

CONFRONTING UNLAWFUL AND IRRESPONSIBLE BEHAVIOUR INSOFAR AS IT RELATES TO COMPANY LAW

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CHAPTER 3

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Structure of this Chapter

This Chapter is structured in a manner whereby, in the following three Parts, the Office's inputs, throughputs and outputs respectively are detailed.

PART A: INPUTS

EXTERNAL INPUTS

The Office's activities in confronting unlawful and irresponsible behaviour are driven to a substantial extent, both directly and indirectly, by inputs received from external sources. This is a function of the fact that:

- a number of parties, including liquidators, auditors and certain professional bodies, have statutory reporting obligations to the Office;
- the Office forms part of a broader statutory framework that provides for the referral of, otherwise confidential, information between regulatory and enforcement bodies where such information is considered to be relevant to those other entities' functions; and
- the Office receives a substantial number of complaints from members of the public annually.

In that context, the principal inputs received from external sources during the year were as follows:

Table 5
Inputs from external sources

	2014	%	2013	%
Statutory reports				
Liquidators' initial section 56 reports	973		1,226	
Liquidators' subsequent section 56 reports	539		577	
Total liquidators' section 56 reports	1,512	78.9	1,803	78.2
Liquidators' reports regarding possible criminality	0	0	10	0.4
Auditors' indictable offence reports	121	6.3	203	8.8
Professional Bodies' indictable offence reports	2	0	0	0
Referrals				
Referrals from external parties	43	2	38	1.7
Complaints				
Complaints from members of the public	236	12.8	252	10.9
Total inputs from external sources	1,914	100	2,306	100

The principal external sources of inputs driving the Office's activities over the year under review are elaborated upon below.

Liquidators' section 56 reports

Introduction – overview of the liquidator reporting regime

As can be seen from Table 5 above, liquidators' section 56 reports accounted for just under 79% of all external inputs received by the Office during 2014 (2013: 78%). In summary, liquidators of companies that are in insolvent²³ liquidation are required by law²⁴ to report to the Office on the circumstances giving rise to the company's demise and on the conduct of any person who was a director of the company during the 12 months preceding the entry of the company into liquidation. The liquidator must also proceed to apply to the High Court for the restriction²⁵ of each of the directors, unless relieved of that obligation by the Office²⁶.

The essential aims of this statutory reporting regime are to:

- afford the public a degree of protection by ensuring that persons who have been determined by the High Court as not having acted honestly and/or responsibly in the run up to a company's entering insolvent liquidation may, in respect of the mandatory 5 year period of restriction, only act as directors of other companies that meet minimum capitalisation requirements; and
- ensure that persons who, in the run up to a company's entering insolvent liquidation, have been judged to have acted honestly and responsibly can continue to engage in entrepreneurial activity through the medium of limited liability companies without sanction or penalty.

In discharging its role, the Office expects liquidators to provide it with all of the information which is relevant to the making of an appropriate decision. It also encourages liquidators to make a suitable recommendation on relief by reference to the results of their investigations.

The Office considers granting relief where a liquidator advances an evidence-based justification in support of a claim that a director has acted honestly and responsibly in conducting the company's affairs. In making its decisions, the Office is anxious to ensure that no director needlessly bears the burden of a High Court hearing where he or she has clearly demonstrated honest and responsible behaviour in the conduct of the affairs of the failed enterprise. In practice, the Office acts as a filter to remove the need for consideration by the High Court of those cases which do not appear to warrant its attention.

It is important to note, however, that ODCE decisions of 'no relief' or 'partial relief' do not constitute a finding of dishonesty or irresponsibility in respect of the directors concerned, and it would be inappropriate for any such inference or imputation to be drawn. It is solely a matter for the High Court (having heard the submissions of the liquidator and directors respectively) to determine if a restriction declaration should be made in respect of any particular company director.

Companies entering liquidation

Albeit at a reduced level, company failures continued at a relatively high level during 2014. As can be seen from the Table below:

- during the year, insolvent liquidations (i.e. creditors' and Court liquidations combined) accounted for 50% of all liquidations (2013: 57%);
- following the three year period from 2010 to 2012, during which insolvent liquidations exceeded 1,300 annually, 2014 saw a second consecutive year in which the comparable number was closer to 1,000 annually; and
- solvent (i.e., members') liquidations increased by 18% during 2014 (2013: decrease of 8%), from 848 to 1,001.

