



DPE 022/007/2021

07th October 2022

To: Accounting Officers

DPER Circular: 20/2022

Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report Examination of the 2019 Appropriation Account for Vote 29 – Environment, Climate and Communications: Programme B – Broadcasting, and the 2020 Appropriation Account for Vote 33 – Tourism, Culture, Arts, Gaeltacht, Sport and Media.

A Dhuine Uasail,

I am directed by the Minister for Public Expenditure and Reform to enclose, for your information and guidance, a copy of the Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of the 2019 Appropriation Account for Vote 29 – Environment, Climate and Communications: Programme B – Broadcasting, and the 2020 Appropriation Account for Vote 33 – Tourism, Culture, Arts, Gaeltacht, Sport and Media.

Issues raised

The Minute of the Minister addresses the following issues:

- The liability to the Exchequer resulting from the use of contractors by RTÉ;
- Funding of public service broadcasting;
- Decline in commercial revenues for RTÉ; and
- The gender pay gap and the remuneration of Irish-language workers at RTÉ

Enquiries

Enquiries in relation to this Circular should be addressed to Government Accounting Unit, Department of Public Expenditure and Reform, telephone: +353 1 6767571 or email: govacc@per.gov.ie.

Mise le Meas,

David Moloney

Secretary General

Committee of Public Accounts Report on the Examination of the 2019 Appropriation Account for Vote 29 – Environment, Climate and Communications: (Programme B – Broadcasting), and the 2020 Appropriation Account for Vote 33 – Tourism, Culture, Arts, Gaeltacht, Sport and Media (Programme E - Broadcasting)

The Minister for Public Expenditure and Reform has been advised by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that, in accordance with the provisions of the Broadcasting Act 2009, RTÉ is fully independent in the pursuit of its public service objectives (which are set out in Part 7 of the Broadcasting Act 2009), including its day-to-day operations.

As such the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media has no role in RTÉ's day-to-day activities, including those related to staffing and remuneration, and as a consequence acceptance or rejection by the Department on behalf RTÉ of the recommendations contained in the report is not possible. However, the recommendations have been brought to the attention of RTÉ for further consideration.

Issue 1 – The liability to the Exchequer resulting from the use of contractors by RTÉ:

Following the Review of Role and Gender Equality, RTÉ commissioned Eversheds Sutherland to undertake a review of the broadcaster's use of contractors. Of the 433 contractual arrangements reviewed;

- 276 contractors were found to have been appropriately engaged,
- 106 contractors were identified as having 'attributes akin to employment', and
- 51 contractors were found to have 'attributes akin to both employment and self-employment'.

The contracts of 157 individuals were found to be in need of a further review¹. RTÉ subsequently offered 82 of these individuals a contract of employment, with 79 acceptances.

Following the Eversheds Sutherland review, RTÉ engaged with the Office of the Revenue Commissioners (Revenue) to address outstanding liabilities arising from these contractual arrangements. RTÉ confirmed to the Committee that the period under examination was 2015 to 2018. RTÉ made a settlement with Revenue of approximately €1.2 million 'in respect of identified liabilities.'

However, no indication has been given to date as to how this figure was reached.

A separate investigation is currently being undertaken by the Department of Social Protection (DSP) of the social insurance status of workers engaged by RTÉ. As DSP does not have a statute of limitations for its investigations, a further amount of PRSI may be liable to DSP should it find any individual was misclassified for PRSI purposes prior to 2015. DSP has stated that its investigation is due to be completed in 2023, and has committed to providing the Committee with an update on its investigation by the end of 2022.

¹https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_of_public_accounts/submissions/2018/2018-07-12_correspondence-vivienne-flood-public-affairs-rte-32r001468-pac_en.pdf

DSP provided the Committee with an update in June 2022 that 60% of examinations to date have resulted in decisions to reclassify workers, previously classified as self-employed, as employees, of which 48% have been appealed by RTÉ.

DSP confirmed to the Committee that RTÉ are liable to pay Revenue any assessed arrears arising from DSP's investigation of RTÉ that exceed the broadcaster's settlement with Revenue in 2021.

Furthermore, as a part of the resolution process, engagement with workers directly will only commence once Revenue and DSP investigations have concluded.

