



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**DÁIL ÉIREANN**

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*  
(OFFICIAL REPORT—*Unrevised*)

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# DÁIL ÉIREANN

*Déardaoin, 4 Aibreán 2019*

*Thursday, 4 April 2019*

Chuaigh an Leas-Cheann Comhairle i gceannas ar 10.30 a.m.

*Paidir.  
Prayer.*

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## **Estimates for Public Services 2019: Message from Select Committee**

**An Leas-Cheann Comhairle:** The Select Committee on Rural and Community Development has completed its consideration of the following Revised Estimate for public services for the service of the year ending 31 December 2019 - Vote 42.

## **Ceisteanna - Questions**

### **Ceisteanna ar Sonraíodh Uain Dóibh - Priority Questions**

#### **State Pension (Contributory)**

1. **Deputy Willie O’Dea** asked the Minister for Employment Affairs and Social Protection if the total contributions approach to calculating entitlement to the contributory pension will come into effect in 2020; and if she will make a statement on the matter. [15534/19]

**Deputy Willie O’Dea:** This relates to the Government’s announcement of a new system for calculating people’s entitlement to contributory old age pension, namely, the total contributions approach. The Government gave the impression that this system would be in place from 2020. Is that still the position? If that is the Government’s intention, when will we see the legislation providing for it?

**Minister for Employment Affairs and Social Protection (Deputy Regina Doherty):** The

introduction of a total contributions approach, TCA, to establishing the level of entitlement for all new State pension (contributory) claims was signalled by the then Government in the national pensions framework in 2010. At that time it set a target date of 2020 for the implementation of TCA. More recently, the Roadmap for Pensions Reform 2018-2023 targeted implementation of TCA from the third quarter of 2020. This is subject to the necessary legislation being enacted and supporting structures being in place.

Consultation is a very important part of the development and design of any new pension system. With this in mind, I launched a public consultation on the design of TCA on 28 May 2018 to which a wide variety of stakeholder groups were invited to make submissions. A number of workshops were also held on the day to elicit views and feedback.

Shortly afterwards all Oireachtas Members were invited to a detailed briefing by my officials in Leinster House. The consultation was open for more than three months and the Department received almost 300 responses from individuals and organisations. Those submissions outlined the views of respondents on the issues of most interest to them.

Having carefully examined the outputs of the consultation process, my Department is now designing the scheme and I intend to bring a proposal to Cabinet shortly setting out that design. Once the Government has agreed the approach to be taken, I will initiate the work required to introduce this reform. At that stage the heads of the Bill will go to the Oireachtas Joint Committee on Employment Affairs and Social Protection for pre-legislative scrutiny. As soon as the legislation is drafted it will be brought to the House and I intend to do it later this year.

**Deputy Willie O’Dea:** From the Minister’s reply, I take it there is no guarantee that it will come into effect in 2020. As a result of the consultation, the necessity for legislation, Cabinet agreement etc., it may not kick in until later than 2020.

I want to ask the Minister about one or two technical aspects of the proposal. I know it is in the course of preparation and the Minister mentioned a consultation process with 300 submissions, etc. I am sure the Minister got a submission the rest of us received relating to the existing hurdle for someone to qualify. Regardless of their record, they must have at least 520 paid contributions. That is the position under the temporary arrangement the Government has introduced, which we supported, to accommodate people who became pensioners since 2012. The rules for the new system may not necessarily be the same as the rules that apply at the moment.

As the Minister will be aware, the initial hurdle was 260 paid contributions, which equates to five years’ full paid stamps. When people have paid contributions for five years they usually have other credits, etc. The required number of paid contributions is a terrible cliff edge. There are very many people in the country who have paid between 260 and 500 contributions. I realise that there would be a big cost factor if the Minister were to reduce it in one go to 260, but surely some recognition can be given to people who have paid at least 260 contributions even if it meant being less generous in the allocation of credits, etc.

**Deputy Regina Doherty:** I cannot say what the Deputy has asked me to say because it is not true. Although there are no guarantees in life and obviously anything could happen between now and 2020, the Government’s ambition is to start up contributions in 2020 and that has not changed. We cannot rule out something happening next month or next year, but that is the ambition and that is the roadmap we are working towards.

Many submissions were made for a variety of options to be included and we are looking at

all of them. I hope what we will provide to Cabinet to rubber-stamp, hopefully, will be all encompassing. I do not want to discount anybody's contribution during their lifetime of work. I do not just mean work outside the home; I also mean to give people a lift or a step-up to include all the work they do inside the home. Although I am not in a position to tell the Deputy what the final outcome will look like, my aim is to ensure the system will work for generations to come, will be fair and equitable and will take into account everybody's contribution to society, both inside and outside the home.

**Deputy Willie O'Dea:** I appreciate the Government's ambition for 2020 but I am getting constant queries, as, I am sure, are other Members, from constituents as to when the new system will be put in place. I cannot tell them definitively, on the basis of the Minister's reply, that it will be next year, but that is the Government's ambition. Did the Department receive submissions in the consultation process regarding the baseline figure of 40 years, which is 2,080 contributions? It was originally envisaged that it would be 30 years rather than 40.

**Deputy Regina Doherty:** I would be very comfortable if the Deputy said to his constituents what I say to mine, namely, that our intention is to introduce it in quarter 3 of 2020. That intention and the roadmap for pensions have not changed since we drew up that roadmap in 2018. There were many submissions on the topic referred to by the Deputy. However, things have changed over the years. The original formation looked at a 30-year span but only ten years' credits. We all recognise that people, particularly women, who stay at home to mind their children do so for a hell of a lot longer than ten years. They should not be discounted. There is no final outcome yet. I have to finalise the position in the next couple of weeks. I want to ensure that everyone's contribution inside and outside the home is recognised equally.

## Social Welfare Rates

2. **Deputy John Brady** asked the Minister for Employment Affairs and Social Protection if she will consider the proposals put forward in the Social Welfare Commission Bill 2018 in order to ensure the adequacy of social welfare payments; and if she will make a statement on the matter. [15742/19]

**Deputy John Brady:** Last October, I introduced the Social Welfare Commission Bill 2018. The intention behind it is to ensure adequacy in social welfare payments across the board. Has the Minister had an opportunity to look at the Bill and will she make a statement on it?

**Deputy Regina Doherty:** The Social Welfare Commission Bill 2018, sponsored by the Deputy, seeks, among other things, to establish a commission to monitor and make recommendations on social welfare rates at least once a year.

The Deputy will be aware that ideas of benchmarking and indexation of social welfare rates are not new. For example, previous studies were conducted by the Commission on Social Welfare in 1986, long before the Deputy and I were Members, and by the social welfare benchmarking and indexation group in 2001.

In our roadmap for pensions reform, which was published on a snowy day last March, the Government committed to examine and develop proposals to set a formal benchmark target of 34% of average earnings for the contributory State pension and to institute a process whereby future changes in rates of pension payment will be linked explicitly to changes in consumer

prices and average wages.

My Department is currently considering options to implement this commitment by examining previous studies on benchmarking and indexation, international experience and a range of potential benchmarks and indices. It is worth noting that the current rates of payment mirror closely already the benchmark levels proposed in previous reports, including those proposed by the social welfare benchmarking and indexation group of 2001 which is usually relied on by advocacy and other groups.

In terms of the wider application of indexation of social welfare payments generally, section 19 of the Social Welfare, Pensions and Civil Registration Act 2018 provides that, as Minister, I will arrange to “consult with stakeholders on examining ways in which social welfare rates are increased with the aim of ensuring adequacy for all recipients and shall do so in quarter 1 of 2019”. From recollection, albeit the Deputy can correct me if I am wrong, that provision was proposed in an amendment which he tabled and we all supported.

In this context, my Department met with numerous interested stakeholders during quarter 1 of 2019 to solicit views on how the adoption of benchmarking and a system of indexation might work for social welfare rates more generally. The feedback from this consultation is currently being considered and will help to inform the development of what will hopefully be a collective approach to benchmarking and indexation.

In addition, I propose that the issue will be considered at my Department’s pre-budget forum on an official basis in July. The forum includes representatives from the community and voluntary sector, ICTU and IBEC, among others. I have the Deputy’s views, which are welcome, and would welcome also the views of those in other political parties who are interested in this area and who might make submissions.

**Deputy John Brady:** I thank the Minister for her reply. It was the top priority at last year’s pre-budget forum meeting in July that there would be adequacy in the setting of social welfare payments right across the board. There have been reports in the last while that the Minister is looking at linking payments to the consumer price index, CPI, only. If that is true, it would be a retrograde step and would fail to ensure adequacy, which is what is needed. We have to get this right. It is the top priority for all NGOs. The Minister stated that the process of engaging with those organisations - as committed to in the Social Welfare, Pensions and Civil Registration Act 2018 on foot of an amendment which, as she correctly indicated, I proposed - has started. I welcome the fact that the process has begun. If the groups involved are completely opposed to linking payments to the CPI only, will the Minister listen and set the idea aside? I also wish to ask her about the proposed national action plan for social inclusion, which is also critical. That plan is long overdue and was supposed to be in place by January. It is now April but there is still no sign of it. The action plan is critical from a cross-departmental perspective. Where is it?

**Deputy Regina Doherty:** It never ceases to amaze me when I read things in the newspapers which I am supposed to have said or done but which are nowhere close to anything I have said or done at all. They either fail to accord with what I said or did or they are completely made up. I do not know where the idea that the Department is considering indexing against the CPI came from but it certainly did not come from us. Someone is being mischievous. The only reason this is on my agenda is that it was advocated for so strongly at our forum last July. This is what NGOs and advocacy groups want, namely, to ensure that we have an adequate payment which meets people’s needs. It is why I did the tender on the total cost of disability this year. I need

to know what different levels of need apply for different cohorts of people who are solely reliant on a fixed income from the Department every week. When we started the consultation, or thought process, last year, it was on the back of what NGOs and advocacy groups had asked for. I cannot do it without their co-operation and I certainly cannot do it without the co-operation of the House. The only way to achieve what we want, namely, adequacy in payments for people on jobseeker's allowance, widow's pensions, pensions and payments for persons with disabilities, including people who are blind, is through consultation. To answer the Deputy's question, a wide variety of views have been put forward and they will all be assessed before we make a proposal.

**Deputy John Brady:** I thank the Minister for that. In the context of the Bill I introduced last October, I carried out an extensive engagement with all of the groups involved, including Social Justice Ireland, the Vincentian Partnership for Social Justice, the Society of St. Vincent de Paul and the European Anti-Poverty Network. I consulted across the board and I note that there is a broad consensus in support for my Bill. That is because it is critical to protect our most vulnerable citizens through social protection. It is also essential to remove the setting of rates from use as a political football, regardless of whether it is €5 here or there or €5 for everyone. That fails to deal with the need for targeted increases to deal with abject poverty. That is what is needed here. There is broad support for my Bill and I am eager to sit down with the Minister to discuss it. The way forward is to establish this commission to set rates. I asked the Minister also about the national action plan for social inclusion. Can she provide a definitive timeframe as to when the action plan will be implemented?

**Deputy Regina Doherty:** I apologise for that. I was talking too much and ran out of time. The launch of the national action plan for social inclusion is pencilled in for 22 May 2019. The Taoiseach is going to launch it. The reason it has been delayed is that, as the Deputy suggested, it involves a multidisciplinary and, more importantly, cross-departmental approach. If it only involved the Department of Employment Affairs and Social Protection, I could have launched it myself last year. However, it would not then have been a robust document. That is because to be effective, the plan must also include the Departments with responsibility for children, education, healthcare and housing. I am adamant that it will not just be a document we all read and say "That is grand". It will be a living document. While the Deputy might slag me, there will be an action plan to go with it and people will be assigned specific targets and the dates by which to achieve them. As long as I am here, I will ensure that we look at those targets on a quarterly basis to ensure they are achieved.

**An Ceann Comhairle:** I call Deputy Brady for a final intervention.

**Deputy John Brady:** Is it a strategy to launch it a few days before the European elections?

**Deputy Regina Doherty:** If it were, I would be leaving it very late at 22 May. People will have already made up their minds by then. Can I answer the Deputy's other question?

**An Leas-Cheann Comhairle:** Yes.

**Deputy Regina Doherty:** As I said to Deputy Brady last week, I am very happy to sit down with him to discuss the Bill. I know I was supposed to call him this week. I am actually more concerned about getting consensus in both Houses. The only way I can do that is to bring our proposals to the Oireachtas Joint Committee on Employment Affairs and Social Protection to get everyone's views. The Deputy and I might share the same view on this particular issue but



I do not believe everyone does.

### Community Employment Schemes Supervisors

3. **Deputy Willie O’Dea** asked the Minister for Employment Affairs and Social Protection her plans for community employment schemes; her further plans to address pension entitlements for supervisors and assistant supervisors; and if she will make a statement on the matter. [15535/19]

**Deputy Willie O’Dea:** This question relates to the Government’s recent announcement that it intends to change the focus of community employment schemes from activation to the social aspect. The Minister has informed us that she has set up an interdepartmental committee to consider how that should be done. I am trying to ascertain if this committee has met yet. How long will it be before we can expect proposals from the committee? For how long will the recommendations be considered? When the recommendations are ready will they be discussed with stakeholders and with the relevant Oireachtas committee, which is the Joint Committee on Employment Affairs and Social Protection?

**Deputy Regina Doherty:** Community employment, CE, is the largest employment programme administered by my Department. It was initially established in 1994 to enhance the employability of unemployed persons by providing work experience and training opportunities for them within their communities close to their homes. Its objective was, and remains, to help long-term unemployed people to re-enter the active workforce. It was always intended, and it has been the practice, that the numbers of people on community employment or similar schemes, such as Tús and the rural social scheme, RSS, at any point in time would reflect the number of long-term unemployed people on the live register. It is because of this that the governing rules were established, are *in situ* and still established today.

Thankfully, the number of people on the long-term live register has fallen very significantly in recent years from more than 200,000 people a short five years ago to about 76,000 people today. Given the reduction in the live register, we have to recognise that there are challenges in ensuring that we can refer sufficient numbers of people with appropriate skills to resource all of the existing schemes at the level the schemes require.

I refute what Deputy O’Dea has said. I am not changing the focus with regard to the interdepartmental group I have established. I am trying to acknowledge the reality of the current system and the fact that one set of governing rules does not actually fit the reality of what our community employment schemes do today. I am fully committed, have always been and will always be, to the future of our community employment schemes. They make an enormous and valuable contribution to our communities. I want to see them sustained, which is not the current position given the difficulties of accessibility and the rules required of people to either apply for CE or to stay on CE. Thankfully, the Government agreed to my establishing the interdepartmental group to explore the most appropriate organisational arrangements with regard to all our schemes. The primary focus is on social inclusion, or sheltered employment, and the delivery of the services they provide for all of our towns and villages.

The first meeting of the interdepartmental group was held last week and it is expected that the group will have a set of recommendations for me to bring to Cabinet by end of the second quarter.

4 April 2019

In his parliamentary question, Deputy O'Dea specifically asked about the claim by CE supervisors-----

**An Leas-Cheann Comhairle:** Time please.

**Deputy Regina Doherty:** -----and assistant supervisors. I sound like a broken record when I say this-----

**An Leas-Cheann Comhairle:** The Minister's time is up.

**Deputy Regina Doherty:** We are all well aware, as are the CE supervisors and assistant supervisors I have met over the past months, that they are employees of their host companies, and as such-----

**An Leas-Cheann Comhairle:** The first supplementary question-----

**Deputy Regina Doherty:** -----I have no role in determining their pension.

**An Leas-Cheann Comhairle:** All Members will keep an eye on the clock. There are other Deputies waiting.

**Deputy Willie O'Dea:** I will get on to the CE supervisors in a moment but first I will address the Minister's reply. My reading of the Department's statement was that the situation had changed with regard to community employment schemes. Originally their primary purpose was labour activation. Now that we are down to nearly 5% unemployment, it is recognised that there is a tremendous social aspect to these schemes also. If the Minister wants to put it differently from me and say that the reality has changed, then that is fine and I am willing to go with that. Will the Minister agree that the new reality, for which she is now providing, indicates that more flexibility will be required? We are constantly presented with cases, for example, where a person works as a caretaker in the local community centre or GAA club and there is nobody to replace him or her when the year comes to an end. Under the rules of the CE scheme, the club or centre has to let that person go. More flexibility will be needed. Will the Minister say whether she agrees with me on that? Would the Minister agree that because of its long experience in this area the Department of Employment Affairs and Social Protection is the proper Department to continue to be the governing Department for the community employment schemes?

**Deputy Regina Doherty:** When it was established, it was not to look after people who may have difficulties from a social inclusion perspective. That just evolved. It has evolved in that way and is effective because of the type of services the CE host companies offer to all of our communities. It is normally a volunteering type of effort, for example, with regard to tidy towns, helping our sports clubs and meals on wheels. It is very much a giving and voluntary-type of service offered by these organisations. Over the years, more people who have faced those social barriers or difficulties in entering the mainstream workforce and who, for whatever reason, have difficulties working on the main streets of our towns, have found a very natural home in our CE schemes because of the extra supports, the extra mentoring and the lovely warm environment our CE companies all display. They provide huge services. People get up every day and go to work. They do not get up every day to help somebody do a service, rather, they provide a valuable service. I want to see that acknowledged because I do not think it currently is. I want to stop the business of me getting letters week in, week out, and I am sure this happened to all the previous social welfare Ministers also-----



**An Leas-Cheann Comhairle:** I call Deputy O’Dea.

**Deputy Regina Doherty:** -----asking for people to stay on a scheme for another year. We need to recognise the valuable contribution they give.

**Deputy Willie O’Dea:** On the CE supervisors, the Minister will be aware of the Labour Court recommendation, which is now 11 or 12 years old, that indicates that community employment supervisors should be paid pensions. There is also a Dáil motion that was passed by a majority of two to one in this House. The initial explanation from the Government for the delay in implementing the will of the Dáil was that if pensions were granted to community employment supervisors, there was a danger it would have to be done right throughout the community and voluntary sector. I believe that we have sufficiently debunked that. I hope the Minister is not going to fall back on the idea that the companies themselves are responsible and, therefore, say she cannot honour the Dáil motion. These are paper companies with no cash or assets and they do not have the resources.

**Deputy Regina Doherty:** I will answer this in the politest way I possibly can. When the Labour Court passed down the judgment in 2008, Deputy O’Dea was sitting at the Cabinet table, and he continued to sit at it for a further three years. If there was a simple solution to this problem, I am quite sure the Deputy would have found it.

**Deputy Willie O’Dea:** So the answer from the Minister is “No”.

**Deputy Regina Doherty:** That is not the answer.

**Deputy Willie O’Dea:** It is a separate issue. Why does the Minister not respond to the question?

**An Leas-Cheann Comhairle:** I call Deputy Bríd Smith.

**Deputy Regina Doherty:** I have responded. I responded on a number of occasions, telling the Deputy that-----

**Deputy Willie O’Dea:** I have asked the Department four or five times and have had no response-----

**Deputy Regina Doherty:** I am committed to finding a solution to-----

**Deputy Willie O’Dea:** It is an absolute disgrace.

**An Leas-Cheann Comhairle:** The Minister said that she is committed to finding a solution.

**Deputy Willie O’Dea:** It is an absolute disgrace.

**An Leas-Cheann Comhairle:** The Minister is committed to finding a solution. I call Deputy Bríd Smith.

**Deputy John Brady:** Discussions might find joint solutions.

**Deputy Bríd Smith:** Lads, break it up will you.

**An Leas-Cheann Comhairle:** The Deputy has 30 seconds to introduce her question.

**Deputy Bríd Smith:** Go raibh maith agat. I hope the Leas-Cheann Comhairle feels better

soon. He sounds like he is dying on his feet there.

**An Leas-Cheann Comhairle:** This is what you do for your country.

**Deputy Bríd Smith:** Exactly. We will write on your gravestone, “I told them I was sick”.

### Social Welfare Benefits Waiting Times

4. **Deputy Bríd Smith** asked the Minister for Employment Affairs and Social Protection the reason for the backlog and delays in issuing social welfare payments; and the further reason for the delay of six months in relation to appeals. [15690/19]

**Deputy Bríd Smith:** I want to ask the Minister the reasons for delays in issuing social welfare payments. In her answer I hope the Minister will address the current situation. About one year ago her Department gave a briefing in the AV room, attended by our staff. At that time the Department acknowledged there was a waiting time for appeals of at least five months, and an overall waiting time for applications. In our experience with case work, the average wait for appeals is six to eight months. It is really unacceptable.

**Deputy Regina Doherty:** The Department is committed to providing a quality service to all the people who apply for the different schemes, ensuring that applications are processed as quickly as possible and that decisions on entitlements are made in the most efficient way.

In general, social welfare schemes such as these with a number of complex qualifying conditions can and do take longer to process. Before a decision can be made for example, on entitlement to domiciliary care allowance, evidence must be provided and examined in respect of the additional care needs of the child. Similarly, before a decision can be made on entitlement to a carer’s allowance or carer’s benefit evidence must be provided in respect of the care recipient’s care requirements, the level of care the carer provides, and caree’s means in some allowances.

It is also the case that in order to register their claim and establish an early entitlement or claim date, many people submit a claim without giving all the necessary supporting documentation on the first day. I am not saying this, but it has been acknowledged to me by some of the NGOs. While this ensures people will be paid with arrears from an early effective date as early as they are entitled to it, it means that claims take longer to process if we have to go back to the customer and look for that missing information.

The Department is currently processing domiciliary care allowance claims within ten weeks and invalidity claims within seven weeks. Disability allowance claims are taking 14 weeks on average while carer’s allowance applications are finally coming down and are now at 15 weeks. That is still three weeks more than our objective for every year.

I wish to reassure the Deputy that claims processing is kept under active review with all possible steps being taken to improve processing times. This includes significant additional resources, where available, and the review of business processes to ensure the efficient processing of applications. For example, additional staff have been temporarily reassigned to the carer’s allowance area to work on claims processing. This has led to a reduction of three weeks in the processing times. We are still three weeks away from our target for every year so we still have a good way to go. We are committed to this and looking at it on a monthly basis.

11 o'clock

**Deputy Bríd Smith:** I need not say this to the many people who suffer the anxiety of waiting for a decision on a payment, but the reason they are in the system applying for payment is because their level of income is so low that they rely on the State for help.

I had a young woman before me recently who was literally falling to pieces with grief. She was with her child. She is waiting for a decision on her application for disability payment. She has been waiting for 18 weeks already. She has a partner who earns money. She will be entitled to something – she has been told that much – but the decision has not been made yet. Anyway, it is not necessarily the case that because a partner lives in the same house, that partner will look after the financial needs of the applicant. While the needs of the applicant are not being looked after she is told she has to wait without any interim payment because she is not single.

Other problems arise, including problems to do with the waiting time on appeals for carer's allowance. I have a chart that shows the waiting times are not coming down in any significant way. In January 2018 the waiting time was 26.3 weeks. In January 2019 the waiting time was 28.4 weeks on appeal. Applications for illness benefits in January 2018 took 27.9 weeks on average and in January 2019 the figure was 41.1 weeks. The waiting times are actually going up and that is causing considerable stress.

**Deputy Regina Doherty:** The first thing I need to say to Deputy Smith is with regard to the lady she referred to. If Deputy Smith gives me her details I will intervene personally.

I need to put on record that anyone or everyone who is waiting for a decision for a payment for any of our schemes is entitled to apply for community welfare through our supplementary welfare allowance. Applicants will get it if they have a means need long before the decision is ever made.

**Deputy Bríd Smith:** That is only if a person is single.

**Deputy Regina Doherty:** If Deputy Smith wishes to give me the details of the lady later on, I will intervene.

I am not disputing the numbers cited by Deputy Smith. What I am saying is that we have taken several steps to try to remedy the difficulty we have with regard to a number of issues relating to the length of time for appeals.

The first point is that we need to put more staff in the area. We have a cap on our staff. It is only when staff resources become free in one section because they are no longer required that they can be moved to another section. That is what we did with the carer's allowance and our appeals recently. We are also in a recruitment process for deciding officers within our appeals section. When they come on board that will speed things up. We have also engaged extensively with the Carers Association and carer organisations in the past year to simplify our application form to try to make it easier, as we did with the domiciliary care allowance some years ago, a move that resulted in great improvements.

**Deputy Bríd Smith:** I refute what the Minister has said. Supplementary payments are not available to those who are not single. If a person is living with an applicant in the same household the applicant is not entitled to it.

Let us consider the statistics. It seems there may be a problem with the number of medical officers available to make decisions. It is in the areas of carers, disability and illness where the

greatest waiting times exist on initial application and on appeal. Is there a shortage of medical officers?

I wish to bring another matter to the attention of the Minister while I have the opportunity. Does the Minister intend to employ more staff coming up to the summer months? A plethora of people are laid off for the summer, including staff who work in schools, and do not get paid for the summer months. These include everything from secretaries to special needs assistants and so on. They have to apply to go back on unemployment benefit on a temporary basis. Last year we had a queue of them coming in and out the door. They got their payments in September when the schools reopened but they needed their payment in June, July and August. It appears the Department is not ready for these scenarios, which repeat themselves year after year.

I am keen for the Minister to address my specific questions on medical officers, on being ready for people who will be laid off on a temporary basis and on the pattern such that anything requiring a medical decision causes more problems.

**Deputy Regina Doherty:** We have a full complement of medical officers. We are not in a recruitment phase. It is not the case that if we had more medical officers it would make it easier or quicker. It is a question of the complexity of the medical evidence that needs to be provided for us. That needs to be adjudicated upon and it is a difficult process. It needs to go back and forth. That is what causes the delay. The most effective way of producing a better outcome is to simplify that process. That is what we did with the Carers Association in the past year in a similar process to the process involving the domiciliary care allowance warriors some years ago. That has given us positive effects. The processing of application times for domiciliary care allowance is now down to seven weeks. The forum works for that and I am positive that the forum will work for this.

I did not say that anyone is entitled to social welfare assistance. I said anyone who has means and who is in need of social welfare assistance can get supplementary welfare allowance on a weekly basis regardless of whether the applicant has a partner. If the partner earns over the threshold, then the person will not get it because they would be sufficiently able to look after themselves. If the partner does not exceed the threshold, the Department is there to step in.

### **Local Employment Service**

5. **Deputy Thomas Pringle** asked the Minister for Employment Affairs and Social Protection to outline the timeframe for the upcoming tendering process for the future provision of employment services nationally; the reason active consideration will not be given to a public procurement process despite the success of local employment services in successfully achieving full-time employment for over 28% of referrals each year and the progression of the remaining caseload to part-time jobs and other pathways to work; the reason successful not-for-profit community holistic models are not being given an equal opportunity to tender for the services despite the problems experienced in countries adopting a privatised model; and if she will make a statement on the matter. [15621/19]

**Deputy Thomas Pringle:** This question relates to how the Department is proposing to terminate the community-based employment services under the local employment schemes and job clubs in the country by the end of this year. The Department is initiating a competitive procurement process for future services. It is clear from my previous interactions with the

Minister that a payment-by-results arrangement as used in JobPath will be the preferred model. I have severe problems with that.

**Deputy Regina Doherty:** With respect, before I start reading out my prepared reply I have a question. When did we have the interaction during which I told Deputy Pringle that a payment was my preferred model?

**Deputy Thomas Pringle:** We have ongoing interactions.

**An Leas-Cheann Comhairle:** You have only two minutes, Minister.

**Deputy Regina Doherty:** I call on Deputy Pringle to take it back, because it is not the case. That is one of a suite of measures that we offer as part of the State. It does not make it better, but it certainly does not make it worse. It is one of the offerings we have.

We use a number of contracted models to procure public employment services to supplement the service provided directly by case officers as part of Intreo. Local employment services, job clubs and JobPath providers all provide such services under different types of contracts. LES and job clubs are on annual contracts that need to be formally renewed every year. They provide for a paid flat fee not related to outcomes achieved. The JobPath providers are engaged under a payment-by-results model with a four year referral commitment due to conclude at the end of 2019.

My Department and I are currently considering how the services provided for the next generation of people who require activation will be maintained after 2019. In addition, in line with the recommendations of the recently published Indecon report on LES and job clubs, we are examining the possibility of a transition to multi-annual contracts under open procurement competition for these services, incorporating some evidence of performance-based fees. I will be before the Oireachtas Joint Committee this afternoon to discuss the matter. In finalising our views and developing proposals for my consideration, the officials in my Department will continue to engage with the relevant stakeholders, as they have done in recent months, to the extent that is appropriate under public procurement guidelines.