23 A company is insolvent when it is unable to pay its debts as they fall due

24 Section 56 of the CLEA

25 Where an individual is restricted under section 150 of the Companies Act 1990, s/he may only act as the director or secretary of a company for a period of five years thereafter provided that the company concerned meets certain minimum capitalisation requirements. In the case of a private company, a minimum called up share capital of €63,487 is required. In the case of a public limited company, the corresponding figure is €317,435.

26 The process and scope of liquidator reporting are outlined in three main ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice D/2003/1 and Information Notice I/2009/1. These documents are available at www.odce.ie

Table 6
Companies entering liquidation: 2010-2014

	2010	2011	2012	2013	2014
Creditors' liquidations	1,258	1,311	1,210	1,043	929
Court liquidations	128	99	107	76	78
Total insolvent liquidations	1,386	1,410	1,317	1,119	1,007
Members' liquidations	899	1,054	919	848	1,001
Total solvent liquidations²⁷	899	1,054	919	848	1,001
Total liquidations	2,285	2,464	2,236	1,967	2,008

Liquidator reports received – 2014

As can be seen from Table 5 above, a total of 1,512 liquidators' reports were received during the year (2013: 1,803), of which:

- 973 were initial reports (2013: 1,226); and
- 539 were subsequent²⁸ reports (2013: 577).

The 10% reduction in the number of insolvent liquidations compared to 2013 is welcome. Based on current indications, a further reduction of in the order of 10% is anticipated over the course of 2015.

The Table below provides details of the sectoral distribution of companies in respect of which liquidators' initial reports were received during the year.

Table 7
Sectoral analysis of liquidators' initial section 56 reports received – 2014

Sector	2014		2013	
		%		%
Wholesale & retail	222	23	271	22
Construction	167	17	236	19
Manufacturing & printing	121	12	159	13
Hotels, bars & catering	105	11	117	10
Community, social & other	93	10	103	9
Marketing & promotion	80	8	89	7
Real estate & renting	60	6	99	8
Transport & distribution	47	5	44	4
Technology & telecommunications	34	4	51	4
Financial & leasing	20	2	27	2
Recruitment & security services	13	1	13	1
Agriculture, mining & marine	11	1	17	1
Total	973	100	1,226	100

²⁷ Whilst the Office has no role in solvent (i.e. members') liquidations, data in respect of same has been included in the interests of completeness.

²⁸ An initial report is the first report received from a liquidator and is required to be submitted within 6 months of his/her appointment. In the majority of cases, the decision as to whether or not to grant relief is made based on this report. However, in some cases a subsequent report is required from the liquidator when his/her investigations have progressed further. In circumstances where a subsequent report is considered to be necessary, 'relief at this time' is usually granted in respect of the initial report.

Timeliness of liquidators' reporting

Over the course of the year, the Office issued 277 (2013: 224) notices to 124 (2013: 106) separate liquidators advising them that they were in default of their statutory reporting obligations. Many of these defaults were promptly rectified as a result of this action and, as a consequence, 96% of the first reports due during the year had been received by the end of the year (2013: 97%).

However, a small number of liquidators have repeatedly failed to comply with their reporting obligations. Such cases have been designated as a particular area of focus for the Office and appropriate enforcement action up to, and including, criminal prosecution may result from such persistent breaches of statutory obligations.

Standard of liquidators' reporting

The standard of liquidators' reports received during the year was considered to be broadly satisfactory. However, the quality of reporting in certain instances was not of the required standard. Indications would suggest that contributory factors in that regard include:

- the volume of insolvency assignments being taken on by some firms; and
- as a result of new entrants entering the market, a relative lack of experience of insolvency related work on the part of certain liquidators. In that context, Table 8 below provides an analysis of the profile of liquidators undertaking insolvency engagements over the period 2010 to 2014.

The foregoing issues necessitated a high level of engagement with relevant liquidators for the purpose of specifying Office requirements and clarifying aspects of reports submitted. In certain instances, it was considered necessary to request individual liquidators to attend the Office to discuss their reports and to review, *inter alia*, the basis for the conclusions set out therein.

