 2000, to the Committee of Public Accounts, the results of its look-back in the case of each institution, specifying the DIRT arrears levied, the interest charged, the penalties imposed, any comments considered to be appropriate and if any appeal has been lodged;
- Measures to ensure that the appeals process is expedited;
- Provision is made for the results to be made public on determination.

ISSUE B

The Sub-Committee recommends:

that the Minister for Finance prepare proposals for the enactment by the 28th Dail of a Revenue Act to provide a clear and modern framework in law for the Revenue Commissioners.

The Sub-Committee recommends:

that the drafting of the Bill be preceded by a general review, by the **Public Service Management and Development Division of the Department of Finance**, of the Revenue Commissioners and that the results of this review be reported to the Committee of Public Accounts within six months. The review should address the issues of independence and accountability, organisation, structures and practices and the desirability or otherwise of executive and non-executive Commissioners on the Board of Revenue.

ISSUE C

The Sub-Committee recommends -

that in preparing the legislation for a Single Regulator, the Department of Finance in consultation with the Department of Enterprise, Trade and Employment have regard to the following:

- That the Single Regulator address ethics, professional standards and corporate governance in the provision of financial services in Ireland;
- The requirement that each licensed and regulated financial institution appoints a Tax Compliance Officer, to be the Chief Executive Officer of the licensed institution;

- The detailed rules and requirements in relation to the duties of directors of financial institutions to be proposed for the Single Regulator; and
- A scheme and procedure for bank officials to report suspected wrongdoing.

The Sub-Committee recommends –

that within six months an outline of the proposals for legislation in this regard be presented to the Oireachtas.

ISSUE D

The Sub-Committee recommends –

that the Minister for Finance consider implementation of the system of independent audit described by the Appointed Auditor.

ISSUE E

The Sub-Committee recommends –

that, as soon as is feasible, legislation be prepared by the Minister for Finance so that the resource represented by funds in dormant accounts may be used for specified purposes of societal and community benefit. There is a precedent in the Funds of Suitors provisions. The Sub-Committee recognises that this recommendation raises important considerations including property rights and liquidity issues. The Sub-Committee recognises that the Minister for Finance should have discretion as to the timing and content of the proposal.

ISSUE F

The Sub-Committee recommends–

- The establishment of an independent permanent Oireachtas Commission, similar to the UK Parliamentary Commission. The Commission should be chaired by the Ceann Comhairle and oversee and control the funding, staffing and organisation of the Houses of the Oireachtas;
- That the Committee system should be funded from a separate Vote and that the Ceann Comhairle should be accountable to the Oireachtas for the assistance to and approval of the Oireachtas Commission;
- That the Vote for the Houses of the Oireachtas be increased substantially for the year 2000 and future years;
- That the preparation of the Vote for the Oireachtas Commission be independent of the Department of Finance and should be proposed to the Dáil by the Ceann Comhairle.

ISSUE G

The Sub-Committee recommends –

- that the Department of Finance report back to the Committee of Public Accounts within six months on proposals to avoid any conflict of interest where officials leave the civil service for employment in the private sector.

ISSUE H

The Sub-Committee recommends –

that a detailed examination be undertaken by a Review Group established by the Department of Enterprise, Trade and Employment and that the Review Group examines:

- Whether accountancy firms appointed to undertake external audit should be involved in the provision of other services to the same financial institution;
- Whether the external audit function is compromised or undermined by the extent of modern-day intermingling of functions – audit, tax advice, consultancy, etc;
- How the issue of fees can be determined in such a way as to give primacy to the interests of shareholders and in a manner that respects the central importance of the audit process;
- What the Sub-Committee perceives as possible over dependence of the external auditor on a management that in practice appoints and remunerates the external auditor;
- If the balance of relationships between audit and other functions is reflected correctly in the statutory provisions of the Companies Acts and related codes;
- The role of the external auditor in ensuring compliance with Statutory provisions (e.g. the D.I.R.T. legislation) and whether the existing statutory audit requirements adequately address this issue;
- The Sub-Committee's view that the Central Bank should prescribe the scope of management letters issued by external auditors to financial institutions and that the Central Bank receive and discuss management letters with management and its external auditors on an annual basis;
- The Sub-Committee's view that the specific audit standards pertaining to Financial institutions be strengthened;
- The suitability of having joint auditors to financial institutions one of which to be proposed and appointed by the Central Bank;
- The view of the Sub-Committee that there should be a maximum term of 5 years for any Auditor to a financial institution after which a new Audit Firm must be appointed.

The Sub-Committee recommends –

that the Review Group established by the Department of Enterprise, Trade and Employment reports back to the Oireachtas within six months of the date of this Report.

ISSUE I

The Sub-Committee recommends –

the establishment by Houses of the Oireachtas of an Oireachtas Law Agent to act as Legal Advisor to the Houses of the Oireachtas; and

- Provide ongoing legal and procedural advice to Oireachtas Committees and Sub-Committees and represent the Houses of the Oireachtas in any legal matter including procedures in Hearings under the Compellability Act, 1997.

ISSUE J

The Sub-Committee recommends –

that provision is made in law so that the Houses of the Oireachtas may:

- Appoint from time to time a Parliamentary Inspector with powers similar to and adapted from those of a High Court Inspector; and
- Appoint persons as Parliamentary Inspector including certain Officers of State (e.g. the Comptroller and Auditor General).