I wish to assure the Deputy that we are going to do everything we can within EU procurement rules to ensure the continuity of the highly valuable services, including local employment services and job clubs, without which we would have been unable to work in recent years.

While the precise format of any future contracts has not yet been decided, what has been decided is that we would not have been able to reduce our unemployment when it was at its height and was handed to us in 2011. A total of 457,000 people were out of work on that day. We had in excess of 200,000 people on the long-term unemployment register. Now the figure is down to what we have today, which is 5.3%. The reduction would have been impossible without the absolute expertise, experience and commitment of the people who work in our local employment services and job clubs.

**Deputy Thomas Pringle:** I take it from what the Minister has said that the tendering process is going to be found that will allow community based programmes to tender. I take it the process will not be totally on a privatised basis. Is that what I can take from the response of the Minister? If that is the case, then it is most welcome but that does not seem to be the way the Department has been going. I call on the Minister to confirm that will be the case and that local employment services will be entitled to tender and apply under the process. I trust they



will be given favourable consideration or will be able to compete with privatised firms. I do not think that is the way it will happen but maybe I am wrong or will be proved to be wrong. I would be delighted if the Minister were to prove me wrong. If she has a contrary view, I would be delighted to hear it.

**Deputy Regina Doherty:** I hope I have been here long enough to prove the Deputy wrong. Last Thursday, I met representatives from the Irish Local Development Network, ILDN, jobs clubs and CV clubs, which are in all counties and provide invaluable services that Intreo offices and JobPath cannot provide. No two jobseekers have the same barriers to employment so the services the State offers need to recognise that and complement each other. The services that might be suitable for Deputy Pringle might not be suitable for the Deputy sitting beside him, or for me. We need to ensure the complexity of issues facing people who still cannot find work is addressed in the next generation of activation and that employment opportunities, supports and training are available.

The Deputy asked if I would ensure certain people apply for the tender. Nobody is stopping them from applying for the tender but I will make sure they get the support they need to ensure they have the capacity to apply for the tender. No tender has been decided yet and there may not just be one tender, on account of the fact that, as I said, one size does not fit all. We see these services, which we have relied upon since their establishment 35 years ago, very much continuing into the future.

**Deputy Thomas Pringle:** I am glad to hear the tendering process will be fair and that the people to whom I referred can compete for them. I am interested in the Minister's comments to the effect that no two jobseekers are the same. It is a pity she does not tell JobPath that, because JobPath behaves in a way that suits its own needs. The local employment schemes are very successful and very important, especially as regards the local model they use. The Indecon report showed them to be financially viable and more viable than JobPath, with a cost of €2,544 per placement and a referral rate of 28.8%, compared with a cost per placement at JobPath of €3,718 and a referral rate of 18%. The local schemes provided more employment for €1,200 less and that is vitally important.

**Deputy Regina Doherty:** I do not know what the obsession is with trying to make everybody be the same.

**Deputy Thomas Pringle:** The Minister should tell JobPath that.

**Deputy Regina Doherty:** I am talking about the Deputy's comparison of local employment schemes with jobs clubs, Intreo and JobPath. We have a range of services because we have a range of people with different barriers to getting employment. It is for this reason that we have back to education allowances, job incentive schemes, training opportunities, employment opportunities, youth employment support schemes, over-55s clubs, etc. There are different barriers for different age groups and different geographical areas. We cannot compare apples and oranges and expect to get the same results. The people we send to JobPath are the long-term unemployed who have different barriers to employment from those we send to local employment schemes or CV clubs.

In the near future, I want to see a rationalisation and the finalisation of our offerings in the form of activation services for the next generation and there will be a place for all our services in that.



## Ceisteanna Eile - Other Questions

### Employment Rights

6. **Deputy Bríd Smith** asked the Minister for Employment Affairs and Social Protection her plans to deal with bogus self-employment practices; and when legislation will come before Dáil Éireann on the matter. [15656/19]

10. **Deputy Clare Daly** asked the Minister for Employment Affairs and Social Protection if her plans to improve protections for persons trapped in bogus self-employment will include new legislation; and if she will make a statement on the matter. [15605/19]

14. **Deputy Joan Collins** asked the Minister for Employment Affairs and Social Protection her plans to introduce legislation on bogus self-employed contracts; if so, the parameters of the planned Bill; and if she will make a statement on the matter. [15510/19]

26. **Deputy Willie O’Dea** asked the Minister for Employment Affairs and Social Protection her plans to address issues in relation to bogus self-employment; and if she will make a statement on the matter. [15529/19]

39. **Deputy John Brady** asked the Minister for Employment Affairs and Social Protection the proposals she recently brought to Cabinet regarding bogus self-employment; her plans to progress these measures; and if she will make a statement on the matter. [15639/19]

**Deputy Bríd Smith:** This is about the Minister’s plans to deal with bogus self-employment. I ask her to lay out her plans today because a number of Bills are before the Dáil, including legislation from my group, and we want to know what her intentions are. This situation resembles the Bill on banded hours, when robust legislation was brought in by the Opposition only for the Government to jump in and bring forward its own legislation. History is repeating itself but we believe the various legislation in the queue offers a more robust solution to the question of bogus self-employment.

**Deputy Regina Doherty:** I propose to take Questions Nos. 6, 10, 14, 26 and 39 together.

My job is to progress Government legislation and not to progress Opposition legislation. There is nothing stopping any Member of an Opposition party from progressing his or her own legislation and I certainly would not impede it.

Disguised employment, or bogus self-employment, occurs when businesses deliberately misclassify workers as self-employed when they work as *de facto* employees of the business concerned. This is done largely to avoid payment of the employer portion of social insurance contributions. The extent of disguised employment, together with potential measures to address this issue, was considered by an interdepartmental group in 2017. Having consulted widely with stakeholders and considered the available evidence, the group concluded that the use of disguised employment arrangements was not very prevalent in Ireland. The work by the interdepartmental group is reassuring in that it indicates that the overwhelming majority of

employers are decent employers who are compliant with employment and social welfare law. The report stated that there was not a gross use of false arrangements but I slightly differ with it on that point. I am of the view that we have always had an issue with bogus self-employment. It has not grown but it is still very evident.

Given the concerns expressed in this House and elsewhere regarding a perceived increase in the incidence of self-employment, and to ensure that people are aware of their rights and the protections available, my Department conducted a survey and an advertising campaign earlier this year on the issue of false self-employment. We did not get an enormous response, which has led people to have certain opinions on it, but we will repeat it because we need to make sure it is consistent and that the people who did not hear what we said last time will hear it next time and the time thereafter, so that they will know what their rights are.

Bogus self-employment is already an offence. Any deliberate falsification of the employment status of a worker in order to avoid payment of social insurance contributions is an offence under section 252 of the Social Welfare Consolidation Act and is subject to prosecution with penalties, including imprisonment and fines. Nobody has ever been imprisoned for this, though there have been fines and significant penalties. Establishing guilt can be problematic as employers can claim genuine error. Employees have to be able to help us to take cases but we are all aware that, in many cases, employees feel lucky to have their job and are very reluctant to pursue it and that the security is not there in the legislation to enable them to establish their rights.

There are already significant legislative powers to investigate and sanction employers and employees who falsely declare their social insurance status as self-employed rather than employed. However, there are gaps and that is why I am proposing a number of new measures with a view to augmenting and building upon existing protection measures and legislation. Based on experience from these inspections and recognising that there is a particular challenge when dealing with large companies, I have tasked the Department with establishing a dedicated team to deal with the work involved in such employer inspections. I expect that this team will be established and functioning within the coming months.

In addition to more rigorous policing of existing law, I intend to implement a number of new legislative measures to further strengthen the powers in our appeals and inspection sections. First, I will seek to put the code of practice for determining employment status on a statutory basis. This code is being reviewed and updated by an interdepartmental group from the Departments of Employment Affairs and Social Protection and Finance, the Revenue Commissioners and the Workplace Relations Commission, in light of recent cases and to ensure the code is current and robust in its measures.

Second, I intend to bring forward measures to address the victimisation, and potential victimisation, of workers who seek a determination of their employment status, including the hundreds and possibly thousands who are afraid to do so.

Third, I am exploring the possibility of providing for deciding officers in the scope section in my Department to make determinations on the employment status of groups or classes of workers who are engaged, and operate, on the same terms and conditions, without having to have a specific complaint or having to investigate each individual worker separately. This would go a long way to ensuring consistency of status decisions and their timely determination, particularly in some of our larger organisations where the vast majority of employees are self-

employed.

Together, these measures are expected to strengthen the framework of protections for workers, while speeding up the dispute resolution process. While the drafting of this legislation is complex, I hope to be in a position to introduce these provisions to the Oireachtas in the spring social welfare Bill in the next number of weeks.

**An Leas-Cheann Comhairle:** I ask the Deputies to abide by the one-minute rule.

**Deputy Bríd Smith:** Listening to the Minister is somewhat similar to listening to the presentations by IBEC and the Construction Industry Federation, CIF, at the committee's meeting last week. It is a case of see no evil, hear no evil and speak no evil and "There is nothing going on here, move along". The Minister indicated there is no evidence that bogus self-employment is rampant. However, it is rampant in one industry that is growing and currently important, namely, construction. Finding evidence for it and addressing it has proved difficult. Thousands of workers have been exploited by developers and builders who make vast profits under these terms. The Minister may claim the figures show that the incidence of bogus self-employment is decreasing. On further inspection, however, one will see that the numbers of those who are self-employed but who do not employ others are rising at an acute angle. This means that individuals are being taken on as self-employed contractors. If they do not employ others, these individuals are not genuine contractors within the industry. That matter must be investigated thoroughly and more robust legislation needs to be put in place. The Minister is trying to jump ahead of other items of legislation which are more robust.

**Deputy Regina Doherty:** Again, the Deputy-----

**Deputy Clare Daly:** The Minister has had six minutes, which, presumably, was her extra time to respond. Is that not the case?

**An Leas-Cheann Comhairle:** The Minister was allowed six minutes but she did not have six minutes.

**Deputy Clare Daly:** She did.

**An Leas-Cheann Comhairle:** It is a simple rule. If three or more Deputies table a question, the Minister will have six minutes to reply.

**Deputy Clare Daly:** I have no problem with that but she has used the six minutes.

**An Leas-Cheann Comhairle:** The Minister will answer the Deputy's question next. We would not deprive Deputy Clare Daly.

**Deputy Regina Doherty:** I am happy to take the questions together.

**An Leas-Cheann Comhairle:** If the Deputy poses her question, we will allow the Minister some extra minutes to answer.

**Deputy Clare Daly:** I welcome the announcement of legislation but it is beyond urgent. I do not accept IBEC's contention that the issue can be addressed by increasing the number of inspections or better enforcement alone. This is a significant problem. On Monday last, I attended a hearing of a case at the Workplace Relations Commission, WRC. While I will not mention the company's name, it is obvious that it will lose badly, which I think it realises.

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When it loses, it will appeal to the Labour Court, and when it loses that, the case will be heard by the High Court. The vulnerable, non-national worker who had the courage to take the case previously approached the Department of Employment Affairs and Social Protection and the Revenue Commissioners but was informed by the latter that there was nothing wrong with his status or social protection. Eventually, approximately 18 months later, by the time the court sides with him, he will probably be long outside the country.

The current structure is inadequate. There are problems with the WRC and I draw the Minister's attention to the article in *Village* magazine by George McLoughlin, who worked for the WRC previously and who made a protected disclosure about the problems there and the systemic favouritism towards employers, which is a problem. A stand-alone investigations unit is necessary, as is beefed-up legislation to allow the implications of one case to be expanded to other cases. Will the Minister clarify whether the legislation will be brought on board in a couple of months or weeks?

**Deputy Joan Collins:** I attended the meeting last week with IBEC, whose attitude is quite astounding. It is the case that while we have not seen definite figures for people who came forward in the requested survey, we know that bogus self-employment occurs in various sectors, including those relating to journalism, English language teaching, to pilots, construction and couriers. I received an email from a young woman who has been caught up in bogus contracts in the tourism industry as a tour director since 2005. She has had to take a case to the court and the scope section. It is on the record that on 7 March 2019, the Department of Employment Affairs and Social Protection decided, on foot of a scope section investigation, that an employee of CIE Tours was insurable under the Social Welfare Acts at PRSI class A. CIE Tours is going to appeal that decision.

Bogus self-employment is rampant and cuts across industries. There is an urgent need for legislation to address the matter. I welcome the fact that the Minister is discussing legislation but four Bills have been published and we believe they could be used as comprehensive legislation to allow the Minister to bring forward robust legislation.

**Deputy Willie O'Dea:** Two issues have been raised, the first of which is how significant a problem this is and whether the numbers are increasing, stable or decreasing. I could argue with the Minister's contention in respect of the numbers but Deputy Bríd Smith has done that. It is currently a significant problem and it is growing. If anything, the evolution of the gig economy will only facilitate the problem becoming greater unless we tackle it now.

The Minister also referred to legislation. She announced, as she also did in the Seanad, that she will introduce her own legislation. We have spent much time in the House being told by the Minister and other members of the Government that legislation is not necessary in the area and that the existing system would work. By offering to introduce legislation, however, she is acknowledging that the system currently in place is not sufficient. The question arises as to when there will be new legislation to tackle a problem which the Minister now acknowledges exists. A number of Bills have been prepared, one of which was sponsored by me while the others were sponsored by the Labour Party, Deputy Bríd Smith's party and so on. We can coordinate our approach and decide among ourselves to put forward one of the Bills with the appropriate amendments. It would be far better if the Government accepted that now rather than assembling another team to investigate the matter further, expressing the hope that at some time in the ill-defined future, it may be able to introduce its own legislation. If the Government is seriously committed to resolving the problem, it would be a better approach. As Deputy Clare

Daly noted, and I agree, it is beyond time for a solution.

**Deputy John Brady:** To hear the Minister put forward arguments from employers that there have been genuine errors in classifying people as self-employed reminds me of when IBEC appeared before the committee last week and stated that it does not believe legislation is necessary. That the Minister is considering bringing forward legislation must be welcomed, and it also shows that she and her Department acknowledge the massive scale of bogus self-employment that exists and is growing. Some of the evidence that was presented to us, such as that given by ICTU, shows that in the construction sector alone, there is an estimated loss of €240 million per year through employer PRSI and tax, but that does not even touch on the loss of employment rights.

I reiterate that bogus self-employment exists even in the House. The camera operators filming proceedings are engaged in a number of scope section discussions with the Department. Bogus self-employment, therefore, exists in the House among camera operators. It is a massive problem. A number of Bills have been published, one of which was brought forward by my party. I welcome the fact that the Minister has brought forward legislation because it is evidence that something needs to be done about the matter. I encourage her to meet the Deputies present, consider all the Bills and bring forward the most robust legislation.

**An Leas-Cheann Comhairle:** When I remind Deputies of the one-minute rule, everybody agrees but nobody abides by it. I will allow a short supplementary question from Deputy Niall Collins.

**Deputy Niall Collins:** I raise the case of a person I have encountered who is trying to gain direct or indirect employment. It is an Irish person with an Irish birth certificate and Irish passport who has returned home from the United States, having lived there for 46 years, but who has been denied a PPS number. The person cannot find any form of employment, therefore, and needs a PPS number to apply for a driving licence, housing, a passport-----

**An Leas-Cheann Comhairle:** The Deputy is asking a different question.

**Deputy Niall Collins:** -----and it has been presented to me that a person must have a valid reason for obtaining a PPS number. This individual is being denied a PPS number by the Department.

**An Leas-Cheann Comhairle:** That is a different question.

**Deputy Niall Collins:** I wished to make the Minister aware of the matter. It is in the context of employment, for which the person may wish to apply. If I convey the details to the Minister, will she consider the case post haste?

**An Leas-Cheann Comhairle:** The Minister to answer the substantive questions.

**Deputy Regina Doherty:** I ask Deputy Niall Collins to supply the details of the case to me before he leaves the Chamber. Nobody should be denied a PPS number. I will address the matter today.

I am glad that we all can agree but I do not subscribe to the view of certain Deputies that I favour one set of organisations over another. I sit at monthly meetings with both our social partners who represent our union colleagues and our social partners who represent our business colleagues. On most occasions, they have diametrically opposed views, and my job is to



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sift through the views and decide where the reality lands. While one half of the social partners would tell me the problem is enormous and cite hundreds of millions of euro being lost, which Deputy Brady noted, the other half would tell me there is no problem and that we should carry on as we have always done. Deputy O’Dea just made a statement that I have finally come around to the view that there is a problem here but for as long as I have sat in this chair, almost two years, I have always acknowledged that there is a problem. I have always prefaced my remarks by saying that I do not know the size of the problem-----

*(Interruptions).*

**Deputy Regina Doherty:** I have the floor. I have always said that I do not know the size of the problem but whether it is ten people or 10,000 people, the legislation must be robust enough to protect them. We have a requirement to put legislation on our Statute Book to protect even one person and that is why I am bringing forward Government legislation. That is my job. I am quite happy to look at legislation from the Opposition but it is not my job to progress legislation prepared by Solidarity, People Before Profit or by Fianna Fáil. If anybody wants to bring forward legislation and to sit around the table with the Department to discuss it and see how we can progress and solve this problem, I am very happy to do so. As I said in my statement last week, I have done a considerable amount of work on this, arising from the amendment that Deputy O’Dea tabled to the Social Welfare Bill last year which he subsequently withdrew, thankfully, and have now produced what I presented in the last week. I am going to keep moving forward. I am going to change the practices and increase the training within my own Department.

Potentially, I may consider a stand-alone issue because I have the same reservations as Deputy Clare Daly. I do not have authority over the WRC and I cannot subscribe to her views on it. When people bring complaints to us, and they are not anything like the numbers reflected by Deputies in this House which genuinely worries me because it suggests a divergence from reality, they are entitled to due process. Both sides are entitled to make a claim as to whether an individual is self-employed or otherwise. The adjudication process is robust. People are entitled to a decision and are entitled to appeal that decision, whatever it may be. If neither side likes the decision that comes from my Department, they are entitled to bring a case to the Labour Court, the High Court or the Supreme Court. That is the law of this land.

On the gaps in the legislation that currently exist, the legislation that I will bring to the House in the next couple of weeks will make the inspections more robust and the decisions that are made more consistent across both geography and industry. It should not make any difference whether an individual works on a construction site or in a hairdresser’s: the decision should be the same. The determining factor is whether the definition of employment or self-employment applies to an individual. It is as simple as that and we do not make that any more robust. We do, however, need to ensure that when we do catch people, they are fined and that the penalties are sufficient.

## **Employment Rights**

7. **Deputy Richard Boyd Barrett** asked the Minister for Employment Affairs and Social Protection if her attention has been drawn to the potential for blacklisting in industries in which there is widespread use of fixed-term contracts; and if she will make a statement on the matter. [15660/19]



**Deputy Richard Boyd Barrett:** Another important area of abuse of worker rights is the abuse of fixed-term workers. Legislation governing fixed-term workers should demand that these workers are treated no less favourably than full-time workers. However, I have seen evidence and have received testimony from workers in the Irish film industry which shows that the provisions of the fixed-term work legislation is not being applied. Indeed, film producers who are receiving almost €100 million per year in public funding are essentially saying that the legislation does not apply to their industry. I ask the Minister to confirm that the fixed-term work legislation applies to every single worker, including workers in the film industry. I also ask her to look into very serious and credible allegations of blacklisting of certain fixed-term workers by film producers in receipt of public money.

**Deputy Regina Doherty:** I am aware that Deputy Boyd Barrett knows this but I will read my Department's reply for the benefit of those who do not. A fixed-term employee means a person who has entered into a contract of employment where the end of the contract is determined by an objective condition such as arriving at a specific date, completing a specific task or the occurrence of a specific event. An employee continuously employed on fixed-term contracts for a period in excess of four years can claim a contract of indefinite duration. However, the Act does not apply in circumstances where an employee is not re-employed by an employer following completion of a fixed-term contract.

In the formulation and development of labour law, there was a clear focus on finding the appropriate balance between the security which employees require on the one hand and the flexibility required by employers on the other, in terms of organisation of work, particularly in situations where that work may be of a short or fixed duration.

The Protection of Employees (Fixed-Term Workers) Act 2003 is not discriminatory. It does not apply only to certain industries. It applies to every single industry in this country that uses fixed-term contracts. That legislation provides for the improvement of the quality of fixed-term work by ensuring the application of the principle of non-discrimination, that is, that fixed-term workers cannot and will not be treated less favourably than comparable permanent workers. The Act also provides for the removal of discrimination against fixed-term workers where such exists and the establishment of a framework to prevent abuse arising from the use of successive fixed-term employment contracts in order to suit employers. Deputy Boyd Barrett obviously has a specific case in mind, the details of which I am very keen to hear. He should note that where individuals believe they are being deprived of employment rights they may refer a complaint to the WRC where the matter can be dealt with by way of mediation or adjudication leading to a decision that is enforceable through the District Court. WRC inspectors can also be asked to investigate breaches of the legislation or complaints arising. Individuals can submit complaints online. The Deputy can submit complaints to me, with which I will be very happy to help. The Deputy suggested that he has examples of blacklisting which is absolutely against the law. It is not and will not be tolerated and I am happy to help the Deputy to deal with that.

**Deputy Richard Boyd Barrett:** I appreciate the Minister's response and will take her up on her offer of help for a particular group of workers. We have engaged with the Department of Finance which is, in fairness, responding with regard to certain issues including the question of public funding and linking that to the vindication of rights. This issue actually cuts across several Departments, including the Department of Employment Affairs and Social Protection. Essentially, film producers who are in receipt of a lot of public money are saying that the fixed-term work legislation does not apply to the film industry. They are saying that the film industry is exceptional.

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I was in Ardmore Studios last week in the company of around 50 film workers. Some of them have had 50 fixed-term contracts with the same producer or with a series of producers but they have no rights. Some of them appeared before an Oireachtas committee in January of last year and said that there were abuses of their rights and of the conditions attached to public funding in the film industry and not one of them has worked since then. This is absolutely outrageous. There is a notion abroad that the film industry is exceptional and that the normal rules do not apply to it. This needs to be investigated in a serious way.

**Deputy Regina Doherty:** I am quite sure that lots of industries and companies in this country believe they are exceptional but none of them is above the law.

**Deputy Richard Boyd Barrett:** I very much appreciate that response and will contact the Minister to arrange a meeting. Many of the people to whom I refer have been working in the industry for ten, 15 or 20 years. Obviously, film work is episodic at some level but if workers point out that they are not receiving their rights and entitlements or if their employer simply does not like them, they stop getting work. I have met film industry workers including carpenters, painters, stage hands and so on who have worked in the industry for many years. Their work has just dried up. They have been displaced and have no rights. Their former employers are rejecting any claim that they have rights but these same employers are in receipt of significant public funding on an annual basis. This has to stop.

**Deputy Regina Doherty:** Again, nobody is above the law. I ask the Deputy to call me later and we will progress this. I am not happy to hear the Deputy's allegation that people have been blacklisted following an appearance before a joint Oireachtas committee and have not worked since then. We will take care of it.

*Question No. 8 replied to with Written Answers.*

### **Child Benefit Payments**

9. **Deputy Denis Naughten** asked the Minister for Employment Affairs and Social Protection the steps she is taking to implement the Programme for Partnership Government commitment on the monitoring of child benefit payments; and if she will make a statement on the matter. [15364/19]

**Deputy Denis Naughten:** It is estimated that one in every ten children leaves primary school with serious literacy difficulties. Such children are more likely to leave school early and it is estimated that early school leavers cost the State €33,000 every year in welfare supports and lost taxes alone. Over half of the prison population left school early and prison places cost €100,000 per annum, on average. In that context, it is about time that we started to do things differently. We must act in the interests of our people by engaging in joined-up Government.

**Deputy Regina Doherty:** I thank the Deputy for his question. Child benefit is the main policy instrument for assisting families with the costs of raising children. It is a universal payment, which I very much support. It is paid in respect of all qualified children up to the age of 16, or to the age of 18 if they are in full-time education or have a disability. It is paid monthly to more than 630,000 families in respect of more than 1.2 million children at an annual cost of €2.1 billion of taxpayers' money. Safeguarding the child benefit budget is a priority and in this regard the Department takes a proactive approach to ensuring it is only paid to eligible families.

The scheme operates a control programme aimed at ensuring that payment of child benefit is made where there is an ongoing entitlement and payment stops once this entitlement ceases. Some 300,000 eligibility reviews are undertaken annually for this purpose.

The Deputy refers to a commitment in the programme for Government to reform the monitoring of child benefit payments by amalgamating the two existing school attendance monitoring systems, currently run by the Department of Education and Skills and Tusla, in order to address poor school attendance within some families. Considerable legal, technical and data protection issues are presented by the exchange of information between schools and my Department. There are particular issues concerning the disclosure of sensitive personal information regarding a child's circumstances which may not be relevant to the parent's entitlement to child benefit. In the meantime, I am satisfied with the existing control and review policy pertaining to the child benefit scheme. I believe it ensures payment is only made to families with an ongoing entitlement.

**Deputy Denis Naughten:** I thank the Minister for her response. Every year, 900 children disappear from primary schools and the Department of Education and Skills does not have a clue where they have gone. The Department of Employment Affairs and Social Protection pays €1.5 million to the parents of those children and the State does not know where they are. As the Minister knows, this country's law on school attendance states that children have to attend school up to the age of 16. In order to be eligible for child benefit up to that age, children must attend school. The Minister has said that this money is only paid to eligible families. If children are not attending school, claimants are not complying with the law as it stands. We need to link up the systems within the Department of Education and Skills, Tusla and the Department of Employment Affairs and Social Protection to ensure that we identify these families and children and provide the proper supports to ensure they get a chance in life.

**Deputy Regina Doherty:** I have already outlined the legal and data protection issues with regard to sharing data that prohibit doing what the Deputy has suggested, which was originally suggested in the programme for Government. I can absolutely assure the Deputy that we take a proactive approach to ensuring that child benefit is paid only to people who are entitled to it. The fraud and error surveys the Department carries out are an integral part of its overall approach to controlling and tackling welfare fraud. The latest survey results confirm the Department's view that child benefit is an exceptionally low-risk scheme. We conduct some 300 inspections every single year, a regime which genuinely results in some payments being stopped. However, the reason for most of those stoppages is not that children are not attending school. Rather, the mother in the house does not see the letter or it goes in a drawer. Parents do not realise the payment has been stopped until it does not arrive in the post office or the bank. They then call the Department and assure it that their children are still going to school. It is a very robust control system and there is an exceptionally low level of fraud. From my own discussions on non-attendance with the department within Tusla that used to be the National Education and Welfare Board, NEWB, I can confirm that we do have a problem. The number of children not attending school is growing. These are the very families that need more supports from us, not just educational supports but mental health and social inclusion supports also. We need to provide robust support to Tusla in identifying those kids and ensuring their families get holistic supports.

**Deputy Denis Naughten:** I thank the Minister. She makes the point that most payments are stopped because parents have put the letter in a drawer and fail to respond to the Department. Have there been any cases where child benefit has been suspended because parents are in

breach of the law on school attendance? Is the most appropriate way to deal with this situation to use tools from 140 years ago and to drag vulnerable parents and families through the courts in order to ensure children access education? Is the Minister aware that one primary school child in eight misses more than 20 days in school? The number is increasing rather than decreasing. In many cases this leads to disruption for the whole class, not just for the child concerned. This has a knock-on impact on adult literacy. One in six adults in this country is unable to determine the correct amount of medicine to give a child from the information printed on the package. How can those adults actively engage with employment or with society if they do not have basic literacy skills? Is it not the case that tackling this must start in primary school?

**Deputy Regina Doherty:** I totally appreciate the result the Deputy is trying to achieve, I just do not think this is the right method to do so. He is right; a phenomenal number of children, especially young boys, are absent from school for more than 20 days, particularly recently. However, it is certainly not their parents' fault and penalising them through child benefit will not fix the problem. We have a real difficulty with young adults growing up in this country facing a substantial amount of social difficulties that we did not face when we were in school. We need to support Tusla so that it has the capacity and resources to work with those families so that we can put other schooling offerings in place to prevent the literacy problems the Deputy describes.