Table 8

Profile of liquidators undertaking insolvent liquidations by number of engagements 2010-2014

Number of liquidators	Number of engagements				
	<3	3-6	7-12	>12	Total
2010	169	48	33	26	276
2011	182	57	30	27	296
2012	187	63	37	22	309
2013	203	46	16	21	286
2014	177	39	19	17	252

Sectoral distribution of other external inputs (i.e. external inputs other than liquidators' section 56 reports)

As can be seen from Table 5, in aggregate those external inputs other than liquidators' section 56 reports accounted for just over 21% (2013: 22%) of total external inputs received during the year. The Table below provides an analysis of the sectoral distribution of those other external inputs.

Table 9
Sectoral distribution of external inputs other than liquidators' section 56 reports

Sector	2014		2013	
		%		%
Real estate & renting	112	28	80	16
Construction	37	9	65	13
Wholesale & retail	35	9	42	8
Manufacturing	32	8	42	8
Hotels, bars & catering	19	5	32	6
Community, social & personal	32	8	40	8
Finance & leasing	17	4	45	9
Transport & distribution	11	3	10	2
Agriculture, mining & marine	11	3	8	2
Health & social work	12	3	14	3
Technology & telecommunications	3	1	22	4
Marketing & promotion	5	1	5	1
Recruitment & security services	2	0	7	1
Other business sectors	3	1	38	8
Business sector not known	0	0	0	0
Not a company	71	17	53	11
Total	402	100	503	100

Complaints

The Office receives substantial numbers of complaints annually from members of the public. During the year a total of 236 complaints were received (2013: 252), which accounted for over 12% (2013: 11%) of all external inputs received. The Table below provides an analysis of the subject matter of complaints received.

Table 10
Complaints received (analysed by character of primary default)

	2014	%	2013	%
Allegations of reckless/fraudulent/insolvent trading	65	28	43	17
Annual/Extraordinary General Meeting related	24	10	15	6
Relating to the issue of unpaid debts	27	12	30	12
General shareholder rights issues	19	8	23	9
Relating to companies trading whilst struck off the Register	10	4	1	0
Directors' conduct	22	9	40	16
Audit/auditor related	28	12	28	11
Allegations of forgery/furnishing of false information	7	3	21	8
Other	34	14	51	21
Total	236	100	252	100

Auditors' indictable offence reports

Introduction – overview of the auditor reporting regime

Where, in the course of and by virtue of, their carrying out of an audit, information comes into the possession of a company's auditors which leads them to form the opinion that there are reasonable grounds for believing that an indictable offence under the Companies Acts²⁹ has been committed by the company, or an officer or agent of the company, the auditors are required to report that opinion to the Office³⁰. The Office has developed and published guidance to assist auditors in complying with their obligations in this regard³¹.

Nature of suspected offences reported

During the year, a total of 121 indictable offence reports were received (2013: 203). The Table below provides an analysis of the nature of suspected offences notified in those reports. It should be noted that the number of reports received does not accord with the number of suspected offences reported as, in a number of instances, reports included reference to more than one suspected offence.

Table 11
Analysis of suspected indictable offences reported by auditors

	2014	%	2013	%
Directors' loan infringements	101	74	165	78
Failure to maintain proper books of account	24	18	26	12
Provision of false statements to auditors	2	1	2	1
Persons not qualified to act as auditor to a company acting as such	3	2	2	1
Falsification of documents	1	1	4	2
Other miscellaneous offences	6	4	13	6
Total	137	100	212	100

Referrals

As alluded to earlier in this Chapter, the Office forms part of a broader statutory framework that permits the exchange of confidential information between regulatory, enforcement and other relevant bodies, subject to safeguards and appropriate limitations. In that context, the Office receives referrals from other statutory bodies and entities from time to time. During the year under review, the Office received 43 (2013: 38) such referrals from a variety of sources including:

- the Registrar of Companies;
- the Central Bank; and
- other external statutory Bodies.