ISSUE K

The Sub-Committee recommends that -

- A Parliamentary Inspection be initiated only by Resolution of the Houses of the Oireachtas;
- The Resolution sets out clearly defined terms of reference for the Inspector and designates a relevant Committee to which the Parliamentary Inspector shall report;
- The Committee's remit in relation to the issue under inquiry be clearly defined in the same Resolution; and
- The Parliamentary Inspector should report directly to the Oireachtas Committee designated in the Resolution; and
- That the Committees of the Oireachtas are granted the Right of Initiative in proposing an Inquiry and any motion to that effect from a Committee should be decided upon in the Houses of the Oireachtas within 21 days and that Standing Orders of both Houses of the Oireachtas be changed to give effect to this.

ISSUE L

The Sub-Committee recommends that -

- Urgent consideration be given to an increasing role for Oireachtas Committees in
 - The passage of legislation, especially as a means of avoiding hasty scrutiny
 - The taking of Questions for Oral Reply not reached in the House
- Meetings of Committees should not be scheduled to run in parallel with Plenary Sessions of the Oireachtas.

ISSUE M

The Sub-Committee recommends -

- that where Ministers are not accountable for operational decisions of State Companies, the chairman and chief executive should be amenable to the appropriate Oireachtas Committee.

ISSUE N

The Sub-Committee recommends that: -

1. Committees

- Each Chairman of an Oireachtas Committee is fully briefed on the modalities of Parliamentary Inquiries;
- A Handbook of Parliamentary Inquiries be prepared by the Secretariat of Committees; and
- Powers of discovery for Committees be amended so that any documentary Discovery made by any Parliamentary Inspector is automatically Discovered to the Committee.

ISSUE O

2. Witnesses

- General powers of Direction of Witnesses be included in the Resolution of the Oireachtas establishing a Parliamentary Inquiry;
- The procedures for taking of evidence before a Parliamentary Inquiry provides for groups of Witnesses to be taken; and
- That all Witnesses appearing before a Committee to which the Compellability Act, 1997 applies should be under Direction.

ISSUE P

3. Business

- All business, including ordinary business of the Committee of Public Accounts should be under direction;

ISSUE Q

The Sub-Committee recommends –

that the Government ensure that the Foundation for Investing in Communities is established as a Community Foundation in line with the findings in the Report prepared by the Combat Poverty Agency, Community Foundations – an Introductory Report on International Experience and Irish Potential (1998). The Sub-Committee recommends –

that the Government consider the imposition of a levy on the financial institutions the proceeds of which go towards the funding of the Foundation for Investing in Communities including the National Endowment, the Children's Trust and Business in the Community.

ISSUE R

The Sub-Committee recommends -

a comparative study be undertaken by the Department of Finance and the Attorney General's Office into Parliamentary Inquiries and Tribunals of Inquiry in the light of this Inquiry and to report back to the Oireachtas by 1 December 2000

ISSUE S

The feasibility of establishing a special Revenue Court be looked at to deal with the issue of Revenue Prosecutions as they relate to the Office of the Revenue Commissioners including perceived current administrative, legislative and procedural deficiencies.

Also the feasibility of introducing a Revenue Prosecuting Counsel.

Letter dated 26 September 2000 supplying information on revenue cases prosecuted and the resulted penalites imposed by the Courts between April 1997 and June 2000.

Houses of the Oireachtas

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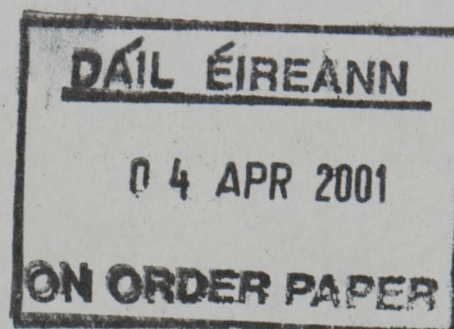
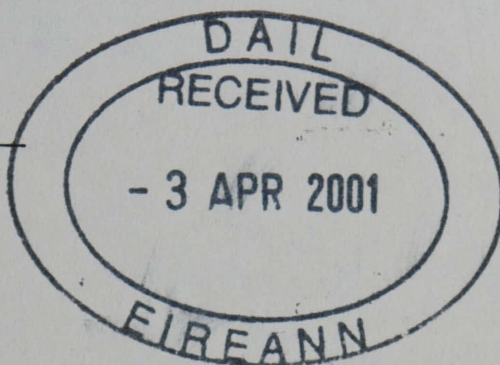
D27 (a/b 4/2001)

DOCUMENT(S) TO BE LAID BEFORE HOUSE OF OIREACHTAS

Clerk of R912

I enclose copies* of the undermentioned document(s) to be laid before the House. The information sought below is as set out.

Head of Department or other Body



1. Department or other body laying document

COMMITTEE OF PUBLIC ACCOUNTS

2. Title of document

Parliamentary Inquiry into DIRT Final Report

3. If laid pursuant to statute, state Title and section of Act

A A

4. Is there a statutory period in relation to the laying of the document?

N A

If so, give particulars

N A

5. Is a motion of approval necessary

N A

*Three copies of the document in respect of each House, or six copies where it is to be laid before one House only.