The answer to the Deputy's original question of whether child benefit has ever been stopped because of non-attendance at school is "Yes". The forms that are issued as a control measure must be brought to the school for signature to ensure that little Johnny or Mary is still in school. If he or she is not, the school does not sign the forms, they cannot be returned to my Department and the payments are stopped. We must recognise that there are problems beyond the normal attendance issues the Deputy describes. Putting resources in place to help the families is the proper way forward.

*Question No. 10 answered with Question No. 6.*

## **Pensions Reform**

11. **Deputy John Brady** asked the Minister for Employment Affairs and Social Protection the status of her plans to introduce auto-enrolment; the stage plans are at; the next steps; and if she will make a statement on the matter. [15638/19]

**Deputy John Brady:** I wish to ask the Minister about the status of her plans to introduce auto-enrolment. The consultation period ended last November. What are the next steps? I call on the Minister to make a statement on the matter.

**Deputy Regina Doherty:** As stated in the roadmap for pensions reform, the Government proposes to implement a supplementary retirement savings system known as automatic enrolment, AE, by 2022. This will see employees without personal retirement savings automatically enrolled into a quality-assured retirement savings system with freedom of choice to opt out.

I launched a straw man public consultation process for an automatic enrolment retirement savings system in Ireland, which is a bit of a mouthful, last August as the basis for a national public consultation. I have said that the straw man should not in any way be construed as a confirmation of the form this system will ultimately take. Thankfully, it has not been. The straw

man is a high-level draft document intended to generate and prompt discussion and improve our ideas. Thankfully, that is exactly what it has done.

In excess of 100 written submissions were received in response to the straw man from employer and employee representatives, pensions industry bodies, advocacy groups and genuinely interested individuals from whom I was very keen to hear. My officials have met with many of these groups. I chaired several public consultation seminars held in Dublin, Galway and Cork. Most recently, a series of focus groups was held in March to garner the views and ideas of the target population for automatic enrolment.

Overall, the responses to the straw man have been very positive and constructive. In the vast majority of cases, our proposals were welcomed and nearly every stakeholder agreed with most of the design features. As is human nature, we all have different views on how to improve things. There were diverging and conflicting views from stakeholders on specific aspects. These diverging views depended on which body they represented.

My Department is continuing to analyse the substantial material collated from the consultation process in order to determine how the feedback received can assist with the design process. Furthermore, my Department is continuing its research and consultation with experts from around the world who have already implemented improvements to their own systems. My Department has also commissioned the Economic and Social Research Institute, ESRI, to examine the potential macroeconomic and microeconomic impacts of automatic enrolment. It is anticipated that reports of findings from the consultation process and the research currently being undertaken will be brought to Government in the coming months. These reports will assist the Government in making decisions on the next steps for implementation to enable the scheme to commence in the first quarter of 2022.

**Deputy John Brady:** We welcome any provision that will mean additional financial security for workers when they reach old age. That said, we have some concerns in regard to the Strawman that was published and we made a submission on that. To come to the crux of the issue, there is poor coverage and only one out of three employees have a private pension in the private sector. When we take into account the public service, it pushes that up to 47% but it is still very low. We know there are serious concerns in terms of pension charges and uncertainty around defined contribution and defined benefit schemes, all of which needs to be addressed. Auto-enrolment gives us an opportunity to address all of these issues but there are still key questions to be answered, which is why I asked for a timeframe. While there were over 100 written submissions and that is welcome, it is a low number, although I presume many of those were from organisations. When can we expect to see the next stage of the process?

**Deputy Regina Doherty:** The Deputy's submission is very welcome. The views he expressed in the submission were not unique and there are others who share his views, which will not surprise him. We both agree that 35% coverage is too low. Some 65% of people are not saving a single euro for when they get to 66 and we need to help them to make sure they have a better quality of life when they get to 66.

My ambition is to have a document brought to Cabinet before the July recess and, as it is April now, it is not that far away. I will try to do it as early as I possibly can so we can have considerable time to discuss the proposal. The Deputy might like 80% of it and not like 20%. However, I need to ensure we can all agree on the proposed system. As soon as the memo goes to Cabinet, I will bring it to the joint committee and we can have a conversation about it.



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**Deputy John Brady:** Hopefully, the Minister will publish that document and she has said she will furnish it to the joint committee. I look forward to seeing it and scrutinising it. The crucial elements are the contributions from the three sides - the employer, the employee and the State - and how this will be teased out and expanded upon. Obviously, from the perspective of my party, fund management is one of the key components. We have put forward proposals around the NTMA and the State playing a leading role in the management and investment of that money. It could be put to fantastic use within the State, whether in regard to housing or the green economy. I look forward to the document being brought forward. Is that a definite timeframe and is the Minister committed to bringing it to Cabinet before the summer recess?

**Deputy Regina Doherty:** That is my plan. Once the scheme is finalised, arising from the changes we will potentially make following the consultation process, I have no choice but to bring the memo to Cabinet as I do not have the authority to do these things off my own bat. We will bring the memo to Cabinet and I will get approval. If I get approval on the scheme as it is presented, that is when I will bring it to the joint committee. At the end of the day, this has to go through as legislation so it will have to go through pre-legislative scrutiny. It will obviously go through that robust analysis and people will either agree or not agree.

To touch on some of the specifics raised by the Deputy, I would like to see some of the ideas he has. Unfortunately, it may not be easy to design and direct money specifically to a particular area. As I said, I am not finished the deliberations yet and I will come back to the Deputy when it is ready.

**Deputy Willie O’Dea:** The Minister said the Strawman proposals are not conclusive, which I accept. However, I notice Strawman does not advert at all to the possibility that the pension will be delivered other than by one of a small group of companies in the private sector. Strawman does not accept the possibility that it will be delivered through a public body.

**Deputy Regina Doherty:** I think I understand the question. The Strawman was designed to elicit conversation and discussion and it certainly has done that. There are a number of suggestions from the 100 written submissions that this should be entirely Government-run and that a Government agency be established. However, as I said, we will establish a preferred method based on all of the views that have been put to us with regard to what is the best and the most sustainable way of providing the assistance we want to provide.

### State Pensions Payments

12. **Deputy Aindrias Moynihan** asked the Minister for Employment Affairs and Social Protection the timeframe for completion of the reviews being carried out into persons affected by the changes to the State pension (contributory) in 2012; and if she will make a statement on the matter. [15653/19]

16. **Deputy Aindrias Moynihan** asked the Minister for Employment Affairs and Social Protection if extra staff will be hired to ensure completion of the reviews of the cases of persons affected by the changes to the State pension (contributory) in 2012; and if she will make a statement on the matter. [15654/19]

21. **Deputy Éamon Ó Cuív** asked the Minister for Employment Affairs and Social Protection when all the cases will be examined under the review of pensioners entitlements which



follows the introduction of a total contributions approach method for assessing pensioners that became eligible for the State pension after September 2012; and if she will make a statement on the matter. [15508/19]

**Deputy Aindrias Moynihan:** The 2012 pension cut hit very hard because it reduced the weekly pension for many people. Six years on, the correction was very much needed. However, time is not on the side of the people who are losing out. Having their weekly payment corrected as soon as possible must be a priority, given there are 90,000 people losing out each week. How soon will those reviews be concluded so people can see that correction reflected in their weekly pension?

**Deputy Regina Doherty:** I propose to take Questions Nos. 12, 16 and 21 together.

Since late September 2018, my Department has been planning and developing processes to review the social insurance records of approximately 90,000 pensioners born on or after 1 September 1946, who had a reduced rate State pension contributory entitlement based on post-budget 2012 rate bands. These payments are being reviewed under the new total contributions 2012 model of pension calculation, which includes provision for home caring periods.

Reviews commenced on 13 February 2019, the day after I signed the necessary regulations, which together with provisions in the Social Welfare, Pensions and Civil Registrations Act 2018 allow the increased payments to be made. As of 2 April 2019, 13,915 or 15% of reviews have been completed. Of these, 10,398 or 75% have resulted in an increase in payment for the pensioners concerned. The pensioners who did not qualify for an increase in payments will continue to receive exactly the same payment as heretofore.

As I stated at the outset, it will take a number of months to complete all the reviews due to the numbers involved and the individual nature of social insurance records. In some cases, it is necessary to engage in correspondence with the pensioner in order to clarify periods of caring, work and contribution histories. To date, over 36,900 requests for information have been sent out to pensioners. In order to process these reviews, 121 temporary staff have been recruited and trained and are now in our sections in Sligo and Donegal and it is planned to recruit a further eight staff this month. Based on experience to date, it is anticipated that it could take up to the end of September to complete all reviews.

What I have said previously and will repeat is that if we send out information requests to people and they do not reply to us, I have no intention of closing off the reviews. We will keep going and keep sending out reminders until every single one of the 90,000 people who were adversely affected by the rate band changes from 2012 have an opportunity to go through their file with one of our 121 staff to make sure they get what they are entitled to and any back payment they are due.

**Deputy Aindrias Moynihan:** The figures suggest there are 90,000 people affected and there has been a staff increase of 120. Given some 1,200 to 1,300 cases are being processed per week, this suggests the 90,000 could take a year or a year and a half to process. Time is not on the side of these people. Is the Minister satisfied the Department has enough staff on that force to deal with this? It initially started off with 60 staff, increased to 70 last year, then to 100 and the Minister is now talking about 120. Has she underestimated the workload involved? Is she satisfied there are enough staff?

Is the 90,000 figure only for people on the contributory pension? There is also a cohort of

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people who chose to take the non-contributory pension because it paid them better than the contributory. Are they included in the 90,000 or is that figure an underestimation? Is the Minister's target realistic?

**Deputy Éamon Ó Cuív:** In selecting the people for early examination, was priority given to those cases where there was likely to be an increase in the pension following the review?

**Deputy Regina Doherty:** Nobody was prioritised. Letters were sent out randomly and nobody was particularly selected because of their age, the length of time or anything like that.

The ambition is for us to ensure that we carry out reviews of all 90,000 cases as quickly as we can.

In response to Deputy Aindreas Moynihan regarding the staging of the recruitment, that is how long it took us to find staff. It certainly was not our ambition to start off with 60 staff, before increasing the number to 80 and then 120. I am completely satisfied that the staffing levels are sufficient to ensure this process will be completed in a couple of months. It will certainly not take anywhere near as long as the Deputy suggested. I am also adamant that I will not tell the Deputy or anybody else that we are finishing on 1 June when people still not have given us the information required to allow their cases to be reviewed. In many cases, we can probably do reviews based on the information we have. Those cases are easier to review but there are many gaps where we do not have the information and that requires co-operation and information flow back and forth. To be fair and truthful, we had anticipated being able to do the vast majority of these reviews online, meaning we expected that if I emailed the Deputy today, he would email me back tomorrow. However, this approach does not quite work with some members of our older population and there is a delay in receiving responses when we send out requests for information.

12 o'clock

*Written Answers are published on the Oireachtas website.*

### **Ceisteanna ó Cheannairí - Leaders' Questions**

**Deputy Dara Calleary:** We saw another press release from the Government announcing a new national oral health policy called Smile agus Sláinte. Only Fine Gael could try to make dental treatment sound fluffy. The new policy implements one of the recommendations of the Sláintecare report. All children will receive eight oral healthcare packages while medical card holders who are over 16 years will also receive packages. However, there is no mention in the fluffy press release of the 18,000 children who are currently on the orthodontic waiting list or the 24,000 children waiting for dental treatment in general, including many in my constituency. I have been lobbying the Government hard on this matter. As we speak, up to 9,000 children with moderate to severe malpositioned teeth and jaw problems have been waiting for more than two years for access to an orthodontist. Those who can afford treatment will pay in excess of €3,000. All of that was glossed over.

The proposals are welcome but as with every press release and announcement from Government Buildings, also know as spin central, this one comes with a health warning. While the president of the Irish Dental Association, Dr. Kieran O'Connor, welcomed the publication

of the document, he pointed out that his members were not involved in or consulted in detail regarding its formulation. We have a new dental strategy that has been formulated without talking to dentists. One could not begin to make it up.

I remind the Tánaiste of the conversation I had with him on Tuesday regarding an article by Paul Cullen published in *The Irish Times* and followed up by Aoife Hegarty in “RTÉ Investigates” on Tuesday evening. The programme, which was compiled following whistleblower allegations, reported on an audit of orthodontic treatment affecting 7,500 people in the greater Dublin and Leinster area in the period between 1999 and 2002. The report was finalised in 2015 and still has not been published. We need to know the details of that report. Why is it taking so long so deal with the findings? Have the people affected been contacted? Since Tuesday, what has been the Government’s response to Paul Cullen’s article in *The Irish Times* and the “RTÉ Investigates” report? What action is being taken to contact people whose orthodontic treatment has been compromised by the difficulties within the service?

**The Tánaiste:** I am still not quite sure whether the Deputy welcomes the new approach to orthodontic care.

**Deputy Dara Calleary:** I am sceptical.

**The Tánaiste:** It is certainly a very positive new policy, with eight new packages of care for children up to the age of 16, and an attempt by the Government to be proactive. For what it is worth, there was extensive consultation before the new approach was launched.

On the second issue raised by the Deputy, in 2015, the HSE received a review report it had commissioned following receipt of a statement of concern from two consultant orthodontists relating to an orthodontic service serving the greater Dublin area between 1999 and 2002. The statement of concern was initiated by the consultants who claimed that some children suffered damage as a result of interrupted orthodontic treatment at the time of the dispute between the consultants and the HSE relating to the model of care for delivery of orthodontic services. The original review report of 2015 was, in effect, a scoping report commissioned to advise the HSE on what actions should be taken to determine if there was a risk of harm to patients during that period. The report did not include a review of any patient records for the period and so, understandably, reliable conclusions could not be drawn at the time regarding definitive patient harm.

Since receipt of the 2015 report, the HSE has initiated a comprehensive audit of more than 7,500 patient files available from that period. Dedicated funding and personnel have been allocated by the HSE for this work. Due to the scale of the audit of the files and the requirements for dedicated personnel and resources, the timeline has been protracted. However, this work is nearing completion. While the Minister and the HSE regret that the work has taken a long time to progress, the priority for the HSE at all times has been for a robust audit on which to base further action. The HSE has informed the Minister that it cannot, as a matter of course, commit to the publication or otherwise of the report prior to the completion of the audit process. The benefits of publication must be balanced with the requirement for patient confidentiality and its obligations to afford natural justice to all other parties concerned. I assure the House that once the audit of patient files from the period is complete, a HSE serious incident management team will consider the results to determine if a recall of any patient is required and to co-ordinate open disclosure, as necessary.

**Deputy Dara Calleary:** I welcome the proposals relating to the dental strategy generally. I

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am just quoting from the press release issued by the Irish Dental Association, which represents the people who will deliver the proposals. It stated that nothing short of a complete reversal of Government policy would be required if the policy was to be rolled out successfully. The Government does not do reversals very well. Therefore, while I welcome the approach, I am sceptical.

Regarding the report into orthodontic services, have the 7,500 people affected been contacted? Have they been advised by the HSE review team that their files are being examined and they may have to undergo treatment? What is the level of contact with them? Are the individuals involved in the treatment still in the service of the HSE? Are they still working for it? The Tánaiste spoke about natural justice and I accept that but what is the timeline for the completion of this review? The HSE has had the report since 2015. Four years later, surely there should be an end in sight for the completion of the review and publication of the lessons learned.

**The Tánaiste:** It is important to remember that these files go back to the period from 1999 to 2002 so they relate to quite a long time ago and there are many patients are involved - 7,500. My understanding is that this audit is likely to be completed in the next couple of weeks. That is the indication I have from the Minister.

**Deputy Dara Calleary:** What about contact with the patients?

**The Tánaiste:** I do not have a direct answer to that question but I presume the patients will not be contacted until the audit has been confirmed and we understand what we are dealing with and they can be informed properly. I can confirm the position for the Deputy later. The priority is to finalise the audit to understand the number of patients involved and the detail of each of those patients so that we can contact them and fulfil the obligations under the open disclosure requirements that are now in place.

**Deputy Pearse Doherty:** On Tuesday, my party leader, Deputy McDonald, raised the issue of hospital overcrowding with the Tánaiste. I raise it with him again this morning because, in the past number of days, the problem has gone from bad to worse. Early in the week, there were serious problems at Cork University Hospital. There are still significant problems there, with 43 people on trolleys today, according to the Irish Nurses and Midwives Organisation, INMO. To top it all off, there was utter chaos yesterday at University Hospital Limerick, where the number of patients on trolleys reached a level never before seen in any hospital in the history of this State. The INMO recorded 81 people on hospital trolleys yesterday morning. By midday, the number had reached 92. Today, there are 76 people on trolleys in that hospital, while there are 531 people on trolleys in hospitals across the State. This is absolutely scandalous. We are reaching record numbers of people on trolleys and hospitals are in situations of utter chaos. The pictures on the front page of today's *Irish Examiner* are akin to the scenes in a hospital after a major natural disaster, but there is no natural disaster. These scenes of overcrowded hospitals and patients lying on trolleys in our corridors are becoming all too common. There are patients in University Hospital Limerick who have been waiting for days to get a bed, and all the while, right beside them, ward 1A is closed, padlocked and chained. The Government has put 17 beds in that ward out of commission and that makes absolutely no sense. My colleague, Teachta Quinlivan, has called for the immediate reopening of the ward, and I echo that. The Minister and the HSE should do this without delay.

There are, however, bigger problems at University Hospital Limerick. I have seen correspondence provided to the health committee on behalf of the staff of the hospital. It makes for

disturbing reading. The correspondence in question states that University Hospital Limerick continuously fails to adhere to national emergency department escalation policy and remains constantly in full capacity protocol. It states that the additional winter funding provided by the HSE has had no impact on overcrowding. It states that the consequence of all this is that nurses are struggling to provide safe care and cannot adequately monitor or assess patients to the level required. The staff go on to state that this is due to inadequate staffing and the extra trolleys on wards and in the accident and emergency department. This amounts to one thing: an unsafe hospital for patients. It is impacting on patients and putting them at risk and it is affecting the health and safety of staff. Both of these impacts are incredibly worrying. However, this is no longer just a winter problem; it is a problem all year round.

What is going to happen to the patients in University Hospital Limerick on foot of the escalation over the past 48 hours? More generally, what is the Minister's plan to respond in a meaningful way to the capacity crisis right across our hospital network? Whatever he is doing is just not working. Not only is it not working; it is completely and utterly failing. We need serious action from Government.

**The Tánaiste:** I will deal with the specific issues relating to Limerick in a minute, but it is important to give a broader picture nationally of what is happening with regard to trolley figures. The trolley numbers for the first quarter of this year are the best for five years, so it is important we deal with the numbers and the facts. I know there are some hospitals under severe pressure and staff under pressure, and no one wants to minimise or belittle that strain. It is there. It was there earlier this week in Cork and yesterday in Limerick and Galway, which are under pressure. The hospitals are responding to this, but the overall trolley numbers are down and are lower than at any point in the past five years. It is important to recognise progress. This reduction in the numbers is due to our investing in more capacity. We are trying to streamline management systems in hospitals in order to ensure that we can deal, in particular, with capacity at this pressurised time of year as we come through the winter and see outbreaks of influenza and so on and in the aftermath of a strike action, which also caused some pressures. I am not apportioning any blame in this regard; I am just outlining the reality. That said, there are and have been particular issues in the past 24 hours in Limerick.

The Deputy specifically mentioned ward 1A. The HSE has informed me that the closure of a 17-bed medical short-stay unit, ward 1A, at University Hospital Limerick will facilitate the completion of works on a new fracture unit there. The closure is in accordance with the plans to redesignate the space occupied by the old emergency department at the hospital. University Limerick hospital group has advised that staff were fully involved in this process, with the various teams presenting business cases on optional use of the old emergency department. The hospital group has advised that the new fracture clinic will have a specific benefit for patients in reducing waiting times and improving patient experience. We are trying to invest in new facilities at the same time as trying to manage current pressures, and we must do both. We cannot simply abandon plans to invest in increasing capacity and improved efficiency in an effort to try to deal with the immediacy of what is a very pressurised situation at University Hospital Limerick. The hospital group advises that the closure of these 17 beds has been offset by the opening of 22 beds elsewhere in the hospital in recent weeks, including a 12-bed surgical short-stay unit and three additional cardiology beds. It is widely agreed, however, that a key part of the solution for Limerick is additional beds. The capital allocation for 2019 of €2 million has been granted in recent weeks to facilitate the completion of enabling works for the 60-bed modular ward, to which I also referred on Tuesday.



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**Deputy Pearse Doherty:** No matter what way the Tánaiste wants to spin it, we were sent pictures yesterday from individuals who were in University Hospital Limerick as 92 patients were lying on trolleys in corridors, wards and the accident and emergency department. The pictures are of ward 1A with padlocks and a chain around the gate. There are 17 beds behind those doors that could be accommodating these patients. However, Limerick is not the only hospital that has wards that are closed. In my local hospital in Letterkenny, there is a 20-bed ward in respect of which the Government has given sanction to open only ten of the beds, despite the fact that every day, every week, we see patients on trolleys. While the Tánaiste tries to claim that the Government is doing so much better, the reality is that there are 531 patients on trolleys today, hospitals are being deemed unsafe and his own local hospital in Cork had to invoke status black, which means it is unsafe to admit a patient into the hospital regardless of the circumstances. There is complete and utter chaos in our health service. This is not just about the discomfort of not having a hospital bed; it is about the treatment and the health outcomes. Those on the front line are telling us-----

**An Ceann Comhairle:** The Deputy is way over time.

**Deputy Pearse Doherty:** -----that people are dying as a result of this crisis, and the Government is failing to address it after eight years in office.

**The Tánaiste:** The Government is addressing this but it is taking time. Let us look at Cork University Hospital. This morning, according to the HSE count, the number of patients waiting on trolleys in Cork was 25, down 31 from yesterday and 55 from Tuesday morning.

**Deputy Pearse Doherty:** According to the INMO, it is 43.

**The Tánaiste:** The hospital has got on top of what was an unacceptable situation at the start of the week. Let us look at what the Government is doing in the medium term in order to increase capacity. What is required is a combination of increased capacity and improved efficiency and management systems. Increased capacity is a priority for the Government, as we have stated. An additional 241 beds were opened under the winter initiative of 2017-2018, and the national service plan for 2019 provides for a comprehensive capacity programme. Elements of this programme include 75 acute beds and 70 community beds scheduled to come on stream in early 2019 as part of the winter plan. The HSE has confirmed that 46 acute beds have been opened to date. I could go on and list a series of other capital expenditure programmes that are being invested in, including in Limerick, which is a major focus in terms of extra bed capacity. One of the issues-----

**An Ceann Comhairle:** The time is up.

**The Tánaiste:** -----to which I referred earlier involves upgrading of the Limerick facilities in order that we will have more efficiency in the not-too-distant future, when we get through the pressures we face today.

**Deputy Clare Daly:** In December 2017, I raised with the Tánaiste the case of Anthony Cole, the first person to bring an action concerning Lariam. That action had just been settled after the State sparing no expense in assembling a major legal team, with ten days of hearings over five months, before the Government threw in the towel.

The second Lariam case, of Mr. Patrick Fedigan, was settled two weeks ago, again on the steps of the court and after enormous cost and delay. What on earth is going on here? Not only

is the Government not dealing with the existing cases of Defence Forces personnel who have experienced devastating health consequences as a result of taking Lariam but it is actually potentially adding to their number by continuing to force soldiers to take Lariam. That is despite their wishes and a motion passed by this House.

As a result, we have almost 300 loyal but damaged men and women who served this State proudly, and whose papers have been lodged with the courts, facing a lengthy and costly application process before the State will eventually have to settle, as it will. There is not one word about redress and compensation to end this madness. It is a crazy situation. When these cases get to the courts they are, of course, then likely to encounter the 83 cases which have been also been lodged before the courts in respect of Pandemrix. Those cases are mainly the result of children who developed narcolepsy after receiving the swine flu vaccine. Those suffering families have had to fight this State for discovery for years. When I raised this with the Taoiseach last year, he said he would instruct the Minister for Health, Deputy Harris, to bring forward the commitment in A Programme for a Partnership Government to introduce a no-fault vaccine scheme to respond to the needs of people with disabilities arising from vaccination. He also stated the commitment would be implemented by last year. Where is it? The programme for Government is three years old. This scheme was recommended as early as 2001 and these families have been suffering since 2010. We would be forgiven for thinking that the State is engaged in some clandestine plot to enrich the legal profession at the expense of the public and to the detriment of those whose health has been seriously and negatively impacted upon as a result of State actions. There is no justice and accountability for those people. That is appalling.

While everybody moved on to the latest scandal some weeks ago - I think John Delaney was the flavour of the month this time - Dr. Scally produced his latest report. He outlined in that report the problems with the open disclosure approach which, he stated, remains in place despite being judged to be deeply flawed. It is not good enough for the Tánaiste to state the Government is working on it. It has been foostering around with these issues for more than 11 years. We had succeeded in having mandatory open disclosure before this Government removed it two years ago. When will the Government stop talking about doing things and actually start to do them? I was about to say talk is cheap but it is not cheap for the victims or the State. It is about time the Government started delivering on some of the things it tells us it is dealing with.

**The Tánaiste:** The Deputy had many questions. I will deal with the Lariam issue first. It is important to emphasise that malaria is a serious disease that has killed hundreds of thousands people. We need to protect our troops when they are in malaria zones in different parts of the world. Let me be very clear with the House, however, that the health and welfare of the men and women of the Defence Forces is the utmost priority for both the Government and the military authorities. I am advised there are three anti-malaria drugs. I remember looking at this issue when I was in the Department of Defence and speaking to many of the families with concerns regarding the use of Lariam in the past.

The choice of medication for deployment overseas for both officers and enlisted personnel, including the use of Lariam and other drugs, is a medical decision made by medical officers in the Defence Forces, having regard to the specific circumstances of the mission and the individual member of the Defence Forces. In other words, it depends on how long members of the Defence Forces will be in a region and what the medical advice is regarding the appropriate use of drugs in respect of frequency, etc. A working group reviewed the Defence Forces approach regarding these drugs to ensure procedures continue to be appropriate and in accordance with international best practice. I also remember reading a number of reports from other countries

relating to the use of Lariam or other drugs.

A further case has been listed for hearing in the High Court on 7 May. It would be inappropriate for me to comment on individual cases given litigation is pending. This has, however, been an ongoing debate for many years, with which I and other Ministers have been confronted. The approach of the Government and the current Minister is to try to ensure we are acting on the best advice of doctors and medical personnel, inside and outside the Defence Forces, regarding working groups and protecting the health of our soldiers. That is the only motivation we have on any policy regarding the use of Lariam or other drugs to combat the dangers of malaria.

**Deputy Clare Daly:** I have a lot of time for the Tánaiste but I am very disappointed with his response, which is indicative of the reason we are in this mess. I state that because what he has given me is Civil Service speak. The working group on Lariam actually recommended that a medical advisory group be set up to look into these issues. That was in 2017. I recently found out from a freedom of information, FOI, request that the group has never met, not once. Best medical practise would tell us that other defence forces are not using Lariam. The Tánaiste's answer is, therefore, patently wrong.

The Tánaiste did not deal with all of the fundamental questions I put to him. The State's denial has led to a continued over-reliance on litigation and failure to address the serious concerns of those people whose health has been impacted by State actions. The Government is causing those people enormous hardship while enriching the legal profession and failing to make our health service safe. The type of answer the Tánaiste gave me is the same reason we do not have a mandatory open disclosure policy that would make our hospitals safer. He is listening to civil servants and not his instincts. The Government is not addressing the issues it has stated it will address. It is incredibly disappointing and citizens deserve much more.

**The Tánaiste:** We are introducing a patient safety Bill that will require open disclosure.

**Deputy Clare Daly:** That was said last year.

**The Tánaiste:** It is being brought through the system. The Government has committed to that Bill and we will fully follow through on it. Deputy Clare Daly and I have spoken before about the broader issue of the approach to Lariam. She knows this is not a straightforward issue to deal with. Families have made certain accusations and they need to be tested. Those families have chosen a legal route to seek compensation and the truth and they are perfectly entitled to do that. The State also has a perspective on this.