²⁹ Other than offences under sections 125(2) and 127(12) of the 1963 Act, as amended

³⁰ Section 194(5) of the Companies Act 1990, as inserted by section 74 of the CLEA and subsequently amended by section 37 of the 2003 Act and section 73 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005

³¹ Decision Notice D/2006/2 – Revised Guidance on the Duty of Auditors to Report Suspected Indictable Offences to the Director of Corporate Enforcement. This was more recently supplemented by Information Notice I/2009/4 – Reporting Company Law Offences: Information for Auditors

Professional bodies' indictable offence reports

Recognised Accountancy Bodies ("RABs")³²

Where a RAB's Disciplinary Committee or Tribunal has reasonable grounds for believing that an indictable offence under the Companies Acts may have been committed by a person while that person was a member of the RAB, the RAB is required to report the matter to the Office³³. Two such reports were received during the year under review (2013: 0).

Prescribed Professional Bodies ("PPB")

Similarly, where the Disciplinary Committee or Tribunal of a PPB finds that a member conducting a liquidation or receivership has not maintained appropriate records, or has reasonable grounds for believing that the member has committed an indictable offence under the Companies Acts during the course of a liquidation or receivership, the PPB concerned is required to report the matter to the Office³⁴.

Pursuant to the Company Law Enforcement Act 2001 (Section 58) Regulations 2002³⁵, the following have been designated as PPBs:

- Association of Chartered Certified Accountants (ACCA);
- Chartered Institute of Management Accountants (CIMA);
- Institute of Certified Public Accountants in Ireland (ICPAI);
- Institute of Chartered Accountants in Ireland (ICAI);
- Institute of Incorporated Public Accountants (IIPA);
- Irish Tax Institute; and
- Law Society of Ireland.

No reports of this nature were received from PPBs during the year (2013: 0).

Liquidators' reports regarding possible criminality

Liquidators are required, in circumstances where it appears that any past or present officer of the company concerned has been guilty of any offence in relation to the company, to make a report to the DPP and also to refer the matter to the Office³⁶. This reporting obligation extends to all liquidations, solvent and insolvent (i.e. both Creditors' Voluntary liquidations and Court liquidations) alike. During the year, no such reports were received by the Office (2013: 10).

³² A RAB is an accountancy body that is permitted to authorise its members and member firms, subject to those members having satisfied certain criteria, to act as statutory auditors and audit firms respectively. There are six RABs, i.e., the:

- Association of Chartered Certified Accountants (ACCA)
- Institute of Certified Public Accountants (ICPAI)
- Institute of Chartered Accountants in England & Wales (ICAEW)
- Institute of Chartered Accountants in Ireland (ICAI)
- Institute of Chartered Accountants of Scotland (ICAS)
- Institute of Incorporated Public Accountants (IIPA)

³³ Section 192(6) of the Companies Act 1990, as amended by section 73 of the CLEA

³⁴ Section 58 of the CLEA

³⁵ SI 544 of 2002

³⁶ Section 299 of the 1963 Act

INTERNAL INPUTS

Introduction

Whilst, as will be evident from the earlier part of this Chapter, the volume of external inputs received is such that most case files opened within the Office are opened in response to external inputs received, the Office also generates internal inputs through a proactive approach to enforcement of the Companies Acts. Inputs in this regard include, for example, internal initiatives relating to:

- dissolved insolvent companies;
- the supervision of liquidators; and
- other investigations and enquiries commenced on own initiative.

Dissolved insolvent companies

The Office characterises as “dissolved insolvent companies” those companies that:

- are struck off the Register of Companies for failure to file their annual returns; and which
- at the date of strike off, had liabilities, whether actual, contingent or prospective.

It is open to the Office to apply to the High Court for the disqualification of the directors of such struck off companies³⁷. However, the law³⁸ also provides that the Court cannot disqualify a person who demonstrates to the Court that the company had no liabilities at the time of strike off or that those liabilities had been discharged before the initiation of the disqualification application. In considering the sanction to be imposed, the Court may instead restrict the directors where it adjudges that disqualification is not warranted under the particular circumstances³⁹.

Where there is evidence to suggest that a company was insolvent at the date upon which it was struck off the Register, it is the Office’s policy to consider seeking the disqualification of the company’s directors. This is because, by allowing the company to be struck off the Register, the directors avoid bringing the company’s existence to a conclusion in the appropriate manner, i.e., through the appointment of a liquidator. By not appointing a liquidator, the company’s directors also avoid the scrutiny of their behaviour as provided for by section 56 of the CLEA.