A Ministerial Brief on Media Agencies published by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media in 2020² confirmed that the Corporate Governance Division at the Department 'continues to monitor' RTÉ's response to the findings of the Eversheds Sutherland review.

The Committee is concerned at the potential loss of revenue to the Exchequer in terms of the PRSI that should have been paid by RTÉ in respect of any contractors found to have been misclassified for PRSI purposes.

The Committee is also concerned that any settlements in that regard may effectively be subsidised by way of Exchequer funding to RTE.

Recommendation 1(a):

The Committee recommends that the Department works with RTÉ to provide the Committee with a breakdown of the €1.2 million settlement paid by RTÉ to the Office of the Revenue Commissioners in 2021.

The Minister for Public Expenditure and Reform has been informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that, regarding the question of the settlement made by RTÉ with the Revenue Commissioners, while the disclosure or otherwise of financial information (over and above that contained in its Group Financial Statements) is a matter for RTÉ, the Department is aware that RTÉ engaged with the Committee at its hearing on 20 January 2022 on the question of its settlement with the Revenue Commissioners. Furthermore, the Committee's recommendation in this regard has been communicated to RTÉ by the Department for consideration as to whether further detailed information can be made available.

Recommendation 1(b):

The Committee recommends that the Department's Corporate Governance Division provides the Committee with a report by November 2022 – given its oversight of public funds provided to RTÉ – on its view of RTÉ's responses to the findings of the Eversheds Sutherland review.

² <https://assets.gov.ie/89801/0729254c-94ea-4fb3-8ab2-1ee6cdf5adcf.pdf>

The Minister for Public Expenditure and Reform has been informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that, at the Committee's hearing on 20 January 2022, RTÉ advised the Committee that, in accordance with the Eversheds Sutherland review recommendations, it had updated its relevant policies for engaging individuals, and implemented training and awareness for all managers within the organisation. RTÉ indicated the importance of coming to a resolution, which they have been working on through a complex process involving Eversheds Sutherland, the Revenue Commissioners and the Department of Social Protection's Scope Section. The process is ongoing until the Scope Section investigation is completed. The Minister for Public Expenditure and Reform has been further informed by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media that, notwithstanding the independence granted to RTÉ by the provisions of the Broadcasting Act, the Department will continue to engage with RTÉ on the matter.

Recommendation 1(c):

The Committee recommends that the Department ensures any liabilities to the Exchequer, due to be paid by RTÉ resulting from the Department of Social Protection's investigation into RTÉ's use of contractors, are financed through the broadcaster's commercial revenue streams, or savings achieved in the organisation, rather than by Exchequer funds.

The Minister for Public Expenditure and Reform has been informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that RTÉ's income is a mix of commercial income, mainly derived from advertising, and TV licence funding, which is made up of the revenue from direct sales of TV licences and an Exchequer contribution in respect of free licences awarded to recipients of the Department of Social Protection's Household Benefits Package.

The Minister for Public Expenditure and Reform has been further informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that RTÉ advised the Committee in its letter of 9 February 2022 (by way of follow up to issues raised at the hearing on 20 January 2022) that the TV licence funding received, i.e. the combination of revenue from direct sales and the Exchequer contribution for free licences, is attributed across RTÉ services in accordance with the methodology explained in Note 2 of their Group Financial Statements, but that it is not attributed against individual programmes, remuneration, or individual items of expenditure.

The Minister for Public Expenditure and Reform has been further informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that the Department will continue to engage with RTÉ on the matter in the context of its corporate governance oversight role, having regard to RTÉ's statutory independence in its day-to-day activities.

Finally, the Minister for Public Expenditure and Reform has been further informed that, in addition to the Department's corporate governance oversight role, the Broadcasting Authority of Ireland (BAI), as the independent broadcasting regulator, also has a statutory role in recommending the level of public funding

necessary for RTÉ to meet its public service objects, agreeing annual performance commitments and the review of achievement of those commitments.

Recommendation 1(d):

The Committee recommends that it be informed of any future examinations/reviews into the classification/status of workers going forward.