The core issue is whether Lariam is suitable for use. Different countries take different approaches. It is not true to state that all countries are moving away from the use of Lariam. Some countries have and others have not. Some use it in certain circumstances and in certain locations and others do not. I have not been involved with this file for a while because I am outside of that Department. I will follow up on the expert medical group and respond directly to the Deputy on that. On the broader issue, however, is not as simple to deal with as Deputy Clare Daly sometimes maintains.

**Deputy Eamon Ryan:** We have been very sensitive on this side of the House when discussing any arrangements that may be required in the event of a no-deal Brexit for fear of inadvertently influencing the UK debate. That debate is now moving on, however. Red lines have been crossed that could not have been crossed previously. That may, hopefully, lead to some sort of collective sense and some idea of where the UK is going. In the interim, however, this House

cannot just state we have no plan in response to those seeking clarity regarding what we would do in a no-deal scenario.

I refer in particular to the Taoiseach who answered questions yesterday regarding the sanitary and phytosanitary, SPS, checks we may have to do. That issue is becoming very real. If anybody in Westminster wants to quote anyone in this House stating there is no problem, we can respond by stating we will have to irradiate our wooden pallets. The idea that there is a maximum facilitation, *max fac*, solution is complete nonsense. If anything, the closer we get to a no-deal Brexit and the more we prepare for it, the more obvious the case for the backstop becomes. Today the German Chancellor, Angela Merkel, and the Taoiseach debate how to protect the Single Market in Farmleigh House, including specifics such as the management of sanitary and phytosanitary checks. We must start to give the Irish public and farmers some understanding of what that might mean. There was talk yesterday of farm gate animal checks being different because we will have to involve vets. We better try to provide some clarity so that we will not be totally unprepared for what we will have to do if the British Prime Minister, Theresa May, and the leader of the Labour Party, Jeremy Corbyn, are unable to reach some sort of agreement and the UK inadvertently crashes out of the European Union. The Taoiseach indicated yesterday that it may be possible to apply some of these checks on an all-island basis, although he said that would require the co-operation of the UK Government. I presume it would also require the co-operation of the EU. He also suggested that issues in respect of chlorinated chicken or steroid-treated beef may be managed with checks at Dublin Port and Rosslare Europort.

Can the Tánaiste provide clarity on the matter of animal checks, which seems to be one of the most difficult issues we will have to manage if a no-deal Brexit occurs? Irish agrifood companies have set out their concerns about what needs to be done in today's newspapers. This is a public debate. This House needs and deserves some details of the plans for that specific area because it is the thorniest and most difficult challenge we will face in a no-deal scenario.

**The Tánaiste:** I thank the Deputy for raising this issue. It is no secret to this House that, while an extraordinary amount of detailed work on how Ireland and the EU collectively would respond in a no-deal scenario has been completed and published, the most difficult issue to put a contingency plan in place for was always going to be how we would manage an all-island economy in the context of a no-deal Brexit. Those who maintain the argument that this could work easily with some alternative arrangements and without the use of the backstop or the principles behind it, which involve regulatory alignment, are making false arguments and have been doing so for months. There is no easy fix.

The British Government has produced a paper in which it says that it will not implement checks or apply tariffs in respect of goods travelling from the Republic of Ireland to Northern Ireland in the context of a no-deal Brexit, but that would be a temporary arrangement until a solution was negotiated between the British and Irish Governments and the European Commission. There is no way the EU can provide the same assurance in respect of goods travelling from North to South because we cannot ignore the obligations and responsibilities that would be on the EU if Northern Ireland, as part of the United Kingdom, were to leave the European Union and therefore be outside of the Single Market and customs union. I am confident that the EU would have to apply the rules it applies to any third country outside of the EU to Northern Ireland, which would pose real difficulties on this island. That is why this week we have intensified our engagement with the European Commission on how we can work together to fulfil the dual obligations we have, first, to protect peace and relationships on this island and to prevent

physical border infrastructure and, second, our obligation to protect the integrity of the EU Single Market. There is no alternative arrangement or magic solution that does the same job as the backstop, which it to keep the all-island economy functioning as it does today. Instead, we will be looking at mechanisms that will allow us to collect tariffs and which will provide reassurance to other EU member states that Ireland will not be dragged out of the Single Market by the UK crashing out of the EU. We cannot allow that to happen. We cannot protect the normal functioning of an all-island economy, which is what the backstop does, but we can certainly prevent the security issues caused by physical border checks from arising. We intend to avoid such checks.

We are working closely with the European Commission on this issue. I suspect that some of the conversation with Chancellor Merkel today will focus on this issue. I assure the Deputy that EU leaders, from Chancellor Merkel to President Macron, want to assist Ireland in solving this problem, recognising that there is a dual obligation that is very complicated and difficult to solve.

**Deputy Eamon Ryan:** It is difficult, which is why I agree fully with the Tánaiste that what has been said in Westminster - that there is some easy mechanism to deal with this - is complete nonsense. We need to progress preparations and prepare our people properly. My concern is that there is still no clarity on some very specific issues. Glanbia has said today that it brings 130 million l of milk from Northern Ireland to the South every year. It would be useful for farmers on both sides of the Border to know what will happen with that milk, rather than everyone rushing to find a plan to manage the issue the day after Brexit. What happens in the case that we suspect there is chlorinated chicken in the UK market, a scenario the Taoiseach cited yesterday? How would we manage that? Would it be managed at Dublin Port, at the factory or at the Port of Larne? We should not be scrambling to answer that question on Brexit day plus one. We all agree that we want to avoid infrastructure at the Border, but if we will have to have vets carrying out checks in respect of animal movements, when will the vets be told what those checks will be and where they will take place? Leaving it until after a crash-out would not be doing a service to our people. We need some sort of internal discussion on the issue so that we will know exactly what might be ahead of us, as difficult as that might be.

**The Tánaiste:** An internal discussion is taking place, but it is important that the options are weighed up and that we agree on something before we start informing the public. Otherwise, anything we say will be twisted by some in Westminster to get a political message across that is not accurate. That has happened over and over again with regard to alternatives to the backstop. People stand up in Parliament in Westminster and misrepresent the reality. They will continue to do that and it does not make much sense for us to continue to make comments that allow them to do that.

Having said that, the Deputy is right. We need to be ready for Brexit day plus one, as the Deputy has called it, in a no-deal scenario. We need clarity both with the European Commission and with businesses. We are working towards providing that clarity. Some of what we can and cannot do is now pretty clear but there are awkward issues that need to be dealt with arising from our obligations to avoid any infrastructure on or near the Border and, at the same time, to protect the Single Market. Unfortunately, we cannot and do not control any decisions in Northern Ireland and so checks in Larne are not in our gift. Ultimately, any protection for an all-island economy now or in the future can only be delivered with the co-operation of the British Government. I remind the House that in December 2017, long before the withdrawal agreement had been drafted or agreed, in return for the process moving on to the next stage,



the British Government gave a very clear commitment to Ireland that the default position in the absence of agreement in other areas would be regulatory alignment on this island to prevent border infrastructure. We should continue to request that commitment be honoured by the British Government. It was not contingent on a withdrawal agreement being agreed. Protecting an all-island economy now and into the future can only be done by taking a regulatory alignment approach to the problem. Anything else would be disruptive to trade. We must ensure that, in that context, we do everything we can to protect the peace process.

### **Gnó na Dála - Business of Dáil**

**Minister of State at the Department of the Taoiseach (Deputy Seán Kyne):** It is proposed, notwithstanding anything in Standing Orders, that questions for oral answer to the Taoiseach under Standing Order 38 will not be taken on Wednesday, 10 April 2019 and that the suspension of the sitting under Standing Order 25(1) will take place after Questions on Promised Legislation for one hour.

**An Ceann Comhairle:** Is that agreed? Agreed.

### **Ceisteanna ar Reachtaíocht a Gealladh - Questions on Promised Legislation**

**Deputy Dara Calleary:** Next Wednesday will see the sixth day of striking by paramedics and emergency medical technicians on the issue of union recognition. The Government's strategy seems to be to hope that they will go away. After six days on strike, they are proving they will not.

The Workplace Relations Commission, WRC, is an important part of our industrial relations machinery. The Government and the HSE as a Government agency cannot continue to ignore it. What kind of message does that send to other companies in respect of which the WRC is intervening? Will the Government take its head out of the sand and ask the HSE to engage with the WRC? These are exceptional professionals who give extraordinary service to the country. They are not doing this lightly. The Government cannot allow them to go on strike for a sixth day.

**Minister of State at the Department of Health (Deputy Jim Daly):** As the Deputy knows, we do not want to see the strike either and have no desire to see the dispute continue. The issue has been outlined in the House several times. Paramedics are represented by three different unions. If we included a fourth, there would be an issue of fragmentation in the representative role. We must try to work around that challenge. We take on board-----

**Deputy Dara Calleary:** What is the position on asking the WRC to engage?

**Deputy Jim Daly:** There would still be an issue of fragmentation. How many unions would represent one group of people? Would it be five or six? At an operational level, it would be difficult for the HSE to deal with four, five or potentially even six different unions that were trying

to negotiate for one group of people.

**Deputy Pearse Doherty:** I have just come from the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, which has been hearing from small businesses about the serious impact on them of the cost of insurance increases. We heard from Ms Linda Murray from Navan, who operates a soft play centre. She was very brave as she recounted her personal story. She broke down before the committee as she begged us to save the livelihoods of her staff and to give children somewhere to play. She has 25 days before her centre closes because no one in Ireland will insure soft play areas and the only company in Britain that does so has refused. A different company in Navan closed down just six weeks ago and another in Cork will close by the end of the month. Every soft play area across the country will face a similar fate.

The Government has dithered and dallied on this issue. All the while, the clock is ticking for the future of these centres and their staff. Will the Tánaiste ask the Minister for Finance to convene an emergency meeting with the insurance industry so as to ensure appropriate insurance cover is given to these vital services?

**The Tánaiste:** It is not true to say that we have been dilly-dallying on this issue. There are three Bills dealing with insurance and we have had some success in respect of motor insurance in particular on the back of recommendations from a report. We are also implementing recommendations on the cost of insurance for small business. The Deputy is right, though, in that there is a particular concern regarding children's play areas. I have attended a number in my town with my children and spoken to their owners. They are under enormous pressure and cannot stay in business if they must pay the increases. Some cannot even get insurance at any price. Besides passing the legislation, this is an issue that the Government needs to take action on in the short term. I will speak to the Minister directly about what the appropriate course of action is.

**Deputy Dara Calleary:** The Government has only had eight years.

**Deputy Brendan Howlin:** For the second time in six months, Irish soldiers have been let down by the Government. After a six-month tour of duty on a UN mission to the Golan Heights, 130 soldiers were due home today, as the Tánaiste knows. Once again, however, the Government has failed to secure all the necessary clearances for them to travel home to their families. This happened in October, and that was a disgrace. For it to happen a second time is beyond excusable.

**Deputy Mattie McGrath:** Hear, hear.

**Deputy Brendan Howlin:** Families naturally want to be reunited after a six-month absence. Children have travelled to Dublin today to meet their parents again and some family members have booked holidays for tomorrow and the day after. For the second time, all of those plans have been put away. What explanation can the Government give for a second monumental failure of this sort?

**Deputy Mattie McGrath:** Outrageous.

**Deputy Brendan Howlin:** After what happened in October, surely it should have ensured that nothing like it could happen again. When will these soldiers be repatriated?

**The Tánaiste:** I can understand the frustration of very many families, but it is important

that we deal with the facts. The circumstances are not the same as what happened in October. In this instance, the UN is responsible for organising the rotation flights to transfer the current United Nations Disengagement Observer Force, UNDOF, contingent back to Ireland. We have been advised by the UN that the Lebanese authorities have not granted landing clearance in Beirut for the aircraft scheduled to transport the 58th Infantry Group back home. The Minister of State, Deputy Kehoe, has been in direct contact with our ambassador to the UN, who is continuing to engage with UN officials at a very senior level to try to get this issue resolved quickly. Every effort is being made by Department of Defence officials, the Defence Forces and our diplomatically accredited staff at the UN to work to get the next UN flight.

To be clear, there was a paperwork problem in October where there was fault on our side. That is my understanding. That is not the case this time, however.

**An Ceann Comhairle:** Time is up, Tánaiste.

**The Tánaiste:** This was an issue between UN officials and their counterparts in Beirut.

**Deputy Brendan Howlin:** We should take responsibility for our own troops.

**The Tánaiste:** The Deputy knows, or at least he should, that that is not how these UN rotations work.

**Deputy Brendan Howlin:** Yes, it is.

**An Ceann Comhairle:** Tánaiste, please. The time is up. Will the Tánaiste conclude, please?

**The Tánaiste:** We will get them home as quickly as we can.

**Deputy Gino Kenny:** I wish to raise the proposed cannabis access programme. I understand that an importation licence has been granted to a company for medicinal cannabis products. That is welcome news, as this situation has been dragged out. I have two questions. When will the programme be set up? The programme's current guidelines are extremely restrictive and many people will not be given access. In November in Britain, medicinal cannabis was rescheduled to schedule 2, yet few people can get it. We do not want the same to happen in Ireland.

**Deputy Jim Daly:** We have received and circulated an update this week. I cannot give the Deputy an exact timeline for when the programme will be established, but I am happy to share the update from the HSE with him after Questions on Promised Legislation, if that is okay.

**Deputy Mattie McGrath:** I am glad that the Minister for Communications, Climate Action and Environment, Deputy Bruton, is present, as I wish to raise the issue of the Thurles post office. Last Friday, 2,000 people marched in Liberty Square where the GAA was founded all those years ago and mandated Deputies to get a meeting with the Minister. Will he meet a deputation of Deputies, who were elected by the people and have been asked to meet him regarding the movement of the Thurles post office out of Liberty Square, which would be detrimental to business people and townspeople alike? I want him to take political accountability. He claims he has no responsibility, yet Fine Gael's election candidate said on radio this morning that he had phoned her to say she could attend the meeting as well. He does not have responsibility one day and, the next, he does. He should take responsibility, be accountable to the people from Tipperary who elected us, intervene in this issue, and give an immediate date for a meeting with elected Members and the post office action committee under the stewardship of Councillor Jim

Ryan and others.

**An Ceann Comhairle:** Deputy Cahill on the same matter.

**Deputy Jackie Cahill:** I raised this issue last week. Given that the Project Ireland 2040 national planning framework is meant to rejuvenate town centres, it is extraordinary that a State agency is doing the exact opposite. Moving the post office will destroy retail business in the town centre, so the Minister standing idly by and letting this happen is not good enough. I support my colleague's call for an immediate meeting between the Minister, Oireachtas Members and members of the action committee. There was a huge crowd in Thurles last Friday. The town is completely united against this move. I would be grateful if the Minister could refrain from telling us that this is not his business. It is. This move is contrary to the Government's policy, and we want it to be reversed.

**Minister for Communications, Climate Action and Environment (Deputy Richard Bruton):** I assure this House and the people of Thurles that An Post has very ambitious plans. It is not seeking to close its post office service-----

**Deputy Mattie McGrath:** That is not what it says.

**Deputy Richard Bruton:** -----but to extend and improve its service. It has gone through a restructuring plan-----

**Deputy Mattie McGrath:** This is more fake news.

**Deputy Richard Bruton:** -----and it now has very ambitious programmes in place to develop the scale of its business. It will take on new business, including in the areas of financial services, parcel services and other new services that have not been available. Thurles will be one of the flagship services. The existing premises does not allow it to deliver those services.

**Deputy Mattie McGrath:** That is not true.

**Deputy Richard Bruton:** I am aware that Deputies and the community are concerned about this, but this is entirely an An Post decision.

**Deputy Mattie McGrath:** The Minister is like Pontius Pilate.

**Deputy Richard Bruton:** It has responsibility, and it has its own board. In light of what was expressed last week, I asked An Post to meet with public representatives so that the fears expressed could be dealt with.

**Deputy Mattie McGrath:** It will be a box-ticking exercise.

**Deputy Richard Bruton:** I hope that such a meeting will occur.

**Deputy Mattie McGrath:** The Minister did not answer the question. Will the Minister meet the representatives of Tipperary? We are elected by the people of Tipperary; he should meet us.

**Deputy Richard Bruton:** I have been categorically clear throughout this that the responsibility for this decision will be taken by An Post and its board. I have no power, contrary to what the Deputy requests-----

**Deputy Mattie McGrath:** Holy Thursday is almost upon us and the Minister is acting like Pontius Pilate.

**Deputy Richard Bruton:** -----to ask An Post to make those decisions-----

**Deputy Mattie McGrath:** He is passing the buck.

**Deputy Richard Bruton:** -----under a law that the Deputy participated in passing in this House. I am observing the law as the Oireachtas has set down. The Deputy is entitled to call State agencies to appear before committees. In this case, the State agency has indicated that it is willing to meet with public representatives to go through their concerns. That is the way the Oireachtas says this should happen, and that is how it will happen.

**Deputy Mattie McGrath:** The Minister is refusing to meet with us.

**Deputy Thomas P. Broughan:** Throughout the winter, and in recent months, we have heard many distressing stories from older people and other vulnerable patients who have had to spend 12 or more hours on seats and trolleys in Beaumont Hospital. Before the last election, myself and the Minister of State at the Department of Health, Deputy Finian McGrath, campaigned for a new cystic fibrosis, CF, unit and a new accident and emergency department at Beaumont Hospital; the current department has always been massively oversubscribed. I understood that in the programme for Government commitment was given to both of these projects. The CF unit has finally received planning permission, and €100,000 has been spent on the accident and emergency department. However, we are perhaps coming towards the end of this Government and there is still no sign of a new accident and emergency department at Beaumont. I am sure the Minister for Communications, Climate Action and Environment, Deputy Bruton, is very well aware of this. We really need a new university regional hospital in Fingal, never mind a new accident and emergency. What is happening? Why was the agreement that I assume the Minister of State, Deputy Finian McGrath, entered into about the accident and emergency not adhered to?

**Deputy Jim Daly:** We will have to wait until the confirmation of the capital plan, which will be completed in approximately one month, for an update on that matter.

**Deputy Eamon Ryan:** There has been an unusual level of strandings of sperm whales recently on the west coast of Ireland, and indeed a very large number of strandings of dolphins along the French coast. We must remember that we have to protect our oceans and understand what is happening in them. A major report from the universities of York and Oxford, backed up by Greenpeace, provided some good news today. It calls for 30% of the high seas to be declared as marine protected areas by 2030. Will the Government support such an approach in Irish waters in order to help protect marine life? What is its timescale for the implementation of the legislation promised which will introduce much larger marine protection areas? Is it ambitious enough to recognise that our oceans are in dire state? They are vital, not just for nature but also for carbon storage. Where does the Government stand on this legislation?

**The Tánaiste:** I have read about and noticed both the issues the Deputy has raised. He might have noticed that this Government, especially under the Minister for Agriculture, Food and the Marine, Deputy Creed, has been proactive on the issue of marine plastics in particular, creating an initiative with fishermen to take plastics out of the sea. We will also bring forward legislation around microbeads, on which the Deputy's colleague, Senator Grace O'Sullivan, and Deputy Sherlock, brought forward Bills in the Houses. We are building on that legislation.



I am a strong believer in marine protected areas. I am not going to give a commitment on a percentage of area on the floor of the House, but I believe there will be initiatives in this area from the Government.

**Deputy Niamh Smyth:** In the programme for Government, a clear commitment was given to preventing and reducing crime. However, the very opposite is evident in Cavan-Monaghan and in the Border region, where there has been an increase in criminality over recent weeks. In the last four months, we have seen a serious increase in organised crime, particularly robberies of ATMs. There have been robberies of ATMs in Ballybay, Kingscourt and Castleblayney. Will the Tánaiste, the Minister for Justice and Equality, Deputy Flanagan, and the Garda Commissioner direct extra resources, which are evidently badly needed in Cavan and Monaghan, to give the Garda the capacity to deal with these types of crime? These towns are besieged by these criminals, and the consequences for local businesses are dire.

**Deputy Declan Breathnach:** The Criminal Justice (Money Laundering and Terrorist Financing) Bill 2019 is before us. The scourge of crime and subversive activity, from drugs, ATM thefts, fuel laundering to tobacco and alcohol smuggling, has led to a loss of €25 million to my own community, as was announced last week. Illegal landfills are also a problem. When will the Minister, Deputy Flanagan, give a commitment that culpability and responsibility will rest with those who rent properties without inquiring as to what activities will take place in them? We have to deal with this issue in a forthright manner in this House, because the loss of revenue and income to businesses is frightening, not to mention the eventual recipients of this money.

**Minister for Justice and Equality(Deputy Charles Flanagan):** A number of Bills have been enacted, and the fifth EU directive in respect of money laundering is currently advancing through the House. The Deputies will be aware from previous debates on this issue that operational matters are the preserve of An Garda Síochána. Having said that, there is some concern about the spate of ATM robberies around the Border area. Deputy Smyth will be aware of a recent announcement by the Garda Commissioner to provide additional support in the Cavan-Monaghan area, including the armed support response. I am happy to convey the concerns of the Deputy to senior Garda management. I am happy to say that An Garda Síochána is operating with unprecedented and record investment from the Government, amounting to €1.7 billion, much of which is being expended in the Border areas of Cavan, Monaghan and Louth.

**Deputy Peter Fitzpatrick:** Some 130 members of the Defence Forces are unable to return home today as scheduled after a tour of duty in the Golan Heights. They were scheduled to fly from Syria to Beirut and then on to Dublin. This is an absolute disgrace. I am a former member of the 27th Battalion, and it seems to me that Army personnel are being treated as second class citizens.

**Deputy Mattie McGrath:** Hear, hear.

**Deputy Peter Fitzpatrick:** Morale is at an all-time low. Numbers are at an all-time low. The Tánaiste is a former Minister of Defence, and I expect a lot more from this Government. Last Tuesday I read an article in a newspaper by an ex-officer of the 27th Battalion. The officer said that nobody joins the Army to get rich, but neither do they join the Army to qualify for family income support. Please stop treating these people like second-class citizens. They can strike, but they do not want to strike. An Garda Síochána went on strike in the last number of years. Are we going to force the Irish Army to go out on strike? Members of the Army sacrifice their time, as do their families.

It is about time the Government sorted out the Army once and for all.

**The Tánaiste:** The Deputy has raised two issues. With regard to bringing home the contingent from the Golan Heights there was an issue between the UN and the Lebanese authorities that resulted in their plane having to be rescheduled because permission to land was not given because of a miscommunication somewhere. That is as much as I can say about it. We are looking to get that fixed quickly so people can come home to their families.

On the second issue, we are considering how we can improve the remuneration of Defence Forces personnel. We have asked the Public Sector Pay Commission to look specifically at the Defence Forces so that we can do so without undermining the broader pay agreements we have. We hope to be able to get those recommendations shortly.

**Deputy John Brady:** Yesterday, Action Health Enterprises, which is engaged by the HSE to build primary care centres in Arklow and Greystones in County Wicklow, made the announcement it is not going ahead with those projects. In January, it had been granted full planning permission after a number of delays to go ahead with the Arklow primary health care centre. If anything, it gives us another reason that public private partnerships are not the best route to develop schemes such as this. It has caused massive concern in Arklow and Greystones about the future of the primary health care centre in the towns. Will the Tánaiste give a commitment that the schemes will proceed as planned, that there will be no further delays and that in no way is this linked to cuts or scalebacks in terms of capital spend linked to the overrun on the national children's hospital?

*I o'clock*

**Deputy Jim Daly:** One confirmation I can give the Deputy is there is no correlation whatsoever with anything happening with the children's hospital. This is not an issue with capital. As the Deputy will appreciate, I do not have with me today the details on something that happened yesterday but I will get an update on it. There are 22 primary care centres being delivered nationwide this year and they are a very positive development. We are delighted to see these investments in Wicklow as well as throughout the rest of the country. I will get the details for the Deputy and I will check out and come back to the Deputy on whether a company is supposed to have withdrawn.

**Deputy Éamon Ó Cuív:** Bunaíodh Oifig an Choimisinéara Teanga faoi Acht na dTeanga-cha Oifigiúla, 2003. Ina thuarascáil bhliantúil inné, dúirt an Coimisinéir go bhfuil an dlí á shárú ag RTÉ maidir le craoladh trí Ghaeilge. Dúirt sé go bhfuil séanáir áirithe nach bhfuil craoladh ar bith á dhéanamh iontu i nGaeilge. An féidir leis an Aire Stáit a rá liom céard atá i gceist ag an Rialtas a dhéanamh le cinntiú go gcloíonn RTÉ leis an Acht Craolacháin, 2009 i leith na Gaeilge?

**Minister of State at the Department of Arts, Heritage and the Gaeltacht (Deputy Seán Kyne):** Mar is eol don Teachta, ghlac an Rialtas Dé Máirt le tuarascáil bhliantúil Oifig an Choimisinéara Teanga. B'fhéidir go mbeidh an tAire Cumarsáide, Gníomhaithe ar son na hAeráide agus Comhshaoil, an Teachta Bruton, in ann an cheist maidir le RTÉ a fhreagairt. Tá an tAire sin freagrach as an gceartaíocht náisiúnta.

**Deputy Richard Bruton:** I thank the Deputy for the question. Níl an Ghaeilge go líofa agam, so I will not attempt to answer in Irish. I am very much aware the Irish Language Commissioner has reported that RTÉ is failing to meet its obligations as set out in the Act. Clearly the board of RTÉ and RTÉ need to consider this finding and respond adequately in respect of

Act. The Irish Language Commissioner has indicated RTÉ is to report back to him and that he will take the steps available to him under the law. These include reporting back to the Oireachtas. I will be tracking this closely, I assure the Deputy.

**Deputy Michael Collins:** On page 47 of the programme for Government ambitious tourism policy goals by 2025 are set. We have a major tourism threat in west Cork and it is an issue I raised with the Taoiseach two weeks ago. There are major concerns in Kinsale about a proposed mussel farm off Kinsale harbour, which will cover a vast area of sea and will lead to huge consequences for the Kinsale community. I know the Tánaiste cannot comment on live planning issues while they are ongoing. Last Sunday, I attended a public meeting in Union Hall with local inshore fisherman, local tourism operators and local people in opposition to another oyster farm proposed by a French company that would cover an area from Union Hall to Castlehaven, which would have huge consequences locally. It is widely known that planning regulations in other European countries are now very strict, thus in the past month companies have made three applications in west Cork as Ireland's planning guidelines on oyster and mussel farms are far too lax. To save the livelihoods of inshore fisherman, tourism operators and local people in Union Hall, Castlehaven and Kinsale, will the Government work with the Department of Agriculture, Food and the Marine to put in place stricter planning guidelines for these oyster and mussel farms?

**Minister for Agriculture, Food and the Marine (Deputy Michael Creed):** The Deputy is right that I cannot comment on current planning applications but I am aware of the issues to which he has referred.

**Deputy Michael Collins:** I did not ask the Minister to comment on that. I asked him whether he will work to put in place stricter guidelines as other European countries are doing.

**Deputy Michael Creed:** I have no plans to change the guidelines. I will consider all issues relating to any individual planning application in due course.

**Deputy Robert Troy:** We all know Irish Water was established by a previous Government, and we were told the primary reason for its establishment was so it could borrow off-balance-sheet to invest in critical infrastructure. Unfortunately, this is not happening. A number of weeks ago, I raised the high number of water outages in the past 12 months, particularly with regard to Athlone. This morning, there were water outages throughout the town of Athlone. It is a huge inconvenience for businesses and residents. When will critical investment be made by Irish Water in water infrastructure in Athlone? What contingency measures does Irish Water have in place to ensure businesses are not severely discommoded as a result of this?

**Minister for Housing, Planning and Local Government (Deputy Eoghan Murphy):** I thank the Deputy for the question. It is somewhat hypocritical questioning how we fund Irish Water and have security of funding for Irish Water, given that certain Members of the House and certain parties in the House canvassed to remove a very important domestic funding stream for Irish Water. That question has been settled and in settling the question the Government made a serious commitment to funding from the central Exchequer of more than €8 billion over the next ten years for strategic water infrastructure for Irish Water. This investment is being made every year. Yesterday, Irish Water gave a presentation to me on its plans to make sure we have sufficient capacity in the system for the next ten years given the challenges we face. As a result of this, we see water outages, unfortunately, in some parts of the country. We also have to increase capacity for the treatment of water. We know coming off the back of last summer

the serious drought we had and the impact it had on water courses and water reserves. A huge amount of investment is happening and I can get details on the specific problems the Deputy has raised to him later today.