Where a company is struck off the Register of Companies, its remaining assets are vested in the Minister for Public Expenditure & Reform in accordance with the provisions of the State Property Act 1954.

Supervision of liquidators

One of the statutory functions of the Director is:

“...to exercise, insofar as the Director feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Companies Acts”⁴⁰.

Whilst the section 56 process, as outlined earlier in this Chapter, provides the Office with a means of indirectly supervising certain aspects of liquidators’ work, from time to time the Office considers it appropriate or otherwise necessary to engage in more direct supervision of liquidators’ work. This, more direct, supervision is effected through the exercise of the powers conferred by section 57 of the CLEA⁴¹.

37 Section 160(2)(h) of the Companies Act 1990 (as amended)

38 Section 160(3A) of the Companies Act 1990 (as amended)

39 Section 160(9A) of the Companies Act 1990 (as amended)

40 Section 12(1)(e) of the CLEA

41 Section 323A of the 1963 Act includes a similar provision relating to receivers

Section 57 provides that the Director may:

- either on his own initiative or on foot of a complaint from a member, contributory or creditor of a company, request production of a liquidator's books for examination – either in relation to a particular liquidation process, or to all liquidations undertaken by the liquidator; and
- seek the liquidator's answers to any questions concerning the content of such books, and all such assistance in the matter as the liquidator is reasonably able to give.

The powers conferred upon the Director by section 57 are accompanied by certain safeguards and limitations, i.e.:

- the Office must inform the respondent liquidator of the reason(s) as to why the request is being made; and
- a request may not be made in respect of books relating to a liquidation that has concluded more than 6 years prior to the request.

Investigations commenced on own initiative

As indicated above, the Office initiates enquiries and investigations on its own initiative where this is considered necessary or otherwise appropriate having regard to the underlying facts and circumstances. The triggers for such actions can include, for example:

- issues identified internally;
- issues referred internally;
- issues identified on foot of a review of material filed with the CRO;
- issues identified through monitoring of litigation;
- issues identified through a review of press reportage, the internet etc.

By way of example, the subject matter of enquiries initiated during the year included suspicions of bankrupt persons acting as company directors, persons acting as auditors whilst not authorised to do so and the possible falsification of documents.

Depending upon the nature of the underlying circumstances, the Office's enquiries and investigations may be furthered through the use of:

- the Director's civil powers;
- the Director's criminal powers; and/or
- the powers vested in the Gardaí seconded to the Office by virtue of those officers being members of An Garda Síochána

Quantum of internal inputs – 2014

During the course of 2014, a total of 48 (2013: 107) internal inputs were generated.

PART B: THROUGHPUTS

Generally speaking, inputs, irrespective of whether from internal or external sources, result in the opening of a case file.

In the case of liquidators' section 56 reports, cases generally reach a natural conclusion when a decision has been taken as to whether or not to relieve the liquidator of the obligation to seek the company's directors' restriction and, where relief is granted, the file is usually closed. Where relief is not granted, or only partially granted (i.e., granted in respect of some, but not all, of the directors), the Office monitors the progress through the Courts of the relevant restriction or disqualification proceedings and the outcome is recorded once the proceedings have been determined. However, the Office also reviews cases from time to time where concerns come to its attention regarding, for example:

- credible suggestions of excessive liquidators' fees;
- apparent failures to distribute assets on a timely basis; and
- apparent failures to conclude a liquidation within a reasonable timeframe.

In the case of other inputs, such as, for example, auditors' reports, complaints, referrals etc., a file is opened and the subject matter is examined to determine, in the first instance, whether the matter is one that comes within the Office's remit. Thereafter, cases are progressed on the basis deemed most appropriate to their individual circumstances, with methods of progression including, for example:

- meeting the complainant, typically with a view to obtaining an enhanced understanding of the issues being complained of;
- meeting the directors (for example, in a case relating to directors' loans);
- exercising civil powers, such as, for example, issuing demands to:
 - company directors for the production of companies' books and records;
 - liquidators for the production of their liquidation books and records;
 - persons acting, or purporting to act, as auditors for the production of evidence of their qualifications;
 - liquidators requiring that they file outstanding section 56 reports;
- exercising criminal powers, such as, for example, executing search warrants, exercising the power of arrest etc.;
- liaising with other statutory authorities potentially being in a position to assist the Office's enquiries, for example through the sharing of relevant information.