The Minister for Public Expenditure and Reform has been informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that the Scope investigation by the Department of Social Protection is ongoing. The Minister for Public Expenditure and Reform has been further informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that the Department has communicated to RTÉ the Committee's recommendation in this regard for its consideration.

Issue 2 – Funding of public service broadcasting:

In its third periodic report³, the previous Committee of Public Accounts recommended that 'the current television licensing system is reviewed as a matter of urgency with a view to decreasing evasion rates'.

In the year under examination (2016), the level of TV licence evasion stood at 14.6%, with An Post receipts for TV licence sales totalling €161.5 million. Progress was made over subsequent years⁴, with the evasion rate falling to 12.8% in 2018, and An Post receipts increasing to €164.5 million in the same year.

However, much of this progress was lost by 2020, with a significant decrease in An Post receipts to €152.7 million (down €12 million on 2018), and the evasion rate increased to 15.2% - a 2.6% increase from 2019. Receipts from the Department of Social Protection in respect of the free TV licence Scheme increased from €52 million in 2016 to €70 million in 2020. RTÉ estimates the loss to national public service media funding from issues with the current TV licence fee system to be €65 million annually.

Ten recommendations were made by the Joint Committee on Communications, Climate Action and Environment in its report on the Future Funding of Public Service Broadcasting in December 2017⁵. The recommendations included the expansion of the existing charging regime to capture every household consuming media, responsibility for the TV licence fee collection to be assigned to the Office of the Revenue Commissioners, and the introduction of retransmission fees⁶.

On foot of that Committee's recommendations, the Working Group on the Future Funding of Public Service Broadcasting was established in July 2018. The Working Group made two recommendations to Government

³https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_of_public_accounts/reports/2018/2018-07-11_periodic-report-no-3-january-may-2018_en.pdf

⁴ <https://www.oireachtas.ie/en/debates/question/2022-02-08/276/>

⁵https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_communications_climate_action_and_environment/reports/2017/2017-11-28_report-on-the-future-funding-of-public-service-broadcasting_en.pdf

⁶ Retransmission fees are paid by pay-TV platforms to broadcasters for the right to distribute (or retransmit) the broadcasters' channels. In Ireland, free-to-air channels (including the RTÉ channels and TG4) are distributed over a variety of pay-tv platforms, including eir, Sky, Virgin Media and Vodafone. At present, these platforms do not pay the broadcasters retransmission fees for carrying their channels and broadcasters do not pay for transmission of their channels by the platforms.

in April 2019⁷, which included putting the TV licence out to public tender as soon as the Broadcasting (Amendment) Bill 2019 is enacted⁸, and that the TV licence fee be replaced by a ‘device-independent charge’. Both recommendations were accepted by the then Government. In November 2019, the then Minister for Communications, Climate Action and Environment stated the Government’s intention ‘that TV Licence collection be put out to public tender for a period of five years and then replaced with a device independent broadcasting charge’⁹.

The Future of Media Commission was established in 2020, which was tasked with, among other matters relating to the future of public service broadcasting in Ireland, ‘making recommendations on RTÉ’s role, financing and structure’. The Commission produced a report which had not yet been published when this report was laid before the Dáil.

The Committee is concerned at the length of time it is taking to make decisions on the future of funding for public service broadcasting, and reforms to the current TV licence system. The Committee underlines the need for reforms to be made in light of the increased level of TV licence evasion, changes in how media is consumed, and decreased receipts from An Post for TV licence fee collection. This has given rise to the need for increased subsidies from the Exchequer to support public service broadcasting.

Recommendation 2(a):

The Committee recommends that the Future of Media Commission report is published without delay, in order that the economic implications of any recommendations contained therein can be examined.

The Minister for Public Expenditure and Reform has been informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that, at its meeting on 12 July last, the Government considered the Report of the Future of Media Commission, and accepted, in principle, 49 out of the 50 recommendations contained in the Report (reference S180/20/10/1453C). It was agreed to implement these recommendations, subject to any appropriate adjustments following the completion of due diligence and costings, and subject to the Budget and Estimates processes. It was also agreed that the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media would report to Government in November on progress on implementation of the Report’s recommendations. With regard to the Committee’s recommendation, it is noted that this has now been implemented with the Report having been published on 12 July. The report is available here <https://www.gov.ie/en/publication/ccae8-report-of-the-future-of-media-commission/>.