**Deputy Gerry Adams:** The Traveller accommodation expert group was set up on foot of the programme for Government commitment. The European Committee of Social Rights has found this State is in violation of the European Social Charter on five grounds by failing to provide adequate Traveller accommodation. When will the expert group publish its report? The Tánaiste may also recall that immediately after the dreadful fire at Carrickmines in which ten people, including children, were killed, he took a meeting with me and promised the Government would give the family the support it required. Since then, I have been fighting an unsuccessful battle with a series of Ministers over the lack of support for the two surviving sons of Thomas and Sylvia Connors, who need help to get back and forth to school. Will the Tánaiste agree to get this sorted out?

**Minister of State at the Department of Housing, Planning and Local Government (Deputy Damien English):** We hope to have the report towards the end of this month or certainly early May. This is the scheduled time to receive the report. We will then discuss it at committee.

**Deputy Gerry Adams:** On the other question, will the Tánaiste give a commitment?

**The Tánaiste:** I will come back to the Deputy on that.

**Deputy Mary Butler:** On page 46 of the programme for Government there is a commitment to prepare properly regional airports for a future in which they can operate on a stand-alone commercial basis. As the Tánaiste is aware, there has not been a commercial flight from Waterford Airport since 2016. The search and rescue service covering the south-east area still operates from the airport. There is a submission before the Government to extend and upgrade the runway to allow the airport to compete competitively. The submission requests €5 million from the Government, to be matched by €5 million funding from business investors and €2 million from local authorities in the south east. Is there any update on the approval of this request? The airport has the potential to bring a much-needed economic boost to the region through tourism, business and cargo flights.

**Minister of State at the Department of Transport, Tourism and Sport (Deputy Brendan Griffin):** This issue is currently with the Department. I will ask the office of the Minister, Deputy Ross, to respond immediately to the Deputy with an update on the matter.

**Deputy Jan O'Sullivan:** The Central Bank has indicated that it does not have any difficulty with the Rebuilding Ireland home loan scheme. Will the Government now allocate funding to allow local authorities to reactivate and process applications under the scheme? Will the same interest rate as applied previously continue to apply?

**The Tánaiste:** My understanding is that three Departments are to meet the Central Bank tomorrow on this issue such that we have a basis for making a decision. People can still apply for the home loan scheme.

**Deputy Brendan Howlin:** The applications are not being processed.

**The Tánaiste:** The Government is anxious to quickly provide clarity on the funding of the

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scheme. As stated, an important meeting on this issue will take place tomorrow between three Departments, including the Department of Housing, Planning and Local Government, obviously, and the Central Bank.

**An Ceann Comhairle:** That concludes questions on promised legislation. The four Deputies who have not been reached will be given priority on Tuesday.

### **Residential Tenancies (Prevention of Family Homelessness) Bill 2018: Second Stage (Resumed) [Private Members]**

**An Ceann Comhairle:** We must now deal with a postponed division relating to the Residential Tenancies (Prevention of Family Homelessness) Bill 2018, taken on Thursday, 28 March 2019. On the question, “That the Bill be now read a Second Time”, a division was claimed and, in accordance with Standing Order 70(2), that division must be taken now.

Question again put: “That the Bill be now read a second time.”

<i>The Dáil divided: Tá, 43; Níl, 81; Staon, 0.</i>		
<i>Tá</i>	<i>Níl</i>	<i>Staon</i>
<i>Adams, Gerry.</i>	<i>Aylward, Bobby.</i>	
<i>Boyd Barrett, Richard.</i>	<i>Bailey, Maria.</i>	
<i>Brady, John.</i>	<i>Barrett, Seán.</i>	
<i>Broughan, Thomas P.</i>	<i>Breathnach, Declan.</i>	
<i>Buckley, Pat.</i>	<i>Breen, Pat.</i>	
<i>Burton, Joan.</i>	<i>Brophy, Colm.</i>	
<i>Collins, Michael.</i>	<i>Bruton, Richard.</i>	
<i>Connolly, Catherine.</i>	<i>Burke, Peter.</i>	
<i>Coppinger, Ruth.</i>	<i>Butler, Mary.</i>	
<i>Cullinane, David.</i>	<i>Byrne, Catherine.</i>	
<i>Doherty, Pearse.</i>	<i>Byrne, Thomas.</i>	
<i>Ellis, Dessie.</i>	<i>Cahill, Jackie.</i>	
<i>Ferris, Martin.</i>	<i>Calleary, Dara.</i>	
<i>Fitzpatrick, Peter.</i>	<i>Canney, Seán.</i>	
<i>Harty, Michael.</i>	<i>Carey, Joe.</i>	
<i>Healy, Seamus.</i>	<i>Casey, Pat.</i>	
<i>Howlin, Brendan.</i>	<i>Cassells, Shane.</i>	
<i>Kelly, Alan.</i>	<i>Chambers, Jack.</i>	
<i>Kenny, Gino.</i>	<i>Collins, Niall.</i>	
<i>Kenny, Martin.</i>	<i>Corcoran Kennedy, Marcella.</i>	
<i>Martin, Catherine.</i>	<i>Coveney, Simon.</i>	
<i>McDonald, Mary Lou.</i>	<i>Cowen, Barry.</i>	
<i>McGrath, Mattie.</i>	<i>Creed, Michael.</i>	



*Dáil Éireann*

<i>Mitchell, Denise.</i>	<i>Curran, John.</i>	
<i>Munster, Imelda.</i>	<i>D'Arcy, Michael.</i>	
<i>Murphy, Catherine.</i>	<i>Daly, Jim.</i>	
<i>Murphy, Paul.</i>	<i>Deasy, John.</i>	
<i>O'Brien, Jonathan.</i>	<i>Deering, Pat.</i>	
<i>O'Reilly, Louise.</i>	<i>Doherty, Regina.</i>	
<i>O'Sullivan, Jan.</i>	<i>Donnelly, Stephen.</i>	
<i>Ó Broin, Eoin.</i>	<i>Donohoe, Paschal.</i>	
<i>Ó Caoláin, Caoimhghín.</i>	<i>Dooley, Timmy.</i>	
<i>Ó Snodaigh, Aengus.</i>	<i>Doyle, Andrew.</i>	
<i>Penrose, Willie.</i>	<i>Durkan, Bernard J.</i>	
<i>Pringle, Thomas.</i>	<i>English, Damien.</i>	
<i>Quinlivan, Maurice.</i>	<i>Farrell, Alan.</i>	
<i>Ryan, Brendan.</i>	<i>Fitzgerald, Frances.</i>	
<i>Ryan, Eamon.</i>	<i>Flanagan, Charles.</i>	
<i>Sherlock, Sean.</i>	<i>Gallagher, Pat The Cope.</i>	
<i>Shortall, Róisín.</i>	<i>Griffin, Brendan.</i>	
<i>Smith, Bríd.</i>	<i>Harris, Simon.</i>	
<i>Stanley, Brian.</i>	<i>Haughey, Seán.</i>	
<i>Tóibín, Peadar.</i>	<i>Heydon, Martin.</i>	
	<i>Humphreys, Heather.</i>	
	<i>Kehoe, Paul.</i>	
	<i>Kyne, Seán.</i>	
	<i>Lahart, John.</i>	
	<i>Lawless, James.</i>	
	<i>Lowry, Michael.</i>	
	<i>Madigan, Josepha.</i>	
	<i>McConalogue, Charlie.</i>	
	<i>McEntee, Helen.</i>	
	<i>McGrath, Finian.</i>	
	<i>McGrath, Michael.</i>	
	<i>McGuinness, John.</i>	
	<i>McHugh, Joe.</i>	
	<i>McLoughlin, Tony.</i>	
	<i>Mitchell O'Connor, Mary.</i>	
	<i>Moran, Kevin Boxer.</i>	
	<i>Moynihan, Aindrias.</i>	
	<i>Moynihan, Michael.</i>	
	<i>Murphy O'Mahony, Margaret.</i>	
	<i>Murphy, Eoghan.</i>	
	<i>Murphy, Eugene.</i>	
	<i>Naughten, Denis.</i>	

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	<i>Naughton, Hildegarde.</i>	
	<i>O'Brien, Darragh.</i>	
	<i>O'Callaghan, Jim.</i>	
	<i>O'Connell, Kate.</i>	
	<i>O'Dea, Willie.</i>	
	<i>O'Dowd, Fergus.</i>	
	<i>O'Keeffe, Kevin.</i>	
	<i>O'Loughlin, Fiona.</i>	
	<i>O'Rourke, Frank.</i>	
	<i>Phelan, John Paul.</i>	
	<i>Ring, Michael.</i>	
	<i>Rock, Noel.</i>	
	<i>Smith, Brendan.</i>	
	<i>Stanton, David.</i>	
	<i>Troy, Robert.</i>	
	<i>Zappone, Katherine.</i>	

Tellers: Tá, Deputies Aengus Ó Snodaigh and Denise Mitchell; Níl, Deputies Seán Kyne and Tony McLoughlin.

Question declared lost.

*Sitting suspended at 1.25 p.m. and resumed at 2.05 p.m.*

### **Ábhair Shaincheisteanna Tráthúla - Topical Issue Matters**

**An Leas-Cheann Comhairle:** I wish to advise the House of the following matters in respect of which notice has been given under Standing Order 29A and the name of the Member in each case: (1) Deputy John McGuinness - the need for the Minister for Children and Youth Affairs to address the current crisis in not-for-profit services throughout the country; (2) Deputy Timmy Dooley - the need for the Minister for Transport, Tourism and Sport to outline the reasons for the proposed changes to the contract with Clare Accessible Transport; (3) Deputies Eoin Ó Broin and John Curran - the lack of up to 20 junior infant school places in Rathcoole in September 2019 and the future provision of primary school capacity in Rathcoole; (4) Deputies Kate O'Connell and Bernard J. Durkan - the need to discuss a housing issue in south Dublin; (5) Deputy Martin Kenny - the appointment of a school-age psychologist to the child and adolescent mental health service in Sligo; (6) Deputy Caoimhghín Ó Caoláin - the need for the Minister for Justice and Equality to outline in broad terms the criteria that apply to the deployment of members of Garda Síochána emergency response units, to set out the operational guidelines that apply when they have been deployed and to make a statement on the matter; (7) Deputy Mattie McGrath - the relocation of Thurles post office; (8) Deputy Clare Daly - the need to discuss the possible divestment of schools in north County Dublin; (9) Deputy Michael Moynihan - the roll-out of broadband in north Cork; (10) Deputy Maureen O'Sullivan - the need to address the difficulties being faced by private and voluntary nursing homes; and (11) Deputy Louise

O'Reilly - the need to discuss the situation at University Hospital Limerick.

The matters raised by Deputies John McGuinness; Kate O'Connell and Bernard Durkan; Maureen O'Sullivan; and Eoin Ó Broin and John Curran have been selected for discussion.

### **Fibromyalgia: Statements**

**Minister of State at the Department of Health (Deputy Catherine Byrne):** I welcome the opportunity to speak on the issue of fibromyalgia. I would like to begin by acknowledging the seriousness of fibromyalgia and the personal challenges that people with this condition encounter in their daily lives. There are many symptoms of fibromyalgia. They tend to vary from person to person. The symptoms can come and go over a period of time. The main symptoms of fibromyalgia include pain, extreme sensitivity, stiffness, poor-quality sleep, cognitive problems, headaches, irritable bowel syndrome and depression-like symptoms. The exact prevalence of fibromyalgia in Ireland is not known, but it is estimated to affect approximately 2% of the population and nearly one in 20 people across the globe. Anyone can develop fibromyalgia, although the condition typically affects more women than men. While in most cases fibromyalgia occurs between 30 and 60 years of age, it can develop in people of any age, including children and the elderly.

The exact cause of fibromyalgia is unknown, but it most likely involves a variety of risk factors working together which can either make fibromyalgia more likely or act as a trigger for the condition to emerge. These include physical trauma, psychological trauma, a viral infection or depressive illnesses. Research into people with fibromyalgia has identified several physiological changes in the way their body functions. These include disturbed pain messages, low levels of hormones and sleep problems. What causes these changes in the first place and how exactly this causes fibromyalgia is still not clear.

Fibromyalgia is a difficult condition to diagnose as there is no specific test for it while its symptoms can replicate those associated with other conditions. There is no cure for this condition as its cause is unknown. A GP will diagnose fibromyalgia based on having a typical mix of symptoms and ruling out any other conditions that could be causing these. Once all other conditions have been considered or ruled out, there are two criteria which can be used to confirm a diagnosis of fibromyalgia. If symptoms fit within these criteria, it is likely a person will be diagnosed with fibromyalgia.

As fibromyalgia has several different symptoms, no single treatment will work for all symptoms and for all patients. It is, therefore, likely the person will need to try a variety of treatments to find the best approach that suits them. This will normally be a combination of medication and lifestyle changes. As well as medications that may involve pain medications and antidepressants, other treatment options can be used to help cope with the symptoms of fibromyalgia. These include exercise, cognitive behavioural therapy, psychotherapy, relaxation techniques, physiotherapy and psychological support. For most people, the symptoms of fibromyalgia are permanent, although they can vary in severity and frequency.

The overarching principle governing the planning and delivery of health services and supports for individuals with conditions such as fibromyalgia is that they should be integrated, as

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far as possible, with services and supports on a whole-of-population basis. Given the complex and diverse symptoms associated with fibromyalgia, treatment involves a combination of medicines, therapies, counselling and lifestyle changes. In line with the vision set out in Sláintecare, the Government's aim is to ensure all citizens, including those suffering from fibromyalgia, can be offered the right care in the right place at the right time. Those with fibromyalgia should be supported in their local community wherever possible.

To facilitate this, the Government is committed to the expansion of primary care. This is reflected not just in the roll-out of primary care centres across the country but also in the increased funding provided for primary care services. An additional €50 million has been allocated to primary care in 2019, an increase of 6.1% on the 2018 budget. This additional resourcing will enable a range of measures to be advanced, including the recruitment of additional therapy staff such as physiotherapists and occupational therapists who can play an important role in supporting those with fibromyalgia.

I acknowledge the concerns raised by those with fibromyalgia that their expenditure on the medicines they need may not be covered by the public health service. In particular, I know there have been calls to include fibromyalgia as a specified condition under the long-term illness scheme. These requests have been considered carefully but there are no plans to extend the scheme at this time. However, it is proposed the scheme will be included as part of a review of the basis for existing hospital and medication charges to be carried out under commitments given in the Sláintecare action plan. While I understand this news will be disappointing to some, it should be remembered that there are several arrangements which provide patients with protection from excessive medicine costs. Those with fibromyalgia have benefitted from Government action in this area alongside others with long-term conditions.

The Government has lived up to its commitment in A Programme for a Partnership Government to reduce medicine costs for individuals and families. Those suffering financial hardship may be eligible for a medical card. In accordance with our overall eligibility framework, this decision is not based on a particular illness, but rather on the overall financial situation of an individual and family. Legislation allows for the HSE to exercise discretion in awarding medical cards in certain circumstances where an applicant exceeds income thresholds. The total number of medical cards issued as of 1 February 2019 was over 1.5 million. The Government has also ensured thousands of families, whose income levels are just above the thresholds for receiving a medical card, can avail of free GP visits by providing them with a GP-visit card. Over 500,000 people now hold such a card. The revised income thresholds which came into effect from 1 April will ensure more people will benefit from this support.

The Government has also significantly reduced the cost of medicines by reducing the annual required co-payment under the drugs payment scheme and reducing prescription charges for medical card holders. The maximum monthly amount that anyone is required to pay for their medicines under the drugs payment scheme is being reduced this month from €134 to €124. A similar €10 reduction was also applied in 2018. This means the annual financial burden on the average person who spends more than €124 a month on drugs has been reduced by €240 in less than two years.

We have also ensured prescription charges have been reduced in each of the past three years. The culmination of these reductions means that since 2017, co-payments in the community drug schemes have been reduced by 40% for over 70s medical card holders, 20% for medical card holders under 70 and 14% for drug payment scheme members.

The Government is determined to extend free healthcare to more people and reduce costs to others. However, it is doing this in line with the Sláintecare goal of universal access rather than targeting particular illnesses and conditions. I would, therefore, urge all those with fibromyalgia to check their eligibility for the GP-visit card at *medicalcard.ie* and apply for the drugs payment scheme at their local health office or through the *mydps.ie* website. It is my sincere hope that as many people as possible with fibromyalgia benefit from these measures.

Disability services provided by the HSE focus on enabling people with disabilities their full potential, living ordinary lives in ordinary places as independently as possible. The overarching principle governing the planning and delivery of services and supports for adults and children with disabilities is one of mainstreaming and inclusion. People with disabilities should be integrated, as much as possible, with services and supports for the rest of the population. The Government's agenda in this regard is set out in the current national disability inclusion strategy which was launched by the Minister of State, Deputy Finian McGrath, in July 2017. The strategy takes a whole-of-Government approach to improving the lives of people with disabilities, as well as aiming to create the best possible opportunities for people with disabilities to fulfil their potential.

Our current health policy promotes a non-condition specific approach to disability service provision, based on the needs of the individual rather than the provision of services based on a specific disability diagnosis. I appreciate that for people living with this condition, there are many challenges. However, measures and supports are available. I am interested in hearing the view of Deputies on this matter.

**Deputy Marc MacSharry:** I wish to share time with Deputy Eugene Murphy.

**An Leas-Cheann Comhairle:** Is that agreed? Agreed.

**Deputy Marc MacSharry:** I thank the Minister of State for her contribution. I welcome people directly affected by fibromyalgia to the Gallery. I thank them for taking the time to listen to the debate.

While I do not doubt the Minister of State's personal commitment to trying to help people with fibromyalgia, the speech's contents were more of the same lipservice, telling everybody all that is being done for them. That does little to dealing with the symptoms they have. We need to express more than hope when we are in executive positions as Ministers. We need to introduce tangible measures identified by physicians across the world, as well as those identified by the patient experience here.

I know from speaking to patients who suffer from illnesses, such as fibromyalgia and Lyme's disease, although I am not making a direct link between the two, they find it insulting when anti-depressants, psychology and psychiatry are mentioned, the implication being that it is all in their mind. People who experience the very real symptoms of these conditions deserve a little more than a prescription for anti-depressants.

I wish to read into the record an account of a friend of mine who suffers from fibromyalgia. It reads:

Fibromyalgia means that I cannot live the normal life of a 26 year old. I am in receipt of a disability allowance due to my condition worsening so much as to prevent me from completing my degree in college, maintaining a job and on bad days it prevents me from



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functioning daily tasks such as have a shower, brush and dry my hair, make meals and sometimes make a cup of tea as the tea cup falls from my grip due to nerve pain.

I have tested countless prescriptions such as opiates, anti-seizure medication, anti-depressants, benzodiazepines, non-steroidal anti-inflammatory drugs etc. From a very young age my consultants recommended that I have steroid injections, epidurals, rehabilitation surgeries. I have had two surgeries in the space of six years for my pain, the first at the age of 16. These surgeries were both emergencies due to the severity of my pain.

I have also had two rounds of rehabilitation within four years. I am very aware of what these toxic medications are doing to my body which plays on my mind daily. Devastatingly, my options with pharmaceutical medications are rapidly running out as they are slowly becoming ineffective. My consultant has stated that I have only two options left with pharmaceutical drugs until my options run out. Hearing this is a huge shock, and even more so to a 26 year old who has her whole life ahead of her. It affects my mental health and causes severe anxiety and low moods for which I am also on medication since my diagnosis.

In regards to new treatments I am depending on medical cannabis to become available in Ireland for fibromyalgia sufferers due to my pharmaceutical drug options running out. I believe that if pain consultant specialists in Ireland were given necessary training and guidelines to treat and monitor, they would be capable to assess the effectiveness of medicinal cannabis treatment for chronic pain sufferers. The HBRA's reasons for not supporting the inclusion of chronic pain is that "chronic pain is common, and the potential use of cannabis-based medicines by a large number of patients, raises concerns about misuse and diversion into the wider community".

The very high prevalence of chronic pain in Ireland is all the more reason to make new treatments such as cannabinoids with proven efficiency and fewer side-effects available to patients as soon as possible. Also the concerns about misuse and diversion into the wider community, while understandable, are not unique to cannabinoids. They also apply to opioids which have been prescribed for pain for decades. It is a fact that cannabis has significantly less abuse potential than many opiates and significantly less risk of overdose.

My consultant wants to give me the opportunity to try medical cannabis treatment with THC, the pain reliever part of cannabis. CBD will not be enough for me. The Government needs to set up guidelines for him to treat and monitor me safely through blood tests etc. That way I will be using THC safely. The compassionate access programme is not one bit compassionate as it is very restrictive and costly for patients having to travel to get their prescription for THC in the Netherlands. I would not be able to afford it, let alone that my health would not allow me to travel so often. It would also add to my stress levels which will in turn cause more flare ups for me too.

It is time that we stopped commentating on this matter and make medicinal cannabis available. It is available in the UK, in Northern Ireland, the Netherlands and other countries. Why do we have to bring up the rear in terms of proper treatments?

**Deputy Eugene Murphy:** In 1992 fibromyalgia was formally recognised and included within the World Health Organization international classification of diseases. In July 2017 after the successful efforts of the Patient and Client Council of Northern Ireland the condition was declared a long-term disability in Northern Ireland and on 15 January 2019 recognition of

fibromyalgia as a disability in the rest of the UK was debated in Westminster. Fibromyalgia is part of the wider spectrum of chronic pain conditions. It can be described as nerve dysfunction resulting from amplified processing of pain and sensory information. There is no cure for fibromyalgia. It is a lasting, life-long condition. Patients experience many different symptoms. The main symptom is widespread chronic pain which is very severe in many cases. Patients also experience severe debilitating fatigue, which is not to be confused with being tired but can be compared to what can be experienced during a severe flu-like illness. It is not relieved by sleep.

Another symptom is what is commonly known as fibrofog, which describes cognitive issues such as memory problems, short attention spans, difficulty with focus and concentration, problems with word finding and slow speech. Patients often suffer from migraines, restless leg syndrome, irritable bowel syndrome, being unable to regulate their body temperature, hypersensitivity to sound, smell, light and other sensory information. Depression and anxiety often result as the condition can be very difficult to live with. It is not known how many people in Ireland suffer from fibromyalgia as there is no register. We need this to be resolved as soon as possible. The establishment of a register is of utmost importance, and financial assistance from the State is needed. Globally an estimated one in 20 people is affected, although numbers are likely to be higher. Fibromyalgia is an invisible disability which often makes it extremely difficult for patients to experience recognition by their families, work colleagues, neighbours and even their spouses and partners. Many patients are unable to work and depend on financial support, but they face enormous difficulties when applying for social welfare benefits. This must urgently be addressed as it causes enormous stress which is detrimental to the condition, causing a vicious cycle.

Fibromyalgia is a life-long chronic debilitating condition rendering many people unable to work thus rendering them financially dependent on the support of their families. It is neither recognised as a disability in Ireland nor is it recognised on the long-term illness list. The long-term illness list has not been changed in the past 40 years. Fibromyalgia emerged as a condition which absolutely deserves to be placed on this list. It is an extreme, demanding, expensive illness, and self-management including multi-disciplinary support is expected from the individual patient. I cannot understand how patients are expected to fund these treatments advised by the HSE itself.

On 11 July 2012 a group of fibromyalgia representatives briefed the Joint Committee on Health on fibromyalgia. On 24 January 2018 fibromyalgia advocates held a presentation in the AV room in Leinster House. Concerns may have been taken on board but nothing has happened and nothing has changed. Until recently the Department of Employment Affairs and Social Protection had protocol 6 accessible online, but this protocol has since disappeared. It discussed chronic pain and fibromyalgia in detail over 63 pages. One part mentioned fibromyalgia. It said that fibromyalgia is a chronic condition. Although symptoms may vary in intensity the condition is unlikely to completely resolve.

The Disability Act 2005 defines disability as “a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment”. Fibromyalgia can render patients incapable of work, leading a normal social life and caring for their families. Severely affected patients may be unable to leave their house to walk, to shop or to drive, let alone to work to enable them to gain financial independence. These patients fulfil the definition in the Disability Act 2005 in every sense.

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I ask for the Minister of State's support to have fibromyalgia classified as a disability. I have never had any doubt about her sincerity, as she is a very sincere person, but her Department and her senior Minister need to take this matter on board. There is a certain habit of mocking this situation which we must get out of. We must understand that many people suffer from this illness.

**Deputy Caoimhghín Ó Caoláin:** I express my thanks to Deputy Gino Kenny for bringing forward this issue for address today. I was pleased to sign Deputy Kenny's motion on fibromyalgia on behalf of Sinn Féin.

Ms Rachel Lynch from FibroIreland and Ms Joan Byrne from ME Advocates Ireland have reached out to me personally and to my party over a long number of years and we have always been more than willing to listen to their issues and try to advance what they seek to achieve. I thank them for their perseverance in advocating on behalf of all those contending with fibromyalgia in their lives.

On the HSE website, fibromyalgia is described as a long-term condition that causes pain throughout the body. In 2008, a declaration was passed in the European Parliament that recognised fibromyalgia as a disease. The World Health Organization had, years previously, also recognised fibromyalgia as a disease.

Fibromyalgia is an invisible condition. It does not show up in scans or blood tests, yet clinicians recognise that it is chronic, leading to muscle and joint pain, sleep disorder, mobility and lifestyle impact. Many sufferers go undiagnosed. Despite recognition by medical professionals of the existence of the condition, there remains, crucially, little recognition of it by the Health Service Executive. The effect of this is that fibromyalgia is excluded from the long-term illness list and without a pathway of care towards a treatment when it is recognised that a person is suffering from the condition.

Without proper recognition of fibromyalgia, many patients remain locked out of the social welfare system. On top of this, even after accessing basic social welfare provision, many remain out of reach of additional benefits, such as free travel and a medical card, to which those who have a recognised long-term illness are automatically entitled.

As Deputy Gino Kenny's motion states, it is estimated that between 90,000 and 180,000 people suffer from fibromyalgia in Ireland. Despite this significant number, there are no nationwide or specialist treatments available for patients. It is vitally important to highlight that many of those suffering with the condition are women, with a ratio of six to one on the basis of female versus male assessment.

To try to address this situation, it is essential that the Health Service Executive and other State agencies sit down together and decide, once and for all, on the basis of the clinical evidence available, if they are willing to officially recognise fibromyalgia as a disease. I make it very clear that there is only one answer that can be reached in such an undertaking. If this is to be the case, an adequate pathway of care, a treatment programme, an awareness campaign and associated funding must be put in place, including specialist clinical teams to treat the condition. This could also lead to the commencement of the collection of data, establishing best practices and expanding knowledge of the condition which will lead to better approaches and better treatments in time. Training and development for medical professionals is also crucial to aiding earliest recognition and diagnosis and the consequent treatments of patients.

One of the asks in the motion prepared by Deputy Gino Kenny and colleagues is that patients be facilitated in accessing medicinal cannabis as a treatment for this condition. Sinn Féin is certainly not opposed to this request, especially where there is clinical evidence to support the request and a prescription from a consultant or suitably qualified medical professional is available. It is something that simply should be done.

I thank Deputy Gino Kenny for bringing this issue forward. I also thank all those who are advocating for recognition of fibromyalgia and the changes in prescription practices that must come about. We in Sinn Féin remain open to assisting in any way we can steps towards recognition of and relief from this cruel and life-debilitating condition.

**An Leas-Cheann Comhairle:** Bogaimid ar aghaidh anois chuig an Teachta Gino Kenny, who, I understand, is sharing time with Deputy Paul Murphy.

**Deputy Gino Kenny:** I welcome everybody in the Public Gallery to this important debate. I thank the Business Committee for agreeing to take statements on fibromyalgia, which is an important subject. I presume this discussion has been arranged on foot of the motion on the issue I submitted last week. I am disappointed with the number of Deputies who have turned up thus far. Many people are watching and listening to this debate and, more important, waiting to find out what the Government will do to address the issue. It means a great deal to many people who have this condition and they want to know what we, as legislators, will do.