Upon completion of the Office's enquiries, a decision is made as to the most appropriate course of action to be taken. This can include, for example:

- the decision to take no further action (for example, where enquiries suggest that there has been no breach of company law or where the breach is minor in nature and enforcement action would, as a consequence, be disproportionate);
- a decision not to take enforcement action on this occasion but, rather, to issue a warning that any recurrence will precipitate enforcement action (for example, where the breach has been rectified and/or remediated);
- referral to other statutory authorities or professional bodies of matters relevant to their respective remits;
- the initiation of civil proceedings;
- the initiation of criminal proceedings.

Set out in the following Tables are details of the various caseloads progressed by the Office during the year under review. Details of the outputs that flow from the processing of the Office's various caseloads are detailed in the next section of this Chapter.

Table 12
Throughput of liquidators' section 56 reports – 2014

Section 56 reports on hand at 1 January, 2014		765 ⁴²
New reports received during 2014	1,512	
Less: Reports in respect of which determinations made during 2014	1,701	
Section 56 reports on hand at 31 December, 2014		576

Detail regarding the Office's determinations on liquidators' reports is provided later in this Chapter.

Table 13
Throughput of other cases – 2014

Other cases on hand at 1 January, 2014		154 ⁴³
New cases opened during 2014	450 ⁴⁴	
Less: Cases concluded during 2014	514	
Other cases on hand at 31 December, 2014		90

42 Restated from the 2013 Report

43 Restated from the 2013 Report

44 402 external inputs (Table 9 refers) plus 48 internal inputs

PART C: OUTPUTS

Outputs from the section 56 process

Decisions made on liquidators' reports

The Office made definitive decisions (i.e. decisions other than to grant 'Relief at this time') on 1,174 liquidators' reports during 2014 (2013: 1,356), with a further 527 decisions made to grant 'Relief at this time' (2013: 622).

Of the definitive decisions taken during 2014, a total of 1,098 were made in respect of initial reports (2013: 1,014), with a further 603 being made in respect of subsequent reports (2013: 342).

The decisions taken in respect of initial and subsequent reports respectively are analysed in the following two Tables.

Table 14
Analysis of decisions taken in respect of initial liquidators' section 56 reports

Decision type	2014	%	2013	%
Full relief ⁴⁵	753	68	951	69
No relief ⁴⁶	44	4	47	4
Partial relief ⁴⁷	8	1	16	1
Relief at this time ⁴⁸	293	27	359	26
Total	1,098	100	1,373	100

Table 15
Analysis of decisions taken in respect of subsequent liquidators' section 56 reports

Decision type	2014	%	2013	%
Full relief ⁴⁵	250	41	239	39
No relief ⁴⁶	90	15	80	13
Partial relief ⁴⁷	29	5	23	4
Relief at this time ⁴⁸	234	39	263	44
Total	603	100	605	100

Complete lists of the directors, and associated companies, in respect of which full relief and relief at this time respectively were granted during 2014 are available at www.odce.ie.

45 Full relief is granted in cases where the Office forms the opinion that, based on the information available (including the liquidator's report(s)), all of the directors of the insolvent company appear to have acted honestly and responsibly in the conduct of the company's affairs.

46 No relief is granted in cases where the Office forms the opinion that, based on the information available (including the liquidator's report(s)), there is insufficient evidence to demonstrate that any of the directors of the insolvent company acted honestly and responsibly in the conduct of the company's affairs.

47 Partial relief is granted in circumstances where, based on the information available (including the liquidator's report(s)), the Office forms the opinion that some, but not all, of the directors of the insolvent company appear to have acted honestly and responsibly in the conduct of the company's affairs.

48 'Relief at this time' is granted in cases where the Office is satisfied that the liquidator needs more time in which to progress/complete his/her investigations into the circumstances giving rise to the company's demise. Similarly, on occasion, the Office considers it necessary to postpone making a definitive decision due to the complexity of certain companies' affairs and the associated necessity for supplemental engagement with the liquidators concerned. Where 'Relief at this time' is granted, the liquidator will be required to submit a subsequent report.