⁷ <https://www.gov.ie/en/publication/b68b6-report-of-the-working-group-on-tv-licence-collection/>

⁸ The Bill is at Third Stage in the Dáil as of October 2019: <https://www.oireachtas.ie/en/bills/bill/2019/64/>.

⁹ <https://www.oireachtas.ie/ga/debates/question/2019-11-28/53/>

Recommendation 2(b):

The Committee recommends that the Department provides the Committee with a report by November 2022 on the level of extra income that could be achieved for the Exchequer through:

- **the replacement of An Post by the Office of the Revenue Commissioners as the collection agent for TV licence fees,**
- **the introduction of a device-independent charge in place of the TV licence fee, and**
- **the introduction of retransmission fees.**

The Minister for Public Expenditure and Reform has been informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that, having considered the recommendations of the Future of Media Commission (see also response to Recommendation 2(a) above) with regard to the public funding model for public service media, the Government decided not to accept the Commission's recommendation on a taxation-based approach to broadcasting and media funding. Instead Government policy is to retain the TV licence model and to examine options for the reform and enhancement of the current system.

The Minister for Public Expenditure and Reform has been further informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that the Government has also decided not to assign responsibility for collection of the licence fee to the Revenue Commissioners. It was further agreed by the Government that the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media will report to Government in November on progress in this regard.

Issue 3 – Decline in commercial revenues for RTÉ:

RTÉ's accounts show a decline in commercial revenue from 2016 to 2020. Total commercial revenue for 2016 amounted to €158.2 million¹⁰, while the 2020 figure was €134.5 million¹¹. Meanwhile, Exchequer funding to RTÉ for broadcasting licence fees increased from €179.3 million in 2016 to €197.6 million in 2020¹². The 2016 ratio between commercial revenue and Exchequer funding amounted to approximately 47:53, whereas the same ratio for 2020 amounts to almost 40:60.

While solutions need to be found for reforming the TV licence fee system, there may be ways in which RTÉ can decrease its reliance on funding from the Exchequer, and increase funding streams from commercial sources.

Currently, RTÉ does not collect any revenue from content accessed via social media. In its meeting with the Committee in January 2022, the broadcaster confirmed it was in talks with Google in relation to a commercial arrangement between both parties.

¹⁰ <https://about.rte.ie/wp-content/uploads/2019/07/rte-annual-report-2016-web.pdf>

¹¹ <https://www.rte.ie/annual-report-2020/business-review/financial-review.html>

¹² The combined total of An Post receipts for TV licence sales (€152.7 million) and receipts from the Department of Social Protection in respect of the free TV licence Scheme (€69.9 million) amounted to €222.6 million. The €196.6 million referred to in this paragraph arises from the grant paid by the Exchequer to RTÉ in respect of broadcasting licence fees. The remainder of the €222.6 million is used to pay An Post - a commission which is calculated on a sliding scale based on the level of licence fee sales, and to provide funding for the Broadcasting Authority of Ireland's Sound & Vision Fund, and the Broadcasting Fund.

In its Revised Strategy 2020-2024¹³, RTÉ committed to reducing its projected costs by €60 million between 2020-2022. The Strategy also states that RTÉ will grow and diversify its commercial income.

The broadcaster stated in January 2022 that despite delivering on its target for €10 million in savings in 2020, it will be 'difficult to achieve' the full €60 million in savings across the three years.

The Committee is concerned that while Exchequer funding to RTÉ has increased from 2016 to 2020, the broadcaster is not doing enough to reduce its dependence on State funding.

Recommendation 3:

The Committee recommends that the Department engages with RTÉ to explore measures for reducing its dependence on Exchequer funding. The Committee recommends that the Department provides it with a report by November 2022 detailing progress made on the matter.

The Minister for Public Expenditure and Reform has been informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that RTÉ's income is a mix of commercial income (mainly derived from advertising) and TV licence funding, which is made up of the revenue from sales of TV licences and an Exchequer contribution in respect of free TV licences awarded to recipients of the Department of Social Protection's Household Benefits Package.

