



PAC-R-582

July 2012

Ms. Eimear Lavelle  
Committee of Public Accounts  
Dáil Eireann  
Dublin 2

**Correspondence 3A.2**  
**Meeting – 20/09/2012**  
*\*Deferred from 10/07/2012*



Dear Ms Lavelle

As indicated in my letter to you of 5<sup>th</sup> April 2012, I undertook to review issues raised by the chairman in relation to the case of Mr Norman Bradley, Ballybrommell, Fenagh, Co Carlow. I am now in a position to set out the Department's position in this case.

**1) Background:**

In 2008, Millstream Recycling Limited (Millstream) was leasing and using premises owned by Mr Bradley at Ballybrommell, Fenagh, Co. Carlow for the manufacture of animal feed. The legal relationship between them was that of landlord and tenant. It was discovered in December 2008 that the animal feed Millstream had been producing and supplying to the animal feed market was contaminated with dioxins.

Some 550 tonnes of feed material, which consisted of, or came in contact with, feed affected by the dioxin incident of December 2008, was returned to Ballybrommell and placed in Mr Bradley's storage premises by Millstream, his tenant. This feed was to be stored at Ballybrommell by Millstream until it was in a position to arrange a safe method for its disposal. The timing, organisation and cost of destruction of the feed were always the sole responsibility of Millstream.

**2) Government Action to deal with dioxin crisis in 2008/09:**

The dioxin outbreak required concerted and immediate action by the Department involving the recall from the market of pig and pork meat products from meat processors and the slaughter of live pigs and cattle due to their having consumed or being connected with Millstream produced feed.

The Department introduced ex gratia schemes in or around 2008/09 to assist the wider Irish pig meat sector at this critical time. The objective of and rationale for the schemes was to ensure the survival of the pigmeat sector at a time of immediate crisis. It was not intended to compensate for all losses incurred at that time. The schemes introduced by the Government did not provide for the storage of the Millstream feed held in or returned to Mr. Bradley's premises.

Prior to the introduction of the ex gratia aid schemes, the Department sought and obtained a formal State Aid approval for their operation from the Commission.



There was a multitude of other commercial losses incurred at this difficult time by many third parties, but financial assistance was limited to meet the objective as stated above and having regard to the exigencies of the public finances

**3) Responsibility for cost of removal of Millstream feed for destruction:**

Under EU Regulations, as provided by Article 20 of Regulation (EC) No 178/2002 and Annex II of Regulation (EC) No. 183/2005, the disposal of contaminated feed is the responsibility of the Feed Business Operator (FBO) involved.

In addition, Regulation 17(4) of SI 432 of 2009 states that *"The costs of any action required by a compliance notice shall be borne by the owner of the premises, animal, feed, a feed additive or food to which the notice relates"*.

Therefore the responsibility for clearing Mr Bradley's site is and always has been that of Millstream, as the FBO involved and as the owner of the feed involved.

The Department's position therefore is that Millstream, as tenant/occupier of Mr Bradley's premises is fully responsible to Mr Bradley for any losses he may have incurred since 2008. In the Department's view Mr Bradley has a right of action against Millstream for payment of outstanding rent and other losses incurred. He might have taken steps to ensure that he was paid any outstanding rent and that the feed held at Ballybrommell was disposed of more quickly by his tenant Millstream, than appears to have been the case.

It has taken Millstream some considerable time to organise the disposal of the feed held in Mr Bradley's premises. Its eventual removal from Mr Bradley's premises for transportation to and disposal in the United Kingdom, under the supervision of the National Transfrontier Shipment Office as contaminated feed waste, was commenced on 10 January 2012 and Mr Bradley's premises were finally cleared of feed on 22nd March 2012.

**4) Requests for payment of losses incurred by Mr. Bradley since 2008/09:**

Mr. Bradley has since December 2008, at regular intervals through his solicitors and various other parties made representations to this Department, seeking payment of a sum now in excess of €500k from the State for various heads of commercial loss, he claims to have incurred as a result of the use of his premises at Fenagh by Millstream since 2008/09. This Department, in much previous correspondence has made it clear to Mr. Bradley that his claim for loss of income etc. in the intervening years is solely a matter between him and Millstream, as landlord and tenant respectively. It is a private law matter, outside of State involvement for Mr. Bradley to pursue his loss of income with his tenant directly and the Department is not in a position to compensate Mr Bradley for his alleged losses.

During the last 3 years there has been a High Court approved creditors' settlement put in place relating to an insurance fund, which Millstream was entitled to call upon in respect of certain damage and losses sustained by various parties by the dioxin outbreak. This Department is not aware if Mr Bradley participated in that creditors process to mitigate some of his alleged losses, or indeed held any insurance himself for his alleged losses independently.

**5) Conclusion:**

In the circumstances as outlined above, and having reviewed this case once again, including both from the Legal and State Aids point of view, the Department is not in a position to make any payment to Mr Bradley.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Moran', with a horizontal line underneath it.

Mr Tom Moran  
Secretary General  
Department of Agriculture, Food and the Marine