Outcome of liquidators' Court applications

As indicated earlier in this Chapter, where not granted relief by the Office, liquidators are required to apply to the High Court seeking the restriction of relevant company directors. In certain instances, liquidators will, as a consequence of their own investigations, opt to seek to have directors disqualified rather than restricted. The Table below sets out details of the results of liquidators' Court applications as delivered by the High Court during the year.

Table 16
Results of liquidators' Court applications – 2014

	Cases	Directors affected
Restriction Orders granted	118	182
Disqualification Orders granted	11	16
No Orders granted	12	25
Total	136⁴⁹	218⁴⁹

Further analysis of the Orders made by the Court on foot of liquidators' applications is provided in Appendices 3 to 5 of this Report.

Facts and circumstances considered by the High Court in making Disqualification Orders

Set out below, for illustrative purposes, are examples of the types of issues that were considered by the High Court in making the Disqualification Orders listed in Appendix 4 to this Report. These Orders were made on foot of disqualification applications made by the appointed liquidators following the submission of their respective section 56 reports to the Office:

- three related companies were placed in liquidation following a petition by the Revenue Commissioners. The companies had tax liabilities which included assessments for the years 2007-09. The directors failed to maintain proper books of account and the Statement of Affairs presented to the liquidator was unreliable;
- a company involved in construction activity, and having a deficiency of €3.83m, was involved in an unfinished development that had been purchased personally by the directors. The directors failed to deliver up or safeguard the assets and books and records of the company and also failed to co-operate with the liquidator. The company had used VAT funds as working capital and had failed to discharge its responsibilities in respect of other non-VAT returns. Credit cards and other funds were also used for personal expenditure;
- in the case of two related companies involved in the property/construction sector, the Revenue Commissioners were owed €165k and €161k respectively, with bank borrowings of €24.4m and €5m respectively. Cumulative trading losses exceeded €10m and, in both companies, there was a complete absence of cost control and allocation of costs to individual jobs. Significant company funds were used to pay personal expenses of directors, with an unexplained deterioration of assets and payments to related parties;
- the Revenue Commissioners petitioned the High Court for the winding up of two companies on foot of demands for unpaid PAYE, PRSI, VAT and RCT. The sums involved were €444k and an estimated €288k respectively. The directors failed to maintain proper books of account and also failed to co-operate with both the liquidator and Orders of the High Court to provide financial information. Assets were transferred to a related company, displaying evidence of phoenix activity. Company resources had been used for the construction of a house for family members without payment. In addition, two of the directors breached the terms of their respective restrictions arising from their involvement in a previous company;

- the directors of a company engaged in a systematic and deliberate under-payment and under-declaration of taxes for a period of at least three years, resulting in debts to the Revenue Commissioners of in excess of €346k. A director's loan of in excess of €216k was found to be false and the directors had also misrepresented trading figures. The directors failed to respond to the liquidator's requests for information and explanations of substantial differences found in the financial records. As a result, the liquidator concluded that the directors had failed to maintain proper books of account. The directors were also in breach of employment and related obligations regarding the non-payment of the national minimum wage and breaches of the Organisation of Working Time Act;
- a company was the subject of a Revenue audit, which identified that tax liabilities were grossly understated. The actual amount owing was €1.31m as opposed to the declared figure of €128k. This arose as a result of the company not having disclosed, or having under-declared, its PAYE and PRSI liabilities;
- a company involved in the sale and repair of agricultural machinery failed to maintain proper books of account. The Statement of Affairs provided by the directors did not accurately reflect the financial position of the company. During a Revenue audit the company was unable to produce sufficient evidence of purchases for a number of years, which resulted in the Revenue Commissioners issuing a demand for payment of almost €1.5m, which the company was unable to pay;
- a company that had been under investigation by the Criminal Assets Bureau in relation to Vehicle Registration Tax fraud and other matters had a VAT liability of in the order of €1m rather than the declared amount of €70k;
- a company continued to trade whilst insolvent, having built up a significant debt to its main UK supplier. A further Irish based supplier served a demand for payment pursuant to section 214 of the Companies Act 1963 in respect of the debt outstanding. The company's bank had returned 27 cheques unpaid to an aggregate value of approximately €147k. The Revenue Commissioners had served a final demand with a Notice of Attachment. Stock recorded in the financial records could not be reconciled with physical stock and customer deposits taken in respect of goods not subsequently supplied amounted to €132k.