For far too long, there has been an unhealthy silence on conditions such as fibromyalgia and myalgic encephalomyelitis, ME, which are all too invisible in the case of those who live with them. Although this is a cliché, people look perfectly healthy but inside they have to suffer from the chronic pain and fatigue that comes with fibromyalgia. While this debate has moved on in recent years, people who suffered from fibromyalgia, particularly women who are more often affected than men, were written off medically as hypochondriacs or, worse, people suffering from psychosomatic disorders. This was an insult to the sufferer and the condition.

I thank Ms Rachel Lynch and Ms Ursula Hakman from FibroIreland who have helped me understand fibromyalgia. I did not have much knowledge of the condition or of ME. Through their knowledge and experience, they have helped me and others to gain a greater understanding of the condition. I hope today will be the beginning of a much wider debate on fibromyalgia and its recognition as a disability in the State. Bizarrely, given the current discussions on Brexit and the artificial Border in this country, fibromyalgia has been recognised as a long-term condition in the North since 2016. If fibromyalgia can be recognised in the occupied part of Ireland, why can this State not recognise it? There is an ongoing debate in Britain on its recognition and while it is progressing, it has not yet gone far enough. Fibromyalgia must be recognised as a disability as this would result in patients having better access to services and medications and better dealings with the social welfare system. There are horror stories about people with fibromyalgia and ME being put through the ringer by the system. If fibromyalgia is not considered to be severe enough, the sufferer has to fight the system, which can make the condition even worse for those who live with it.

Other Deputies alluded to the long-term illness scheme. It is extraordinary that not one condition has been added to the scheme for 49 years. Surely fibromyalgia fits the bill for being added to the long-term illness scheme. The only reason I can think of that it is not on the long-term illness scheme is funding. It is as simple as that. While those with the condition may have a GP-only medical card, they must cover other expenses such as therapy and medications. It is

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ridiculous that the scheme has not been extended in 49 years. While that is a separate issue, it is incredible. Fibromyalgia is recognised as a condition in France and has been included on the country's long-term illness scheme, which means patients can get medication and so on.

There is major misunderstanding of this condition and addressing that is half the battle. The reason for this debate is to create a greater understanding of the condition because misunderstanding compounds fibromyalgia. To dismiss the condition is unforgivable.

I am no expert on fibromyalgia and I can only try to put myself in the shoes of somebody who has worked with chronic pain and fatigue. I cannot imagine that kind of constant pain. Relying on opiate-based medicine is not desirable and the long-term side-effects are completely detrimental. Alternative medicines should be found, particularly for treating chronic pain. Other Deputies have implied that it is extremely disappointing that with respect to chronic pain and the proposed access programme, medicinal cannabis was not suggested as a treatment. That is extremely disappointing.

I hope we can get one thing from this debate. We can have flowery debates and great speeches with nothing ever happening. After these statements, will the Minister of State meet a representative of each party so we can progress this matter? We are Deputies representing many people in this country who have fibromyalgia. Will the Minister of State meet representatives of each party in the next two to three weeks?

**Deputy Paul Murphy:** I pay tribute to the campaigners on this matter who not only must put up with the chronic pain that they experience while functioning in the world but also when they must campaign for proper recognition and assistance. That process includes debates like this in the Dáil, and I thank Deputy Gino Kenny for his work in raising the matter. It was essential in getting this debate to happen.

The Government's response is disappointing when we take away the words of understanding, care and so on. When we get to the bottom line, there is no fundamental change in the position. I looked at a question I posed to the then Minister of State at the Department of Health, former Deputy Kathleen Lynch, in June 2015 about extending the long-term illness scheme to include fibromyalgia but the answer was that there were no plans to extend the list of conditions covered under the scheme. The answer from the Minister of State today, four years on, is that the requests are being considered carefully but that there are no plans to extend the long-term illness scheme at this time. Effectively, there is no change. That is unfortunate.

When there are between 90,000 and 180,000 people affected by fibromyalgia, it is worth asking how the condition is so misunderstood, badly diagnosed and not recognised properly by the State. It is probably not an accident that it affects women and men at a ratio of 6:1. This is related to the fact that it is not recognised properly in a sexist society that tends to listen less to women. There is a new book called *Invisible Women: Exposing Data Bias in a World Designed for Men* that deals precisely with this question and how it just has not been addressed. That to which I refer is a factor in this matter.

I spoke to a friend and comrade of mine earlier, Ms Phil Foster, who suffers from fibromyalgia, about her experiences. For example, she said that approximately 15 years ago she was sitting her living room and tried to get off the chair but she could not stand up. She had to crawl on the floor to the kitchen and drag herself up by using the table for support. She described the condition as like having a tight Lycra suit in which one cannot move under her flesh and in her



bones. She shared with me a picture of somebody whose back that was covered with bruises. The person was obviously wracked with pain. That level of pain exists but the problem is that it does not show. People might look at an affected person and think he or she is fine and wonder what is wrong, as it is not a generally or widely understood condition. It can come with other conditions, such as an underactive thyroid in Ms Foster, or anaemia. Her daughter is also affected by it. She spent six years trying to figure out what was wrong and she may have spent up to €20,000 going to different consultants and so on. She was forced to go private to try to find out what was happening. If we multiply that experience by 90,000 or 180,000 people, it is an absolute shame on the State.

The Government needs to go beyond uttering words of understanding; there must be action. We need access to medicinal cannabis for those affected by fibromyalgia and the scrapping of prescription changes, with all medications to be covered. We need the condition to be added to the long-term illness scheme. I echo the point made by Deputy Gino Kenny that it is utterly bizarre to believe that the world of medicine froze 50 years ago and that there has been no addition since by the State.

**An Leas-Cheann Comhairle:** Deputy Pringle is sharing time with Deputy Maureen O’Sullivan.

**Deputy Thomas Pringle:** I welcome these statements on fibromyalgia but I wonder how much attention the Government will be paying to Deputies’ contributions. I know a large number of constituents are coming to me at my clinics in Donegal in absolute despair not only because they are dealing with an illness that is debilitating but also because their condition is not recognised by the State, particularly when it comes to accessing social welfare supports. Fibromyalgia is called the “invisible illness” for a reason, namely, it is difficult to diagnose and the causes are still not fully understood. It is invisible because there are no visible symptoms other than someone being bedridden due to pain or having his or her daily activities curtailed. As it is the so-called invisible illness, people undergoing diagnosis or applying for social welfare supports are made feel like they are liars. Fibromyalgia is not listed on the long-term illness list but it has been included on the international statistical classification of diseases and related health problems published by the World Health Organization since 1992. As it is not listed on the long-term illness list, people with fibromyalgia are essentially invisible to the State.

I spoke with Ms Caroline Tait, chairperson of the Donegal support group for people with fibromyalgia, who gave me a very in-depth account of the reality for someone who suffers with the condition. She stated that just getting someone to diagnose the illness in the first instance is an uphill battle. A person needs the diagnosis of a rheumatologist but the waiting list for that is so long, a number of years in some cases, that some people end up going to see a clinician privately in order to obtain a diagnosis. Not everyone has the means to do this and some cannot even get the condition recognised by GPs. If people are on medical cards, they cannot go to different GPs to get treatment. A long list of medication awaits someone once diagnosed with fibromyalgia and some of them do not work. Some people are being prescribed medication that is for other conditions, such as epilepsy, or antidepressants, which can lead to addiction or other side-effects. Furthermore, many people end up having to give up work due to fatigue and the pain they suffer. As many people have problems acquiring medical cards, their partners are put under increasing pressure to be able to afford the number of medications these people end up having to take. We know the level of suffering people with fibromyalgia go through and it is unnecessary.

First and foremost, the condition needs to be recognised as a disability. I repeat some of the calls made in the motion on fibromyalgia from a number of months ago and I urge the Government to once and for all establish an effective and sustainable model of care to diagnose, manage and treat fibromyalgia. It should develop a model of care that is based on international best practice and implement a strategy to set up a framework to help those living with fibromyalgia. The Government must conduct a review of the long-term illness scheme, which has not been updated since 1970, or 49 years ago. Perhaps for its 50th anniversary it can be updated. The Government should carry out a dedicated and rigorous review of the underlying causes of the condition while rolling out a comprehensive education programme for those working in social welfare who deal with people with chronic illness. This is vital in order that people can be treated with respect. The Government should also invest in community, primary and secondary care, as committed to in the Sláintecare report. Finally, the Government must do what is necessary to make this “invisible illness” visible and acknowledge what people are experiencing while living with fibromyalgia.

**Deputy Maureen O’Sullivan:** I acknowledge the tremendous work that has been done with certain illnesses. I refer to cancer, heart disease and even certain kinds of stroke. We know that with the work done and that the illnesses to which I refer do bring with them the death sentence that they used to bring. There are, however, illnesses in respect of which the relevant treatment has not advanced to the same degree and which has not kept pace with the progress made in treating cancer and heart disease. I can think of the people who suffer with Crohn’s disease and colitis, as well as those we are discussing today. I acknowledge the work of Deputy Gino Kenny on this.

Like Crohn’s disease, fibromyalgia is a debilitating illness that affects quality of life. We know it means chronic pain as well as another spectrum of related symptoms like fatigue, cognitive dysfunction and reduced physical function. It occurs predominately in women, although it can occur in men. What is most frustrating is its unpredictability and inconsistency. A person can prepare for something he or she is going to experience frequently but it is very difficult when he or she does not know when it will come. Without being sexist about it, we know how much work women do in the home so we can imagine how much more debilitating it is for women than it is for men. When affected women get up in the morning, they do not know whether they will be able to do all the things they normally do or whether they will be struck by fibromyalgia, which means they have to rest or take to bed for the day.

We know some improvements are being made but they are not keeping pace with what is happening. Going back over decades, Governments have been guilty of taking a very poor approach to health so there is a lot of mismanagement in many sections of the health system. We have the highest spend *per capita* on health in Europe yet we do not have the health system that should keep par with that. We know that once somebody gets into the health system, he or she is looked after but getting in is the problem. It must be based on need, not ability to pay.

I read one piece from Arthritis Ireland about the condition. The people who suffer from this condition are deserving of much more than what they have received. It does mean that we need a more robust and flexible approach as new illnesses appear. I agree with what has been said about the long-term illness scheme and the need for a review of it. Reading the experiences of sufferers, it is obvious that there are so many difficulties for them involving diagnosis, care and treatment. From international best practice, we know there are examples of best treatment in terms of outcomes for patients. There seems to be a growing consensus around an interdisciplinary approach whereby various methods are implemented to improve the health of the pa-

tient. That is critical for fibromyalgia because this disease affects all aspects of a person's life, emotional and physical. I think we can learn what has worked internationally and apply it here.

Recognition has been an issue. Those who have both myalgic encephalomyelitis, ME, and fibromyalgia often have the conditions for quite an amount of time without realising they have these conditions. In many cases, they are diagnosed with mild fatigue or stress-related fatigue. We know that with the majority of illnesses, early intervention is crucial in establishing an effective treatment plan. This is where there is a need for public awareness. I know there is a publication on the HSE website but one wonders about the general population's knowledge or awareness of this issue.

Deputy Gino Kenny has called for the reform of the long-term illness scheme. It does not make sense why that scheme cannot be reviewed because treatments and medicines are constantly changing. Surely the review must keep up with that. We need flexibility when those changes are needed. Deputy Gino Kenny sets out some very practical and modest calls on the Government to take steps that could improve the lives of people who suffer from this condition. Surely this is what we are all about. We want to see a better quality of life for people suffering from an illness and fibromyalgia is one of those illnesses. I always find it very frustrating when we have statements or Private Members' business because we get a lengthy paper on it and the general reaction is "Tá" or "Níl" yet within those papers there are aspects on which we could all agree. There is a need to look at some of those, even to make a start with the smaller and more modest requests that are being made for those people who are suffering.

**Deputy Michael Harty:** Fibromyalgia is a very difficult condition to diagnose and treat. I know that from my own profession. The difficulty in diagnosis, as others have said, is there is no clinical or biochemical marker that will give an exact diagnosis. Most commonly, it is a diagnosis of exclusion. Having gone through all the various conditions that could be leading to chronic pain and stiffness in muscles, one comes to a conclusion that it could be fibromyalgia. There is a prolonged process of elimination before one comes to the diagnosis so many of these patients will be referred on to rheumatology clinics and will have extensive blood tests, scans and X-rays. Eventually, when all other conditions have been eliminated, one is left with a diagnosis of fibromyalgia so it is a very unsatisfactory process to have to work through where one eventually comes to a diagnosis when one cannot find any other answer.

It is much more commonly diagnosed in the US than in Ireland, although it has become more frequently diagnosed here as the medical profession becomes aware of the condition. It can be mixed up with other chronic pain syndromes. It can be difficult to separate it from ME. As Deputy MacSharry noted, Lyme disease can masquerade as fibromyalgia. It is a diagnosis that is made over time nevertheless and sooner or later one comes to the conclusion that somebody is suffering from fibromyalgia. The difficulty then is trying to devise what the care pathway will be because, as Deputy Pringle and others said, it is an invisible disability. There is no outward show of it except for the physical manifestations of pain and muscular stiffness. In response to a parliamentary question in 2015, the then Minister for Health, Deputy Varadkar, spoke about fibromyalgia and outlined the variety of treatments that would be made available to people with the condition, including education, exercise, cognitive behavioural therapy and meditation. The Minister of State referred to how Sláintecare might deliver solutions for people with fibromyalgia. In quoting from Sláintecare, she talked about the transfer of many of our services from hospitals to the community but, unfortunately, the care pathways in the community to treat people with fibromyalgia are not available. In that regard, the national clinical programme for rheumatology was to develop a model of care for the treatment of rheumatological

and musculoskeletal conditions, including fibromyalgia, but when that body produced its report in 2017 entitled *The Model of Care for Rheumatology in Ireland*, there was little or no reference to fibromyalgia in it. There was little or no reference to the pathways that should be provided for people who suffer from fibromyalgia.

The treatment for fibromyalgia is multi-faceted. As the Minister of State has outlined, it involves physiotherapy, occupational therapy, cognitive behavioural therapy, counselling, lifestyle changes and supporting people in self care. Unfortunately, we do not have access to physiotherapy in primary care. Physiotherapy is at a premium in primary care and in many areas, physiotherapy is only supplied to people who have been discharged from hospital after a fracture, surgery or major illness. People with fibromyalgia find it very difficult to get access to physiotherapy. Physiotherapy does not exist in many areas because we do not have physiotherapists to fill the posts. In the same way, occupational therapy is at a premium and is not freely available to people with conditions such as fibromyalgia. Cognitive behavioural therapy is extremely important for people with fibromyalgia. Psychologists and psychotherapists are not available to provide cognitive behavioural therapy in many areas. My area in west Clare has not had access to a psychologist for six years. People with fibromyalgia do not need to be treated by a psychiatrist. It is not a psychiatric condition but, unfortunately, many patients who suffer from fibromyalgia end up on sleeping pills, anti-depressants, opioid painkillers and anti-epileptic medications that have as a side effective some analgesic properties. This is most upsetting because quite often, the only avenue of treatment many GPs have is to prescribe these medications because physiotherapy, occupational therapy and cognitive behavioural therapy are just not available.

3 o'clock

Unfortunately, many people who suffer from fibromyalgia end up on these medications - inappropriately in many cases. They then have two problems. They suffer from fibromyalgia and they are on medication which has substantial side-effects and may not have substantial benefits for them. Deputies Gino Kenny and Paul Murphy referred to medicinal cannabis products being made available to people who have chronic pain syndrome. Unfortunately, however, there is no class 1 evidence-based recommendation for the provision of cannabis-based products in the treatment of chronic pain syndromes. The scientific evidence to back it up is not there, unfortunately.

**Deputy Gino Kenny:** Yes it is.

**Deputy Michael Harty:** Deputy Kenny and I have many conversations about this. He is absolutely correct that the Minister is dragging his heels when it comes to providing an access programme for the three conditions. The Health Products Regulatory Authority has not found evidence that cannabis-based products are a treatment for pain. This is a debatable issue, however.

The Minister of State, Deputy Catherine Byrne, cited Sláintecare as a possible solution to the treatment of patients with fibromyalgia. Our health service is struggling to deliver acute urgent care. We discussed this here this morning when debating the problems in Limerick, where 81 people were on trolleys yesterday and 76 are on trolleys today. Those are unbelievable numbers and the problem is replicated across the country. While Sláintecare seeks to reform the health service, if the Minister of State is to cite Sláintecare as a cure or means of providing services to treat fibromyalgia, I can tell her for nothing that it will not do so today, tomorrow or the next day.

Another issue regarding fibromyalgia is that 50% of people who suffer from the condition are not working. They are lost to the workforce. This is not only a great personal loss to the individual concerned, but also a great loss to the State in that there is a cohort of people who, because the services to treat their condition are not there, are a loss to the workforce. I accept that the Government needs to address this issue through Sláintecare, but it also needs to front-load this in supplying the necessary personnel within primary care to deliver a service which is not a medication service. It should be a physical service, a psychological service and a support service. It should provide physiotherapy, occupational therapy and, in particular, cognitive behavioural therapy to people who have this condition in order to help them to cope with it. The failure of the Department of Employment Affairs and Social Protection to recognise it as a condition is also unbelievable. Many GPs are left signing people off work for musculoskeletal conditions, but one cannot put down the word “fibromyalgia”. That is unacceptable in this day and age. No one wants to be labelled with a term which the State fails to recognise, and fibromyalgia is one such condition.

Fibromyalgia is a condition that is not receiving particular attention, and I thank Deputy Gino Kenny for introducing this debate. The Minister of State needs to recognise the condition. This encompasses the holistic approach we should have for care in our community. It should be community-based and built into Sláintecare. However, Sláintecare has so many problems before getting to fibromyalgia that the Government must specifically target resources towards it.

**An Leas-Cheann Comhairle:** We now move back to Fianna Fáil. I call Deputy McGuinness.

**Deputy John McGuinness:** I am sharing my time with Deputy Michael Moynihan.

**An Leas-Cheann Comhairle:** Is that agreed? Agreed.

**Deputy John McGuinness:** The easiest way for me to capture what people think about this is to read from a letter I received from a constituent in January. The content of the letter represents what most people would write in their correspondence, and I have received numerous letters about the campaign to have fibromyalgia recognised. This lady writes to me about her son, who is 46 years of age. He has had the condition for nine years. He was a schoolteacher but his condition got so bad that he was forced in 2017 to take a career break, which was not paid. His pain and his condition worsened. He continued his course of medication and continued to do all the things that the various websites and Facebook pages suggested to alleviate the pain. He was on illness benefit of €197 trying to pay a mortgage and keep a roof over his head. On his doctor’s advice, he applied for a medical card in 2008. It took six months for the card to come through. As the condition is not recognised, there is no way he can be dealt with in the context of defining the disease and then giving the prescriptions, looking after the management of the pain and so on. It is hugely difficult, and this is someone who is trying to work. This lady finishes her letter by saying he is not a lazy person and never has been and that she cannot comprehend why this Government is doing absolutely nothing about this.

That was in January 2019. Since my election to this House, and particularly in the past ten years, huge efforts have been made by the various organisations that represent those who suffer from fibromyalgia. In the Minister of State’s own words, all she is doing here, with respect, is explaining that she is listening to Members and that she understands the symptoms. She went on to talk about primary care services, disability services and so on. In reality, however, these people suffer in silence. Their quality of life suffers greatly. As other speakers have said, be-



cause of the medication, the pain and the fact that they cannot fully participate in their work or lives, they also end up on antidepressants. The time has come for the Government to recognise this disease and the fact that the World Health Organization recognised it in 1992. Once recognised, a pathway to care must be put in place that is easily accessible and supported by a medical card and an understanding at primary care level in order that the services can be provided without hassle and with the full support of the patient.

On Sunday, 7 April, from 10 a.m. to 4.30 p.m., in the Woodford Dolmen Hotel in Carlow, there will be a presentation and a full day to try to assist those with fibromyalgia to understand what they are going through and to give them the necessary supports. While all this is going on in the public domain, supported by people who understand the disease and are campaigning to have it recognised, the Government is doing nothing. Debates such as this are extremely useful because they help to highlight the issue, and I thank Deputy Gino Kenny and other Deputies for ensuring that this debate was held in this Chamber. However, the measure of this, from the public's point of view, will be the action the Government takes, having listened to all of what was said here today. What every single speaker said could be repeated over and over again because it reflects the experience of the individual who is suffering continuously the pain we are all talking about.

There is a need to inform GPs and set out a pathway to care and to support financially the care that will be required. There is also a need for the Government to finally take action on the 1992 decision of the World Health Organization, take its head out of the sand, listen to patients and take the appropriate action arising from this debate.

**Deputy Michael Moynihan:** I welcome the opportunity to speak on these statements. As practising politicians, all of us encounter daily, and have done over the years, many people who suffer from fibromyalgia. The difficulty people have is that they suffer from this condition but the doors are closed when they seek help. I refer to medical cards, disability supports and all of the avenues the State has open to it to support people with long-term debilitating illnesses. The World Health Organization, WHO, made its decision back in the 1990s. We are now facing into the 2020s and there has been no recognition of fibromyalgia by the State. People suffering from this condition who come to me must try to manage it medically and physically and when they seek help they find that fibromyalgia is not listed on the long-term illness scheme or recognised as a disability. That hurts them and makes their lives extremely difficult. They all want to fully participate in society and be out and about but this condition is holding them back. Fibromyalgia is not being recognised when people seek help from officialdom. It is almost as if the State is telling them that, from an official point of view, their condition does not exist. That is having a detrimental affect on their psychological and mental well-being.

Many of those who contact me looking for medical cards and disability allowances are very frustrated. They often have major medical expenses and low incomes. As my colleague stated, many people with this condition have to give up work at an early stage and take a career break or time off, which causes financial loss to households. All of that leads to individuals' self-worth being diminished and affects their inability to participate fully in society. They would love to be able to do that but this medical condition means they cannot do so.

We have had statements from Deputies from across the political spectrum who are willing to stand up and give the testimony of their constituents. We have heard the facts, including people who are frustrated by the system contacting Deputies. We have been told those people have made appeals to the Department of Employment Affairs and Social Protection. Many Members

have sat in front of appeals officers and explained what their constituents are suffering from and how debilitating fibromyalgia is. The issue is that officialdom is not recognising the condition.

The Minister of State has to do two things when she responds. She must declare that the State and Departments will recognise fibromyalgia as a long-term illness and she must indicate that any and all medical and financial supports will be provided to the individuals in question. Their suffering is being compounded by not having full recognition of fibromyalgia. It is long past time such recognition was given. We can have all the debates we want. The reality, however, is that people's suffering will continue if the Minister of State is not in a position to state that fibromyalgia is a long-term debilitating illness. Those who suffer from the condition should have access to the supports that are available to those who suffer from other classified illnesses. They should not have to fight for their entitlements.

It is difficult enough for people to accept they have this condition without having to fight for help and support from the State. Every one of those people will say that one of the biggest problems they face is having to fight repeatedly for their rights. It is one of the issues they feel low about. I am asking the Minister of State to take cognisance of the contributions from across the political spectrum. We must support people suffering from fibromyalgia and recognise they are fully entitled to whatever supports the State can provide.

**Deputy Louise O'Reilly:** I thank Deputy Gino Kenny for facilitating this important debate, which many people will be watching from their homes. Everyone who has spoken referred to being contacted by constituents suffering from the long-term condition of fibromyalgia. One of the things they say most often is that this illness makes them prisoners in their own homes. Having their voices heard is part of the battle for them. Deputy Kenny is to be commended on giving voice to those people today. How difficult this condition is to diagnose has already been described. It is diagnosis by elimination. People have probably been suffering and in pain for years by the time they get a diagnosis from their doctor.

Deputy Maureen O'Sullivan made a good suggestion. While it may not be the Government's position to accept everything said here today, there are some suggestions that could be progressed. Some changes could be commenced in order that something positive can come out of this debate for those people suffering with this condition. The Government should examine what elements can be progressed and what can be done, rather than dismissing everything out of hand. Some thought could be given to how progress can be made. As others have said, it is not good enough simply to have nice words. There needs to be some action.

Many of those who suffer with fibromyalgia are also advocates for the legal use of medicinal cannabis because they believe it alleviates their pain. As well as asking about normal constituency matters, many of those with fibromyalgia who contact my office ask that some progress be made on making medicinal cannabis readily available where it has been prescribed by clinicians. Sinn Féin supports the legalisation of medicinal cannabis where it has been deemed medically necessary for a patient, in consultation with his or her parents or guardians, for ailments such as fibromyalgia.

The issue of medicinal cannabis is one on which there is a wide range of views and opinions. Some of those have already been expressed today and we are aware of them. This issue should, however, always be viewed from a medical and health perspective. We should always defer to medical experts and patient advocacy groups on these issues because they are on the front line. We may all have an opinion but it has to be informed by those who dealing with the issue daily,

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namely, doctors and campaigners. We need to find out if there is scope for medical professionals to learn more about progressive improvements in education on medical cannabis for medical purposes. That would be a beneficial job of work for the Government to undertake to ensure health professionals are made aware of all of the information and have access to the same kind of information as their colleagues. That should be facilitated by the Government.

Such improvements will benefit medical and healthcare professionals, as well as their patients, many of whom are crying out for legislation on medicinal cannabis. One such person is Vera Twomey, who has been a tireless campaigner for her daughter, Ava. Ms Twomey will confirm that everything is a battle. She has fought all of the way and continues to fight. She should not have to do that. We need to ensure these changes are introduced and this debate goes hand in glove with calls for legislation on medicinal cannabis. We also need to look at the long-term illness scheme. It would be remiss of me not to mention this issue, which others also raised. The scheme is nearly 50 years old and it has reached the stage where it should be re-examined. No one in this House, on any side, is in a position to defend the scheme.

Coming back to those who contact my office and the offices of all other Deputies and are at home in pain as they watch this debate, it would be good if we had something positive to tell them, rather than just nice words. I reiterate and agree with the call made by Deputy Maureen O'Sullivan. I ask that these suggestions be examined by the Government. They need not be undertaken as a whole if the Government cannot support doing so. The Government should, however, examine individual elements on which it might be possible to make some progress. It might be possible then to have something positive to report that will result in some action being taken for those who are suffering with fibromyalgia. They suffer in silence. The chronic pain people suffer has already been described; I do not need to go into it. I am in receipt of the same emails as everyone else, emails in which people describe what it is like to live with a debilitating ongoing condition. It would be good if we had something positive to say to those people as a direct result of this debate.

**Minister of State at the Department of Health (Deputy Catherine Byrne):** I will make some remarks after I have read from the written statement. This is not my remit; I am here on behalf of the Minister, Deputy Harris.

**Deputy Gino Kenny:** The Minister is like the invisible man these days.

**Deputy Catherine Byrne:** That is the Deputy's opinion. I cannot comment.

**Deputy Louise O'Reilly:** The Minister of State is here however.

**Deputy Catherine Byrne:** I thank Deputies for their contributions to the debate on fibromyalgia. I acknowledge the personal challenges faced every day by persons with the condition. I thank the many people who have shared their experience of the condition with Deputies and with myself. As was outlined earlier, fibromyalgia is a difficult condition to diagnose as there are currently no specific tests for it. Symptoms replicate those associated with other conditions. There is currently no cure for this condition as its cause is unknown. Treatment of the condition requires intervention from various medical specialists in order to manage associated symptoms when they arise. This was outlined by Deputy Harty.

To help sufferers of this condition with the cost of their treatments, I reiterate that any patients are eligible to apply for the drug payments scheme or a medical card. Under the drug payments scheme, no individual or family pays more than €124 a month towards the cost of

appropriate prescription medicine. The scheme significantly reduces the cost burden on families and individuals who incur expenditure on medicines. People who cannot without undue hardship arrange for the provision of medical services for themselves and their dependents may be entitled to a medical card. In the assessment process the HSE can take into account medical costs incurred by individuals or by their families. People who are not eligible for the medical card may still be eligible for a GP card, which covers the cost of GP consultations. General medical services are provided by GPs. If the patient's clinical condition warrants referral to a consultant, the GP will organise that referral for the patient.