The Minister for Public Expenditure and Reform has been further informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that, as indicated in response to Recommendations 2(a) and 2(b), at its meeting on 12 July last the Government considered the Report of the Future of Media Commission, including recommendations relating to the funding of RTÉ. The Government has decided (reference S180/20/10/1453C) that the current funding model will be retained but reformed and enhanced in order to provide the necessary public funding for the wider broadcasting and media sector. In addition, the Future of Media Commission made recommendations in relation to the growth of RTÉ's commercial income and the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media will engage with RTÉ on this issue in the context of implementation of the Commission's recommendations.

As agreed by Government, the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media will report to Government in November on progress in this regard.

¹³ <https://about.rte.ie/wp-content/uploads/2019/11/RT%C3%89-2024-Web.pdf>

Issue 4 – The gender pay gap and the remuneration of Irish-language workers at RTÉ:

The 2017 Review of Role and Gender Equality conducted by RTÉ¹⁴ found a 4% pay differential between male and female staff at the broadcaster. The publication of information on the gender pay gap at RTÉ was requested by the National Union of Journalists in March 2021. The Gender Pay Gap Information Act 2021¹⁵, which requires certain employers to publish information relating to the remuneration of their employees by gender, was signed into law in July 2021.

As one of the applicable employers, RTÉ are required to report on the gender pay gap at the organisation during December 2022, and on an annual basis thereafter¹⁶.

The Committee is disappointed that RTÉ has not published information in relation to the gender pay gap at the broadcaster since the publication of the 2017 review.

The Committee points to the example of An Post, another semi-state body, that has not only reported on the gender pay gap at the organisation, but had effectively closed the gap by 2021¹⁷.

Separately, the Committee points to RTÉ's commitment during the first engagement with the Committee to conduct a review into the remuneration of Clár Reachtaí at RTÉ compared with their English-language counterparts. The Committee is concerned that this will be completed only within the context of the broader Willis Towers Watson organisation-wide role review, that this review does not contain a specific reference to the requested and agreed basis of the review, and that this may delay resolution of this outstanding issue.

Recommendation 4(a):

The Committee recommends that RTÉ publishes information in its accounts on the gender pay gap at the broadcaster, and strives to reduce the gap within an appropriate timeframe. The Committee recommends that a copy of the report required under the Gender Pay Gap Information Act 2021 to be completed during December 2022, and all subsequent reports in that regard, are provided to it upon publication.

The Minister for Public Expenditure and Reform has been informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that RTÉ has obligations arising from the Gender Pay Gap Information Act 2021 which come into effect in 2022. Notwithstanding this statutory obligation, the Committee's recommendation has been communicated to RTÉ.

¹⁴ <https://www.rte.ie/documents/about/2017/11/review-of-role-and-gender-equality-in-rte-2017.pdf>

¹⁵ <https://data.oireachtas.ie/ie/oireachtas/act/2021/20/eng/enacted/a2021.pdf>

¹⁶ <https://www.irishstatutebook.ie/eli/2022/si/264/made/en/pdf>

¹⁷ <https://www.anpost.com/getmedia/a4b955c7-217c-4fd5-8c51-aa9a9b952151/Gender-Pay-Gap-Report-2021.pdf>

Recommendation 4(b):

The Committee recommends that the Department ensures parity of remuneration for workers at RTÉ regardless of the language through which their work is conducted, as RTÉ receives the majority of its funding from the Exchequer.

The Minister for Public Expenditure and Reform has been informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that RTÉ advised the Committee, during the hearing on 20 January 2022, that it has commenced a process, assisted by Willis Towers Watson, to evaluate staff roles and grades within the organisation as a whole, and that it anticipated that this process would conclude in the Autumn.

The Minister for Public Expenditure and Reform has been further informed by the Department of Tourism, Culture, Arts, the Gaeltacht, Sport and Media that the Committee's recommendation in this regard has been communicated to RTÉ, and that the Department will continue to engage with RTÉ as the review process is completed and implemented.



Given under the Official Seal of the Minister for Public Expenditure and Reform on this the day of October, 2022.



L.S.

David Moloney

Secretary General

Department of Public Expenditure and Reform

06/10/22