While there are no plans currently to add fibromyalgia to the list of conditions covered under the long-term illness scheme, patients with a condition not listed under the long-term illness scheme are eligible to apply for the drugs payment scheme or a medical card. It is proposed that the long-term illness scheme be included as part of the review of the basis of existing hospital and medicine charges to be carried out under the commitment given in the Sláintecare implementation strategy.

I am aware that a number of parliamentary questions have been tabled in respect of disability services. Access to disability services is based on need rather than on diagnosis. Our current health policy promotes a non-condition specific approach to disability service provision based on the needs of the individual rather than on a specific disability diagnosis.

It is interesting to note that self-help for fibromyalgia is important and that there are several lifestyle changes which can help to relieve symptoms. A GP or other healthcare professional treating a patient will typically be able to give advice on and support in making these changes a part of the patient's everyday life. As the Minister of State with responsibility for health promotion, this is an issue that is close to my heart. Promoting the health of the population to prevent illness is an essential part of the Sláintecare strategy. As I announced earlier, €50 million has been allocated to primary care services in the Sláintecare strategy. These additional resources will enable a range of measures to be advanced, including the recruitment of additional therapy staff in psychotherapy and occupational therapy. Last month we published the 2019 Sláintecare action plan, which includes a plan to continue the implementation of Healthy Ireland across Government and wider society as well as within the health service. The Sláintecare action plan also sets out our ambition to build on our engagement with citizens on how they can empower and enable themselves to look after their own health and well-being.

The speech I read was written for me but I would like to add a few remarks. As always, I have listened carefully to the concerns raised, to the views expressed, and particularly to the personal statements which some Deputies spoke about this afternoon. In response to Deputy Gino Kenny, I am not a doctor so I will not comment on medicinal cannabis or its uses. The Deputy mentioned in his speech that in 2016 fibromyalgia was brought under the equivalent of the long-term illness scheme in our neighbouring countries. I will mention that to the Minister. I will also mention that the World Health Organization and the European Parliament have recognised fibromyalgia as a long-term illness. With regard to his appeal for me to meet with himself and other Members on a cross-party basis, I have no problem in doing so but I believe the Deputy should meet with the Minister, Deputy Harris, because this issue does not come under my remit. I have been asked to step in this afternoon. I give my personal commitment that I will sit in on any meeting between the Minister and the Deputy. I will bring the Deputy's requests to the Minister.

That is all I have to say: I cannot add much more. I personally cannot give any explana-

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tion as to why fibromyalgia is not seen as a long-term illness. I have taken a lot of notes on the contributions of the Deputies who spoke with passion about this debilitating disease. I myself know people who have fibromyalgia and it is a debilitating disease. I will bring the Deputies' concerns and views to the Minister and ask him to reply to Deputy Gino Kenny directly regarding the meeting.

**Deputy Gino Kenny:** On a point of order, we are making statements rather than discussing the motion I have in my hand, but I request that the Minister of State ask her colleagues in Government to take up this motion and table it themselves. They may choose to modify it, but it really goes to the crux of the matter we have been discussing. I appeal to the Minister of State to bring the motion back to her colleagues so that Government can table it and so that we can get consensus on this issue.

**Deputy Catherine Byrne:** I will talk to my colleagues about it.

## Saincheisteanna Tráthúla - Topical Issue Debate

### Childcare Services

**Deputy John McGuinness:** I bring to the attention of the Minister the crisis in the not-for-profit community childcare sector. She will be aware of this issue because I have forwarded her considerable correspondence from the groups concerned not only in Carlow-Kilkenny, but also in the neighbouring counties. In addition, there is an issue in respect of Pobal investigations into childcare and audits which have taken place, but also with investigations into community care units throughout the country. Public meetings are being held. The Minister of State, Deputy Phelan, who sits at the Minister's side, attended one such meeting. The critical need for finance and funding in this area and the need for an understanding of how these services are delivered were outlined for us at this meeting. These are the most marginalised communities in the country. A childcare facility in one community has told me that it will not be able to register 49 children because of what Pobal said in a recent audit.

It is also true that these facilities are dealing with parents and families, some of which are dysfunctional and some of which have great difficulties. As a result of that, children may arrive late or go home early. The centre, which is usually a family resource centre, has to engage with the families and has to encourage them along the route to childcare and after-school services. That has to be understood. The system must be flexible if it is to allow all of the services to be delivered. If numbers are lost in the not-for-profit sector, staff will then be lost. The sector is currently losing staff because much better pay is available in the private sector than in the not-for-profit community sector. Despite this, those in the not-for-profit sector are doing an extremely good job. They are certainly having a positive impact on the communities they serve. They are allowing families to get out of a cycle of unemployment or, in terms of school attendance and so on, neglect.

While Pobal has a duty to audit, we as politicians, and the Minister in particular, have a duty to suggest to Pobal that there is a need for flexibility. Humanity can be a messy business and,



therefore, rigid accounting rules often do not fit easily with the care and attention that family resource centres provide to children in the most deprived areas of the country.

I ask the Minister to remember that these services are being delivered at a value-for-money cost. Those being paid to deliver them are actually being underpaid per hour compared with the rate in the private sector. They do far more in the community sector than just their hours, for example, administration and dealing with the level of bureaucracy imposed on them. At the public meeting I attended, a great deal of anger arose from the fact that they had not been fully consulted. They made the point that, when establishing a Government-private sector contract, there would be negotiation, everyone would be around the table and something would result from it. In this case, all the stakeholders were not around the table. They feel particularly aggrieved about that.

**Minister for Children and Youth Affairs (Deputy Katherine Zappone):** Assisting families to access high-quality, affordable early learning and care, ELC, and school age childcare is a priority for me as Minister. My Department funds a number of ELC and school age capital, SAC, programmes and I want to see investment in this area continue to increase significantly in the coming years. I am delighted that First 5, the whole-of-Government strategy for babies, young children and their families, commits to doubling investment over the next ten years.

Given the large amount of public money invested in these programmes, there needs to be an appropriate level of oversight and accountability. My Department's approach to protecting Exchequer funding and ensuring compliance is balanced appropriately with the supports we provide to services to enable them to continue to deliver a sustainable and high-quality service.

Pobal, as the administrator of my Department's funded childcare programmes, conducts compliance visits to childcare service providers. These visits check a service's compliance with the published rules of Exchequer-funded programmes. Results from Pobal compliance visits for the first part of the programme year 2018-2019 show a significant level of non-compliance. This needs to be addressed as a matter of urgency. In particular, many childcare services have been found to be in breach of programme rules concerning attendance records and registrations. This issue has been especially acute among services offering the community childcare subvention, CCS. Non-compliance like the type we have seen in the CCS represents a risk to Exchequer funds, as it can lead to services receiving funding in excess of their entitlements. For this reason, my Department, working with Pobal, identifies incorrect registrations and applies the relevant corrections to ensure that services receive the correct level of funding.

I recognise fully the challenges that can be faced by community services where incorrect registrations have been discovered. That is why my Department has developed a strong case management system, operated by Pobal, through which a dedicated team assists services facing challenges. This case management system provides non-financial assistance or support in the first instance and is focused on engaging those providers with an identified overclaim. Where financial difficulties or sustainability issues arise, services can access a budget that I have created to assist with these challenges and help them in transitioning in a manageable way towards sustainability. I am encouraged that the majority of services have engaged constructively with the process so far and a way forward has been found. I recommend that all other services get in contact with Pobal or their local city or county childcare committees if they need support and advice. I want to stress that expert assistance and financial support are available to those services that need it.

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The existing targeted childcare schemes will be replaced later this year with the national childcare scheme, NCS, which was developed based on evidence of the best interests of children and families. Its attendance rules will reflect the reality of children and parents' lives and the need for services to operate as businesses. My Department is engaging with service providers on the development of the NCS.

Deputies will be aware that investment in childcare has increased by an unprecedented 117% in the past four budgets and now totals €575 million per year. Community services access much of this growing investment and I note that the targeted childcare supports provided under the CCS and the training and employment childcare scheme were enhanced significantly in September 2017, some by as much as 50%. The NCS will mark another significant milestone in this type of care, creating an infrastructure in which the Government continues to invest.

**Deputy John McGuinness:** The Minister has spoken in general terms about the scheme and the new one that will come on stream at the end of the year. I would be the last to suggest that the Minister should ignore an audit or not seek value for the taxpayer's money. However, it would be remiss of me not to tell her that a certain degree of common sense had been mixed into what was happening in communities at charity level. They are facing specific challenges that are different than those facing the private sector. They are trying to cope, not just with attendances, but with what is happening in the child's home. They are trying to give families support. The last thing they want is to lose a child. They want to work with the child and the family.

The audit must have a human interest element in terms of these children. A balance must be struck between auditing a book and auditing a life. That is what is going on. If everything was as rosy as the Minister said, these public meetings would not be happening and one of the projects would not be telling us that its loss-making could run to €40,000 per year due to changes being made pursuant to a Pobal audit that did not recognise the issues that would be created for families and the children attending.

SIPTU has agreed to support the staff in their efforts to get fair play for the sector and those employed therein. One man who has worked in the sector for the past 12 years has told me that he is still on the same rate but is there because he enjoys the job, likes the mix and wants to be involved in the community. I ask the Minister to go beyond her scripted reply and look deeply into the hearts of these families and young children.

**Deputy Katherine Zappone:** I appreciate the Deputy's response. As he knows, we always prepare a script, which is what I have shared with the House. Going beyond it, I am aware of the issues. The Deputy will appreciate that I fully understand the community not-for-profit childcare sector and its challenges, having set up a number of such services myself. Those involved in the sector would not want to do anything that, while not necessarily against the rules, was contrary to the ways in which they were provided support from the Exchequer. They follow those ways faithfully because they want to be as accountable and responsible as anyone in the private sector.

I understand the Deputy's remarks about there being additional needs in the context of community not-for-profits, the provision of what families require, etc. That is why there is a strong case management programme, developed by my Department and operated by Pobal, to support those services that may have demonstrated non-compliance with clear rules on how to register children. The services are checked to see whether all those children are in attendance for the

hours in question over a certain period referred to as a snapshot window. If not, moneys have been paid that should not have been. What happens next is not a case of us just going in and grabbing the money back. Rather, we have established a case management system to support services in finding a way of ensuring future compliance.

Regardless of whether there are problems regarding the sustainability of that community service, there are other supports, including those of a financial nature, available. I am concerned to hear that community or public meetings are being held; I am interested in hearing more about that from the Deputy. I am also concerned that one service has indicated that it cannot re-register 49 children and another service finds that it is €40,000 down and that it has a lack of sustainability. I understand that my Department is finding ways to support those services. To my knowledge, no service has closed on foot of the compliance procedures that have been operating. Those compliance procedures and rules, as the Deputy may be aware, are shifting and changing, and the establishment of the national childcare scheme because of the consultation we have done with the sector. I would be happy to hear more about the 40 children who cannot be re-registered and the service which, it appears, either may not be sustainable or is not receiving the support it should be.

**Deputy John McGuinness:** I have already written to the Minister about this matter.

**An Ceann Comhairle:** Perhaps the Minister and the Deputy could have a chat.

### **Nursing Home Services**

**Deputy Maureen O'Sullivan:** This is an ongoing issue. It was raised by Nursing Homes Ireland, which held a very well attended briefing in Buswells Hotel some time ago. It has followed up with meetings in the Dáil recently in order to highlight the issue. The message it is sending is that unless this issue is addressed in a timely, professional and effective way, the situation is going to worsen, with dire consequences for those in need of nursing home care. We know, from the statistics provided, that Nursing Home Ireland has over 350 nursing homes in the private and voluntary sector in the Republic, with a further 91 in Dublin. That translates into 17,000 beds and over 20,000 staff. It is also the case that 80% of long-term beds are provided through the private and voluntary sectors, with the other 20% provided by the public sector. The former are making a major contribution. The crisis began with a number of closures of smaller nursing homes.

HIQA was very complimentary about these small, homely, family-run services. The nature of service provided is high quality. It is 24-7 and professional, meets the clinical, social and dietary needs of the residents and provides activities. The services play a role in the discharge of hundreds of patients from hospital beds, which is important given the serious situation in that area. There are four areas which need to be addressed, the first of which is the charges levied. The difference between public and private in this respect is astounding. Public rates are €896 at the lowest end to €2,399 per resident per week at the higher end. In the private voluntary sector, rates are between €765 to €1,355 per week. There is an obvious discrepancy there and it must be addressed. A review of the system for setting up nursing home prices under the nursing home support scheme is awaited. A fit-for-purpose model for charges is needed. The review was due in June of 2017, yet it is still outstanding. Replies to parliamentary questions indicate that it will be released soon; perhaps the Minister of State could tell us the date in her reply. There is a discrimination within the fair deal scheme that has to be addressed. A provider

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informed me that they are not-for-profit organisations, but they are not for loss either.

Staffing is another issue. There is a crisis in the context of recruiting healthcare assistants. The shortage, if it persists, will lead to closures. Nursing Home Ireland is asking that the role of the healthcare assistant is removed from the ineligible category of employment permits list. New categories have been introduced to answer shortages in various crafts and trades; why can this not be done for healthcare assistants? Private and voluntary bodies are training the healthcare assistants, who are then moving on to hospitals.

There is a major issue with regard to what agencies are providing. Agencies are supposed to be for emergencies, but the rates of pay I have seen are €31.50 per hour between 8 a.m. and 2 p.m., €35 per hour between 2 p.m. and 8 p.m., €75 at night and up to €150 if there is an emergency. One can imagine the amount of money that is being spent on agency staff. I am not sure how much goes directly to the staff - I am sure some goes to the agency - but this creates a big problem. Why would anybody work in either the private or the voluntary sector? It was stated that agencies are killing the health system and they have been described as a costly disaster. In a number of nursing homes, nuns provide the services. Their work, of course, is unpaid. Nuns are an ageing breed; they are not going to be available forever, which presents another staffing issue.

Nursing homes have qualified nurses on their staff, yet those nurses are not allowed to put in intravenous drips. That should be looked at. Nurses should be able to do that in nursing homes so that patients do not have to be brought to accident and emergency.

The Minister for Health, Deputy Harris, had certain things to say about the GMS contract - I will not read out his comments - but the current contract means that access to GP services for nursing home residents is constrained. Nursing Home Ireland is calling for a new GMS contract to include specific reference to nursing home residents. This is needed now, not next month. If residents have access to GP care in the nursing home it means that they do not have to go to accident and emergency, which can be a long, difficult process, particularly for elderly people with Alzheimer's or dementia.

**Minister of State at the Department of Health (Deputy Catherine Byrne):** I am taking this question on behalf of the Minister of State at the Department of Health, Deputy Jim Daly.

**An Ceann Comhairle:** The Minister of State should be appointed "Minister for Topical Issues".

**Deputy Catherine Byrne:** I am acting in that capacity at the moment. I thank Deputy Maureen O'Sullivan for raising this issue. The Minister of State, Deputy Jim Daly, apologises for not being here.

The Government's core stated objective is to promote care in the community so that people can continue to live with confidence, security and dignity in their own homes and communities for as long as possible. There will, however, always be a cohort of older people who require a quality long-term residential care option. The nursing homes support scheme provides financial support for those in need of long-term nursing home care. Participants in the scheme contribute to the cost of their care according to their means while the State pays the balance of the cost. The aim of the scheme is to ensure that long-term nursing home care is accessible and affordable for everyone and that people are cared for in the most appropriate settings.

The review of the nursing homes support scheme, NHSS, published in 2015, identified a number of issues for more detailed consideration, including a review of the pricing mechanism used by the National Treatment Purchase Fund, NTPF, with a view to ensuring value for money and economy, with the lowest possible administrative costs for clients and the State and administrative burden for providers; increasing the transparency of the pricing mechanism so that existing and potential investors can make as informed decisions as possible; and ensuring that there is adequate residential capacity for those residents with more complex needs. A steering group was established to oversee and manage the pricing review. The steering group is chaired by the NTPF and includes representatives from the Departments of Health and Public Expenditure and Reform. As part of its work on the review, the NTPF sought various inputs including external expertise and stakeholder engagement to inform the review. These inputs are being considered in detail.

This report is significantly overdue, however. I understand that the NTPF is close to completing the report and it is expected that the steering group will be provided with a final draft very shortly. Once complete, the report of the review will then be submitted to the Department of Health. It is recognised that any change to any part of the scheme must be considered in terms of the short and long-term impact on the viability of the scheme and accessibility of long-term residential care in general. It is important, therefore, that the relevant issues are considered thoroughly through this review process and that we ensure that support for people who require it remains on a sustainable footing.

The nursing home sector has also raised concerns in relation to staffing, particularly in terms of securing access to appropriately qualified staff. On foot of these concerns, nursing home providers have requested the removal of healthcare assistants from the ineligible list for permits issued by the Department of Business, Enterprise and Innovation to bring in workers from outside of the European Economic Area, EEA. These permits may be issued for occupations in respect of which there are labour or skills shortages. The results of the most recent review of the employment permits critical skills list and ineligible lists of occupations that come into effect on 22 April 2019, as set out on the website of the Department of Business, Enterprise and Innovation, contain no changes to the grades of care worker and healthcare assistants. There needs to be a clear demonstration that recruitment difficulties are solely due to shortages and not to other factors, such as salary or working conditions.

Both Departments met sectoral representatives and considered their business case. The sector has been advised that more evidence is required of the labour shortage and that they must demonstrate full engagement with the Department of Employment Affairs and Social Protection. On provision of this evidence, the matter will then be reconsidered. The Minister of State, Deputy Jim Daly, acknowledges the significant role of private and voluntary providers in residential care provision. I assure the House that he and the Department will continue to engage with the nursing home sector.

**Deputy Maureen O’Sullivan:** There is a danger of shooting the messenger because I must acknowledge that reply was very disappointing. To go back to the review and how long it is taking, it is acknowledged that it is significantly overdue but we are not too sure why it is taking so long. The report is close to completion but we still do not have a date as to when the review will be available.

What must also be considered is that we need a system whereby when a satisfactory rate is struck, it will be proofed against inflation in relevant areas of cost for a number of years. We



hope inflation will decrease as well as increase but that proofing must be included also. There are concerns about the appeals mechanism and this needs particular consideration. With regard to the price review, is there professional and independent costing and other technical and relevant expertise?

In the context of staffing, the Minister of State's reply stated it must be proved there is a genuine labour shortage and it is not due to other factors. I have given the facts about the work and the rate that can be paid when going through an agency. How can agencies offer so much when the funding is from the State? This is leading to shortages in the private and voluntary sector. Somebody has to join up the dots and look at the matter in a much more holistic way. Earlier, I spoke to my colleague, Deputy Pringle, and he told me there is a very good system in Donegal where there is close co-operation between hospitals and community nursing homes but there is a fear this could be subject to change.

The voluntary and private sectors are providing much-needed care for long-term residents in particular. We must acknowledge that there is an increasing demand for the service. We want to keep people in the community but it will not be possible for everybody. Further closures will have serious consequences so these issues must be addressed. I could not get over the difference between the average public and private rates, which ranges from a difference of 40% to 163%. This needs to be looked at as well as the other issues I have raised.

**Deputy Catherine Byrne:** I do not have a closing statement on this. I acknowledge Deputy Maureen O'Sullivan's frustration, particularly with regard to the report that is significantly overdue. I would like to revert to the Minister of State, Deputy Jim Daly, on some of the questions the Deputy has raised and ask for a more specific response. I am not in a position to give Deputy O'Sullivan specific answers. I hope she will bear with me while I raise the issues with the Minister of State, Deputy Jim Daly, and ask him to respond. I acknowledge Deputy Maureen O'Sullivan's frustration about the clear fact that I am not in a position to answer some of the questions she has asked. I will go to the Minister of State and ask him to provide specific answers.

A Cheann Comhairle, I have been asked to take the next matter but I do not have a script. It was not brought; I just received a short note.

**An Ceann Comhairle:** That is not fair to the Minister of State or to the Deputy who tabled the matter.

**Deputy Caoimhghín Ó Caoláin:** Or the seriousness of the matter to be addressed.

**An Ceann Comhairle:** Absolutely.

**Deputy Catherine Byrne:** The script is being delivered now. I have not seen it. I am not sure whether I will be able to take the matter. Perhaps the Deputy would like to defer.

**An Ceann Comhairle:** We can defer until Tuesday if Deputy Ó Caoláin wishes.

**Deputy Catherine Byrne:** I am only receiving the reply now. I apologise.

**Deputy Caoimhghín Ó Caoláin:** This is very unsatisfactory. I responded to the opportunity. In respect of the Minister of State, Deputy Byrne, who has not even had sight of the reply and has just been handed it-----

**An Ceann Comhairle:** It is not the fault of the Minister of State, Deputy Catherine Byrne.

**Deputy Caoimhghín Ó Caoláin:** No, I acknowledge that absolutely.

**Deputy Catherine Byrne:** I only just got it.

**An Ceann Comhairle:** If the Deputy so wishes, we will take the matter again. If the Deputy resubmits the matter, it will be selected as a priority on Tuesday.

**Deputy Caoimhghín Ó Caoláin:** “Priority” is the key word. I accept the suggestion of the Ceann Comhairle. I hope the Minister for Justice and Equality will present himself to address the issue involved.

**An Ceann Comhairle:** Whoever might attend, I have to say it is most unsatisfactory to find ourselves in a situation whereby we have only been able to proceed with two of the four Topical Issues selected. This is becoming something of a habit. I am afraid that we cannot lay responsibility entirely at the door of the Government because frequently people who submit Topical Issues then withdraw them as soon as they have been selected. That is not acceptable either.

**Deputy Catherine Byrne:** I have the response if Deputy Ó Caoláin would like to read it.

**An Ceann Comhairle:** No, he wants to be able to engage with the Minister directly.

**Deputy Caoimhghín Ó Caoláin:** It would be appropriate to engage directly with the Minister for Justice and Equality.

**Deputy Catherine Byrne:** I apologise to the Deputy and the Ceann Comhairle. I have only just received the reply.

**Deputy Caoimhghín Ó Caoláin:** I do not think either of us hold the Minister of State in any fault.

**An Ceann Comhairle:** We will suspend for ten minutes while we prepare to take the next item and give the participants of that debate an opportunity to prepare and arrive.

*Sitting suspended at 3.55 p.m. and resumed at 4.05 p.m.*

### **Report on Public Private Partnerships for Public Sector Infrastructure Projects - Liquidation of the Carillion Group: Motion**

**Deputy John McGuinness:** I move:

That Dáil Éireann shall consider the Report of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach entitled ‘Report on Public Private Partnerships (PPPs) for Public Sector Infrastructure Projects - Liquidation of the Carillion Group’, copies of which were laid before Dáil Éireann on 22nd October, 2018.

As the Minister of State, Deputy D’Arcy, who is present, is aware, the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach did considerable work on this issue. In my constituency, school building programmes in County Carlow were affected. A significant

number of the contractors were based around that area. When the difficulties began and came to light, a number of subcontractors from around the country contacted members of the committee and asked whether it would investigate the matter and try to protect the services and goods the subcontractors had provided to Carillion.

Before the financial crash, subcontractors were regularly caught out by big contractors such as Carillion and often went broke thereafter. Some of the contractors to which I refer are family-run businesses that have been in existence for generations and provide services or goods. When the public private partnership contract came along, the presumption was that greater guidelines and safety would be built into the contract and would extend to covering the subcontractors in question. I am aware that during the contract phase there were checks on the contractor to ensure that payments were being made and were up to date. When the crash happened, it became clear that the payments were not up to date. Subcontractors providing plastering or painting services, as well as those providing school furniture, for example, were caught and they and their businesses took a substantial hit with a resultant impact on the employment levels in those businesses. I would have thought that since these events occurred and, indeed, since the publication of this report which has 19 recommendations, one of which is that the report and the matters raised therein should be debated in the House, there would have been some progress in informing the committee on the action of the Department or Departments regarding the procurement process in order to safeguard future contracts and subcontractors. The evidence is that large companies outbid everyone else and get the contracts and that there is not enough scrutiny of their financial affairs. An examination of the balance sheets of the companies in question would have shown suspect figures, and that should have come to light. I would have believed, in the context of Carillion, that this would have happened, particularly in view of the scale of the collapse.

On how many of the 19 recommendations is the Government going to act? In response to the committee's report, what action is the Department taking, in the context of the procurement process, to safeguard contracts by vetting the winners to the greatest extent possible, secure in the belief that they will carry out the work from start to finish?

The issue of subcontractors also arises. Considering that a €14 million fund was mentioned, we recommend in the report that the subcontractors be paid. There was quite a hullabaloo at the time, both in the media and at the committee, because we heard from the subcontractors. There was pressure put on for them to be paid part, if not all, of the moneys due. That did not happen. If we are to instil confidence in the sector and the PPP process, we have to take steps to earn the confidence of subcontractors throughout the country and ensure that the State's position is understood. I do not get that sense today.

Subcontractors remain concerned. The subcontractors involved with Carillion and Sammon have still not been paid in the way they should have been. To witness railings being taken down and moved away and subcontractors turning up at the gates of schools to take back the desks at which the children were to sit tells its own story. The Government cannot stand by and just watch that happen. It is damaging the very sector we are relying on to continue to create jobs and that created 1 million jobs in the past. I want to know the safety arrangements in the context of protecting the subcontractors. What did the Government do with the set of subcontractors involved before? Was payment made? What will be done about the big firms that win the contracts in the context of how they are paid and how they pay subcontractors? I hope the Minister of State will put in place a response to each of the recommendations and that the appropriate action will be taken to protect the individual subcontractors who were left skint as a

result of the collapse.

**Minister of State at the Department of Finance (Deputy Michael D'Arcy):** I welcome this report. Most of the issues raised in it do not fall within the scope of PPP policy. The focus of much of this report seems to be the impact on subcontractors arising from the liquidation of Sammon, itself a subcontractor working on the schools PPP bundle 5 project. This intrudes on law dealing with the complex situation of company insolvency rather than PPP policy or public procurement policy. The position of any subcontractors engaged by a PPP company is essentially no different from that of subcontractors working on traditionally procured projects, whether in the public sector or private sector.

I absolutely sympathise with anyone who has experienced a financial loss. The State, however, is not to blame for this loss. The State meets its obligations and will pay the PPP company the contracted price for the project delivered. That said, the Government has considered this report in its entirety, and I am happy to set out how we will respond to its recommendations.

Last year, the Government launched its vision for how we can achieve a better future. Project Ireland 2040 includes two core elements, namely, a national planning framework and a €116 billion national development plan that sets out an ambitious and strategic vision for Ireland's investment in public infrastructure over the next ten years. With this plan, investment levels in Ireland will continue to increase at a sustainable rate and, very importantly, our infrastructure investment will be strictly guided by the national planning framework, which creates a single vision for our country as a whole, covering both rural and urban areas. This will deliver modern public infrastructure over the coming years that will improve the lives of people throughout Ireland and allow our companies and economy to continue to compete with the best in the world.

I will briefly explain what PPPs are and their role in the delivery of Project Ireland 2040. A PPP is an arrangement between the public and private sector for the purpose of delivering infrastructure or services that were traditionally provided by the public service. In effect, it is a form of procurement available to the public sector. When referring to PPPs, we generally mean that the asset is funded and constructed by the private partner, following which it is made available for public use and is paid for by the State and-or users over an extended period, typically between 20 and 25 years, following which the asset comes into State ownership. In the meantime, the PPP is regarded as off-balance sheet from a general Government perspective, which means that the initial capital cost of the project does not impact on the general Government balance over the construction period, but rather its cost is spread over the lifetime of the project.

Since the late 1990s, significant infrastructure projects have been delivered on behalf of the State using the PPP approach, including the pilot schools bundle in 2002, the National Maritime College in 2004, Cork School of Music in 2007, the Criminal Courts of Justice complex in 2009, the National Conference Centre in 2010, further schools bundles and a number of major motorway projects from 2005 onwards.

In July 2012, the Government announced plans for a major new €1.4 billion PPP programme, as part of a €2.25 billion stimulus programme of investment in public infrastructure projects. This comprised eight new PPP projects across the health, justice, transport and education sectors, of which schools bundle 5 is one. This was followed up with a second phase of the PPP programme, announced in 2014, to deliver 1,500 social housing units and a third phase, announced in 2015, to deliver projects across the higher education, health and justice sectors. There are now 28 PPP and concession projects that are either operational or in construction, in

addition to those in procurement or planning. The annual cost of the unitary payment charges in respect of operational PPPs is some €290 million in 2019. The contractual capital value of all PPPs in operation or construction is over €5 billion.

In order to support value-for-money assessment, an analysis, called the public sector benchmark, is prepared that estimates the full cost of pursuing the project as a traditional procurement. As a general rule, a project proceeds as a PPP only if the tendered cost to the Exchequer is less than the public sector benchmark, which was the case in school bundle 5. The committee has suggested that the public sector benchmark be published before concluding a PPP contract. The public sector benchmark is confidential as it effectively says how much the State should be willing to pay for a particular category of project. However, current practice is already to publish the public sector benchmark, once it is no longer commercially sensitive.

In 2017, I initiated a policy review of the future role of PPPs to ascertain how they would contribute to Project Ireland 2040. The main outcomes of the review are: PPPs should continue to feature as a procurement option for projects that demonstrate value for money over a traditional procurement option; value for money should be the key deciding factor, an approach also recommended by the 2017 IMF review of our public capital investment processes; PPPs that have already been announced and that are in planning or procurement, as announced in budgets 2015 and 2016, will proceed as planned.

There is frequently a degree of misunderstanding regarding what a PPP project entails. Comparing the construction costs of a project with the total payments made by the Exchequer over a 25-year PPP contract does not compare like with like. The payments made by the Exchequer over the lifetime of the PPP contract include not just the construction costs but also those relating to finance and operations and maintenance, including cleaning and caretaking, over the period. The PPP company must provide a fully maintained asset. If the asset is not available or maintenance is not undertaken in accordance with the contract, the State reduces its monthly payment until the required standard is restored. This means that the PPP company has a strong incentive to deliver a high-quality asset and maintain it in good condition. Over the lengthy period of the contract, the PPP company can expect to make substantial investments and significant refits to keep the asset in good order. Residual life requirements are key features of these contracts, which means PPP companies must hand back the assets in good condition and meet specific residual life conditions. In traditionally procured projects, such further costs fall to the Exchequer. All of this is taken into account when designing a PPP. The PPP contract makes explicit the full costs of constructing and maintaining an asset in good quality.

The Department of Education and Skills is undertaking a review of the first pilot bundle of five post-primary schools that were delivered through the PPP model in 2001-2002. The review includes a direct comparison with traditional schools that were procured around the same time. The review will incorporate detailed condition surveys of the buildings and compare the operation and maintenance provision in both PPP and traditional schools. We expect it will provide useful learning for the traditional schools programme and for the PPPs.

Schools bundle 5 is a PPP project that is delivering five schools and an institute of further education across four sites. The bundle includes: Loreto College in Wexford, which is in my constituency; Coláiste Ráithín and Ravenswell primary school in Bray; Eureka secondary school in Kells; Tyndall College in Carlow; and Carlow Institute of Further Education. The bundle will provide for 3,150 post-primary school places, 24 primary school classrooms and 1,000 further education places. The new buildings are replacing infrastructure which is no



longer fit for purpose or adequate for student enrolment numbers and are hugely important investments for the school communities involved. This project is managed by the National Development Finance Agency, NDFA, on behalf of my colleague, the Minister for Education and Skills. In 2016, the PPP contract was concluded with a consortium that included Carillion, a British company which had been involved in many PPP projects in the UK. The construction was subcontracted by Carillion, as the works contractor, to Sammon, which was an Irish construction company. Following the financial collapse of Carillion in 2018, Sammon went into examinership and subsequently into liquidation.

The PPP structure transfers delivery risks to the private sector. Therefore, responsibility for completing the construction of schools bundle 5 ultimately rests with the PPP consortium and the private investors funding the project. As with all forms of public procurement, the prime focus is on achieving value for money in delivering the required schools. The three school buildings in Bray and Wexford were handed over in late August and early September of last year in time for the current academic year and are now fully operational. The remaining buildings in Carlow and Kells are scheduled for completion in the second quarter of this year. The NDFA, in consultation with the Department of Education and Skills, is liaising closely with the PPP company and the funders to achieve the delivery of all remaining buildings as soon as possible. The full lessons from schools bundle 5 cannot be determined until all the buildings have been delivered and the final outcome is known. A joint lessons learned exercise regarding schools bundle 5 has commenced and will conclude after all the buildings are delivered. The review involves my Department, the Department of Education and Skills and the NDFA. I intend that this review will publish a summary of findings. This will substantially address the need to identify whether any aspect of the PPP framework needs attention as a result of experience of this project.

The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach has made a number of recommendations to review and promote the Construction Contracts Act 2013 and potentially implement alternative protections for subcontractors. When the 2013 Act was being developed, extensive research into the approaches taken in other jurisdictions was undertaken and this was reflected in the regulatory impact assessment undertaken at the time by the Office of Government Procurement. This means that potential alternatives have already been evaluated and assessed. The legislation is based on the approach taken by the UK and New Zealand Governments in dealing with similar issues. It is important to appreciate that alternative measures, such as requiring contractors to acquire performance bonds, entail unpredictable costs for the private and public sectors. The balance that was struck in the Construction Contracts Act 2013 represents all that any such measure can do.

Some people have suggested that PPP contracts are exempt from the scope of the 2013 Act. This exemption applies only to top-level contracts with the PPP company - typically, a contract involving equity people and funders rather than the construction sector subcontractors the 2013 Act seeks to protect. The 2013 Act applies to subcontractors further down the supply chain. For example, it would apply to subcontractors working for Sammon on schools bundle 5. The committee recommends the promotion of awareness of this legislation. I agree with this recommendation. It appears that subcontractors are not availing of this framework in situations that could help them. This is best addressed by inviting construction sector representative bodies to promote awareness among their members. To that end, I have arranged for the Department of Business, Enterprise and Innovation to deliver a presentation on the Act to the construction sector subgroup. This group ensures there is regular and open dialogue between the Government

and the construction industry on how best to achieve and maintain a sustainable and innovative construction sector which is positioned to deliver successfully on the commitments in Project Ireland 2040. It comprises representatives of key industry bodies, as well as senior representatives of relevant Departments and agencies with responsibility for policy and the delivery of infrastructure. It is chaired by the Secretary General of the Department of Finance. The scope for construction sector bodies to pursue their own initiatives in this space has not been exhausted. The construction sector could give consideration to the establishment of a fund to guarantee payment to subcontractors - not limited to public sector contracts - on the basis of a levy collected and managed by the industry. This might have a positive impact on payment behaviour.

The Companies Act 2014 is the legislation applicable to the winding up of companies. The Act contains detailed provisions relating to the realisation and distribution of assets and provisions to address abuses when companies are being wound up, such as rules on the fraudulent disposition of assets and unfair precedents. The Company Law Review Group is a statutory advisory expert body which advises my colleague, the Minister for Business, Enterprise and Innovation, on the review and development of company law in Ireland. As recently as 2017, the group published a review of company law safeguards for employees and unsecured creditors. Subcontractors are likely to be unsecured creditors under company law. In general, the review found that the existing protections and remedies for employees and unsecured creditors in company law are comprehensive and fit for purpose. As the group's report is of recent vintage, the need for a further review of company law in respect of subcontractors at this stage is unlikely to be productive.

I welcome the joint committee's report. I have drawn it to the attention of the relevant State bodies with an interest in its recommendations. The thrust of its recommendations are already reflected in the actions that have been taken. I refer particularly to my commitment to invite construction sector bodies to promote more awareness of the Construction Contracts Act 2013 and the protections that are already available.

**An Ceann Comhairle:** I thank the Minister of State. His timing is superb.

**Deputy Thomas P. Broughan:** I warmly commend the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach on the production of a valuable report on the use of PPPs for public sector infrastructure projects. I thank the Chairman of the joint committee, Deputy McGuinness, and the committee secretariat for producing this report, which is particularly timely in the context of the liquidation of the Carillion group. The collapse of Carillion has significantly delayed the delivery of the PPP contract known as schools bundle 5 right up to the present. It raises profound questions about the continued use of the whole PPP process, which has tied the State into a system of large annual payments to PPP contractors until the 2050s or 2060s. The informative report before the House may be considered alongside the House of Commons report on Carillion, which is a devastating indictment of the PPP approach. We copied this approach from the UK Government, which refers to it as the private finance initiative, PFI. At the time of the Carillion collapse, *The Guardian* responded to a report on the company by the UK National Audit Office by concluding that PFI schemes have "as they have evolved, simply not worked". The leader of the UK Labour Party, Jeremy Corbyn, rightly refers to the dogma of privatisation which he claims has resulted in an outsourcing racket to the detriment of public infrastructure for the British people.

Carillion had approximately 43,000 employees, including 19,000 in the UK, when it collapsed in January 2018. One of the disgraceful results of this collapse was that it left a pension

liability of the order of £2.6 billion. It also owed in the region of £2 billion to its 30,000 suppliers and subcontractors. Many of our companies and their workers were exposed in this regard. The liquidation of Sammon Contracting Ireland Limited on foot of the collapse of Carillion led to grave difficulties in the delivery of schools bundle 5 under an Irish PPP, including serious adverse impacts on subcontractors that worked on the project.

The House of Commons report castigates the management and governance of Carillion, the board of which included among its members Mr. Philip Green who was chairperson from 2014. Carillion's business model is described in the report as an "unsustainable dash for cash", with the company "choosing to pay out more in dividends than the company generated in cash". The executives and the board are accused of a chronic lack of accountability. The culture within Carillion is described as "rotten". Yet this company was chosen in July 2016 by the National Development Finance Agency, NDFA, to lead the Inspired Spaces consortium with the Dutch Infrastructure Fund, DIF, to construct schools bundle 5, ultimately funded by €250 million of State payments over a 25-year period. This is the debacle into which we have been led.

The House of Commons report especially emphasises the role of auditors in the Carillion collapse and the fact that KPMG audited Carillion for 19 years, earning £29 million in that time. Deloitte was responsible for advising Carillion's board on risk management. It is clear that the auditors concurred with what the report refers to as the company's "aggressive accounting policies to present a rosy picture to the markets". Accordingly, I greatly welcome the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach's focus in section 4.4 of its report on the role of auditors and due diligence procedures. The chairperson's and the committee's request that the NDFA liaise with its counterpart agencies in other jurisdictions on due diligence is timely and important. It is good to read also that the UK Financial Reporting Council, FRC, is conducting an investigation into KPMG's audit of Carillion's financial statements. Clearly, the Central Bank and the Office of the Director of Corporate Enforcement must also review the outcome of the UK investigation and its impact on subcontracting companies here.

We have learned from the *Financial Times* and other newspapers that the UK Government and the FRC are proposing that the so-called big four accountancy companies in the UK be broken up because of their predatory pricing of audits. The UK authorities also wish that financial consultancy work and auditing should be totally separate functions not carried out by the same company through Chinese walls. Will the committee examine the current regulation of auditing, recommend whether similar reforms are necessary and examine the dominance of the auditing market by the big four?

Section 3.3 of the committee's report addresses the PPP policy framework and considers the findings of the 2017 Department of Public Expenditure and Reform's review that PPPs should continue to be used, with an emphasis on value for money at procurement stage. It also recommends that a new and alternative model should be considered for future PPPs. However, we have not heard any response to this from the Minister of State. The committee correctly concludes that the PPP framework operates without the visibility and transparency required for the State to know whether those along the entire supply chain – including our subcontractors and workers - are paid appropriately for services provided. It also concludes that such full visibility and traceability of payments must be central to any future PPP contracts. The Minister of State did not address the central point about the 2013 legislation.

I strongly support this conclusion and also agree that the Department of Public Expenditure and Reform review prior to the Carillion and Sammon collapses must be revisited as a matter of

urgency. Indeed, the whole PPP process is another kind of shadow banking but one in which the State is involved. Deputy Michael McGrath has also raised this issue of shadow banking in the context of car-leasing companies. That is why I believe the State should finance, construct and manage all major infrastructure projects for our people, including those relating to education, health, transport and public housing.

The State refused to take responsibility for regulating the construction of homes during the Celtic tiger property bubble. The role of the clerk of works in public contracts was abandoned. When I worked on Dublin County Council sites as a student, I knew the clerk was there to ensure that work was done properly. However, this model was abandoned by the Government led by Bertie Ahern. It is no wonder that section 3.4 of this report states that the certification of works is arguably the single most contentious issue to emerge in the course of the committee hearings. A certification of works is necessary in order for a completion certificate to be granted by the Buildings Control Authority and this certification is governed by the building control amendment regulations, BCAR, and the code of practice for inspecting and certifying buildings and works. It is striking that, even hearing from subcontractors, the committee felt that the current certification process may expose the State to future liabilities in terms of insurance cover and health and safety regulations. Again, the NDFA has a significant role to play in making this certification process more accountable. The committee supports what it calls a pragmatic and sensible approach whereby the PPP company and the replacement contractor, Woodvale in this case, engage with the original supply chain to secure the necessary certification.

I strongly echo the committee's view in section 4.1 that there is a lacuna in legislation regarding the protection of payments and entitlements to subcontractors and their workers. Any review of the Construction Contracts Act 2013 will show that new multifaceted legislation is necessary for the proper protection of subcontractors and their staff. The losses in outstanding payments sustained by as many as 400 subcontractors in the schools bundle 5 debacle may total at least €14 million with a profound negative impact on smaller companies, their workers and families.

The proposal in section 4.6 of the committee's report for a contingency fund is crucial. The State should at least take this step to protect subcontractors and front-line workers and suppliers. Any future winning consortium should be obliged to set aside such a contingency fund. This echoes a similar proposal from the House of Commons investigation into any future PFIs in the UK.

I commend Senator Alice Mary Higgins, along with her colleagues in Civil Engagement, Senators Ruane, Dolan, Colette Kelleher and Black, for bringing forward the Public Authorities and Utility Undertakings (Contract Preparation and Award Criteria) Bill 2019. I was delighted to see it pass Second Stage in Seanad Éireann. It will give further effect to the European Parliament Directive 2014/24/EU and Directive 2014/25/EU. It provides for the use of social considerations and best price-quality ratio as criteria in awarding public contracts. It would be a positive step forward if the Government weighed in behind it when it comes to this House.

I commend Deputy McGuinness and my colleagues on the finance committee, as well as the staff who prepared this report. I hope it will start an important debate to which the Government will respond with necessary legislative changes.

**Deputy Louise O'Reilly:** I commend the Chairman and members of the finance committee, as well as the staff who supported them in producing this important report.



Unfortunately, PPPs play a significant role in the construction of health facilities. This is despite the fact that serious and grave concerns exist about them, some of which are outlined and highlighted in the report. There are a significant number of primary care centres around the State, built using the PPP model. I can always tell which ones were built this way because they are the ones with no GPs or staff. Last year, I tabled parliamentary questions on the number of primary care centres under construction. The reply was interesting. Of the 32 primary care centres then under construction, 13 were being built using PPPs. I am sure the Minister of State will say that people do not care who builds the primary care centre, they only want to ensure that it is built. My response to that, however, is that a building is no use if there is no one in it. Several primary care centres which were built using the PPP model are completely devoid of staff. It is pointless to have a building where a GP cannot afford the rent or where there is not a full complement of staff. We need to ensure that our primary care centres belong to the State and can be staffed with directly employed GPs and with rent and other bills covered by the HSE or that they can be offered to a self-employed GP at a rent charged at a fair and affordable rate.

I also wish to make a broader point. Over decades, the failures of privatisation and PPPs became clear and those who promoted them were exposed as they offered false promises. In most cases PPPs are an expensive and inefficient way of financing infrastructure and services since they conceal public borrowing while providing long-term State guarantees for profits to private companies.

Earlier, the Minister of State stated that the committee “made a number of recommendations to review and promote the Construction Contracts Act 2013 and potentially implement alternative protections for subcontractors”. I have a particular interest in this area and I urge that in any review he would include protections for workers. The best protection for any worker, of course, is to join a union, however these companies very often do not recognise trade unions. PPPs are effectively State-sponsored privatisation. In many instances they do not honour or acknowledge the third-party machinery of the State or the minimum rates for the job in the relevant sector and ride roughshod over workers’ rights. I have seen a PPP in action in a school where I represented workers. It was a design, build and operate contract. They came in and the workers, who had been State employees, were essentially offered an ultimatum that they could switch to become employed by the contractor, and were offered a contract to work in the school once built. There was no union recognition, however, and I do not believe that the State should do business with people who do not recognise trade unions or third-party industrial relations machinery. One cannot rely on the goodwill of employers. Generations of my family would have been out of a job if one could rely on the generosity of employers; one cannot rely on employers’ good nature. We must ensure that wherever and however the State spends money and whatever contracts are entered into, workers’ rights are protected and are put front and centre.

PPPs originated as an accounting trick as a way around governments’ own constraints on public borrowing. This remains the overwhelming attraction for governments and international institutions. A state with the financial clout of this State and the capacity to raise finance of its own should not be forced to engage in PPPs. They are not a solution and merely hoodwink us that they work well. They have been proven time and again not to deliver for those who need them most. There is a better way, which delivers the best interest of the State and the people, namely, direct State investment. That applies to the health service, the education sector and across the public service.

**Deputy Michael Fitzmaurice:** I speak as someone who comes from a construction background. The report refers to subcontractors. There should be a system whereby when pay-



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ment is made to the main contractor, there is a list of the subcontractors that are on site. It is a problem, not everywhere but here and there, that those subcontractors are owed money. They can find it difficult to do a final sum with some larger firms, and many of these subcontractors need to be paid fortnightly. It becomes a major problem. I refer to small operators who do not qualify under the procurement guidelines as they lack the necessary level of turnover, which is a problem with the procurement rules. We need to ensure there is protection there because these firms are vulnerable; there is no point in saying they are not. We have heard the stories that go around in the different parts of the country. A subcontractor might be owed €24,000 only to be told by the contractor that they would receive €20,000 and that would be it, and they might have their tongue out for it. I would encourage the Government to insert a guarantee that in any project undertaken with the Department of Education and Skills, with Transport Infrastructure Ireland or whatever Department or agency, any list of subcontractors which the main contractor had on site would have to be signed off on before the State would pay the main contractor any money.

I do not have a problem with the principle of PPPs if they are done right, but only if they are done properly which is the problem, for the simple reason that the State is bound by certain constraints when borrowing money. Borrowing is effectively off-balance-sheet if it is done the right way. However, I have a big problem with primary care centres. I know of situations where a deal has been done on a primary care centre - it is usually for a period of 25 years - in which the loan the banks are giving the builder are for a duration of 18 years. The rest have a few pounds out of it. The problem is that we were not smart enough. Had we inserted a clause that we could pay €1 for that building after 25 years we would nail it down, because the contractor had been paid for it. Instead we must enter into a new contract with those people for a further 15 or 20 or years. This is an awful gap in what we are doing and ought to be nailed down. The Minister of State is looking at me but I have checked this with some people who have had such a contract and this is the reality.

There are roads for which we seek funding. I have no problem with this being done by PPP. There is the cost, the interest and must be a bit of space for people to make money because there is no point suggesting they will enter into something to lose money. However we need to nail the process down, whether it is over a 20 or 25-year period, in order that at the end of that period, the asset returns to State ownership for a minimal sum. It cannot be some balloon figure near the end.

Those are the two things that I would like the State to examine. There are roads that are planned or that are not even on the cards as yet for which this could be used. There is a budget, say €1 billion or €800 million, and it is impossible to deliver everything one wants from that. No one is coddling himself or herself that it is possible. There is an opportunity, however, over a 20 or 25-year period to deliver the infrastructure that is needed through PPPs. However, I emphasise that we need to nail down the process and do it properly. If it is used for roads and insufficient traffic goes through, the State will have to pick up the difference and no one is cribbing about that as that is the agreement entered into by the State. I worry about the system being used for primary care centres, however, because I know some of those builders and it is an open goal for them. We need to go back and look at some of the projects that were done and we should watch what we do in the future.

**An Ceann Comhairle:** I suggest that we might be a little innovative, at the risk of putting the officials in a flap. We are meant to go to the Minister of State and then to Deputy Thomas Byrne to wrap up but perhaps it would be better that we hear Deputy Byrne first and then let the

Minister of State respond, if the Deputy is amenable.

**Deputy Thomas Byrne:** We would accept that. The Minister of State has already spoken at length and he has heard some of what we had to say.

I am grateful to my colleague, Deputy McGuinness, for affording me the opportunity to speak on behalf of the committee of which I was formerly a member, as was the Minister of State, Deputy D'Arcy. It is an issue I have previously spoken on in the House and on which I have long had an interest, both as Fianna Fáil's education spokesperson and as a Deputy for Meath East where, frankly, many subcontractors were shafted, there is no other word for that. The report's most important recommendation is its last substantive recommendation that a contingency fund be set up. The committee heard in its evidence that about €14 million is owed to subcontractors. I have no doubt that millions of that is owed in Kells, where my constituency office is located, and in the surrounding areas. I have met many of those subcontractors. When we think of subcontractors, we tend to think of individuals. While many individuals have been badly affected, so too have many businesses, including large local undertakings and family businesses. I remember when the project in Kells was starting an open day was arranged for local business people. I believe it was held in Carlow or wherever the Sammon Group had its office. Business people were invited to meet representatives of the group to find out about the opportunities. When I heard about the open day, I thought it was a wonderful opportunity for local business people. It was fantastic to have a major construction project coming into a rural town like Kells. It could only be good news, we thought, but unfortunately for many local contractors, it was a disaster. There is no other way to describe it. Contractors and businesses, some of which had offices across the road from where the school was being constructed, were delighted to get that stream of business because the economy was at its lowest point at the time.

Before the Sammon Group collapsed, contractors who were looking to be paid got in touch with me asking if I could do anything about it. I raised the matter in the House with the then Minister for Education and Skills, Deputy Bruton, and whatever happened at the time, whether through embarrassment or something else, moneys were paid. This was before the company collapsed. Many issues arose with this project and they left a sour taste in north County Meath.

If there is a problem with a school building project, it will be resolved at some point. The girls attending Eureka secondary school will get the benefit of the school at some point, even if it has been substantially delayed, even beyond initial expectations. However, business people, workers and families in Kells will suffer forever as a result of lack of payment for goods and services. One of the points made to me is that in some cases the goods provided, for example, tarmacadam and blocks, are in the building are on site. The providers have paid for the building, a public service, but are not getting paid for what they have provided. It is scandalous and outrageous that this has been allowed to happen. It is important for the country's economy and the future of public private partnership programmes that the fine recommendations of the committee's report are put into practice and such a case never occurs again.

The committee also pointed out that the Construction Contracts Act 2013, which was initiated by the former Senator, Mr. Feargal Quinn, in the Seanad, has not worked to the level expected. At the same time, people need to know about the provisions of the Act. That is another recommendation of the report.

I worry when I hear the word "learning". I accept there have to be learnings from this. Learning is a new word that has entered into the political and administrative lexicon in recent

years. We used to hear that mistakes had been made. Mistakes were clearly made in this case. One of the biggest was the failure to look at what was going on in the UK where the authorities also made the mistake of trusting Carillion too much. They said it was a fine company without looking at the underlying position of the company or asking how on earth it was able to provide all these contracts at rock bottom prices in the public sector. It simply was not possible to do so and it created a bubble that was waiting to burst. Unfortunately, when it burst the consequences were devastating for subcontractors and severe for school children.

Having said that, I am generally supportive of PPPs but only if there are adequate protections for the subcontractors who provide work to the main contractor. If the State is directly contracting a project, some protection will be provided. In this case, where the financial arrangements were extremely complex and involved banks in Japan, a company in England and another company in the Netherlands, the State was removed from the process. The State has been subsidised by local business people in Kells and north Meath. That cannot happen again and Fianna Fáil will not be able to support PPPs if that is allowed to be the case and the recommendations are not looked at with the seriousness they deserve by those in charge of public procurement.

I pay tribute to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach. If the Ceann Comhairle will forgive me, I also pay tribute to Mr. Ken Murray who has done the radio work for five counties, including, I understand, the Minister of State's county, and also on Shannonside FM. Today could be the last day the debates are broadcast on the various local radio stations, which is a great tragedy. This is a matter for the Oireachtas Commission but instead of cutting back, we should be expanding coverage of Dáil proceedings to all of the radio stations that are willing to take it. It is a useful public service and one of a number of ways of following debates. I express my gratitude to Mr. Murray for his work in the Oireachtas over many years, as I am sure will Deputies Fitzmaurice and D'Arcy given that radio stations in their areas are covered by his work.

**Minister of State at the Department of Finance (Deputy Michael D'Arcy):** I agree with Deputy Byrne that Mr. Murray has done a super job on the promotion of the work we do in the Oireachtas. Many Members do not always get the level of coverage they should but Mr. Murray has brought coverage of proceedings to each of the counties he has covered. I support the continuation of that service. It is a good service and this is a matter for the Ceann Comhairle and the Oireachtas Commission, in their wisdom, to consider.

**An Ceann Comhairle:** The matter is under deep consideration.

**Deputy Michael D'Arcy:** When Deputy Thomas Byrne and I were Senators, a Bill introduced by the former Senator, Feargal Quinn, highlighted the disservice being done to subcontractors. There are also many subcontractors in the private sector who find themselves in difficulty because they are dealing with larger companies. An interaction of unequals is leading to such difficulties. Former Senator Quinn's legislation, which Deputy Byrne and I both discussed in the other House, has improved the sector in its totality. I want to show my appreciation for former Senator Quinn's legislation. There is a difference between a contract between two private companies and one that has been done with the State. There is an expectation that the State will ensure that people get paid, but the State cannot pay for a job twice.

I am pleased to have an opportunity to comment on the joint committee's report. As has been noted, the report is being circulated to relevant bodies to consider its recommendations in

light of their respective remits.

As with all forms of public procurement, the prime focus of the PPP framework is to achieve value for money in delivering the required infrastructure. The PPP structure gives a strong incentive to the private sector to deliver the project. The State does not commence unitary charge payments until the works are delivered to the expected standard.

As explained previously, the PPP company must maintain the asset for the duration of the contract, which is over a lengthy period, such as will require substantial continuing investments to be made by the private sector project funders. These are significant benefits, which mean the PPP framework can offer very good value for money for the right project. However, the concerns expressed here do not primarily relate to the PPP framework. If schools bundle 5 had been a traditional procurement, the position would be substantially the same. The same protections apply to subcontractors here as would apply in any project, whether in the public or private sectors. The law still applies. I am sure everyone agrees that the State cannot pay twice for the same works.

A lessons learned exercise into schools bundle 5 has commenced, involving the Departments of Public Expenditure and Reform and Education and Skills and the National Development Finance Agency. It will conclude after the project has been fully delivered. It will chiefly focus on the effectiveness of the PPP framework as a procurement tool.

The issues raised here are probably best considered in the context of the safeguards for employees and unsecured creditors in company law. As pointed out, the Company Law Review Group recently reviewed those safeguards and found that, in general, the existing protections and remedies were comprehensive and fit for purpose. The Construction Contracts Act 2013 drew on international experience to frame a measure that could mitigate the exposure of subcontractors in these cases. Alternative approaches, such as mandatory performance bonds, were considered. That analysis can be found in the regulatory impact assessment completed by the Office of Government Procurement in the context of the development of the legislation. Those alternatives were found to have drawbacks, such as adding considerable administrative and financial overheads to small businesses.

*5 o'clock*

The scope for construction sector bodies to take their own initiative has not been exhausted.

For example, the construction sector could give consideration to the establishment of a fund to guarantee payment to subcontractors, and not limited to public sector contracts, on the basis of a levy collected and managed by the industry, and this might have a positive impact on payment behaviour. There is only so much that can be achieved by legislation. Legislation on any topic typically needs to find a balance in complex matters. That said, I am sure the contents of this report will add to the ongoing policy deliberations in the various areas to which it relates.

The law of the land includes employment law and Deputy O'Reilly seemed to intimate that public private partnership, PPP, projects do not adhere to the law of the land but that is not the case. Whether the project is a public private partnership, a standard project that goes through procurement or is done by a private subcontractor, the law of the land applies. Rates of payment and employment protections apply. It is important to put this on the record as I do not want the idea to go out that PPPs contain a methodology with which companies can work their way around the law of the land. They cannot do it.

Question put and agreed to.

4 April 2019

The Dáil adjourned at 5.05 p.m. until 2 p.m. on Tuesday, 9 April 2019.