Civil outputs from the section 56 process

Three cases in which documents and other materials had been sought from liquidators pursuant to section 57 of the CLEA were progressed during the year. In one case, following examination by the Office, the liquidator proceeded to distribute in excess of €70,000 to the Revenue Commissioners and other State Agencies. In the second case, having sought and obtained certain information and explanations from the liquidator concerned, the Office referred certain matters to the Revenue Commissioners. The third case was closed following completion of the Office's examination of the issues involved.

Criminal outputs from the section 56 process

From time to time the Office's review of liquidators' reports identifies issues that are considered to warrant action over and above the making of a determination as to whether relief should be granted or not. Such actions typically include:

- making internal referrals of matters considered to warrant further investigation and/or enforcement action; and
- making referrals to other regulatory bodies.

During the year under review, the Office continued to address the failure, on the part of a small number of liquidators, to comply with reporting obligations on a timely basis. At the beginning of the year, 1 prosecution was in progress and, during the course of the year, a further 3 prosecutions were initiated. Three prosecutions were concluded during the year, with the following outcomes:

- one liquidator was fined €500 (in respect of two separate section 56 Reports) and ordered to pay prosecution costs of a further €1,250;

- in the second case, the two summonses were struck out at the ODCE's request and the defendant discharged prosecution costs of €1,250; and
- in the third case, in light of circumstances peculiar to the defendant, the ODCE had the summonses struck out with no Order for costs.

A fourth case was ongoing at year end.

Outputs of enforcement work

The Office's enforcement work takes a variety of forms, including:

- engaging with company directors and other interested parties with a view to securing the voluntary rectification/remediation of instances of non-compliance;
- exercising the Director's civil powers to secure compliance;
- referring indications of possible breaches of regulatory provisions other than those relating to company law to other relevant regulators (incorporating also the referral of relevant matters to professional bodies);
- seeking civil remedies in the High Court, such as, for example, applying to the High Court for company directors' disqualification for stated reasons;
- taking summary criminal proceedings before the District Court; and
- where, having conducted a detailed investigation and concluded on the basis of same that the indications of suspected criminality are such that trial on indictment may be warranted, referring investigation files to the DPP for consideration as to whether the matters therein warrant criminal prosecution before the Circuit Court.

The principal outputs associated with the Office's enforcement activities are detailed below.

Securing voluntary rectification/remediation

In 115 cases (2013: 175) where suspected directors' loan infringements had been reported, or had otherwise come to attention, the Office's actions resulted in rectifications (including the repayment/reduction of loans) totalling €66m (2013: €62m). Actions taken by the Office in pursuit of the objective of securing rectification on a voluntary basis included the holding of meetings with company directors of 8 separate companies.

The Office also formally cautioned:

- 14 individuals in respect of whom there were concerns that they might have been purporting to be auditors whilst not qualified to act in that capacity; and
- the directors of 13 companies in relation to matters associated with the keeping of proper books of account.

Securing compliance through the exercise of the Director's civil powers

A variety of legislative provisions were successfully used during the course of 2014 in order to secure compliance with the Companies Acts. These included:

- 2 directions under section 131(3) of the Companies Act 1963 (as amended) ("the 1963 Act") requiring the convening of companies' Annual General Meetings ("AGM") (2013: 2). These directions were issued following the consideration of complaints received from members of the companies concerned;
- 2 directions under section 145(3A) of the 1963 Act requiring production of the minutes of companies' AGMs as well as meetings of the directors/Committees of the directors. Similarly, these directions were issued following the consideration of complaints received;
- 277 directions (2013: 227), pursuant to section 371(1) of the 1963 Act, requiring liquidators to comply with their reporting obligations under section 56 of the CLEA;

- 4 demands (2013: 2) under section 19 of the Companies Act 1990 (“the 1990 Act”), requiring the production of documents.

Referrals to professional and other regulatory bodies

Whilst there is an obligation upon the Office to keep confidential information that comes into its possession, there is statutory provision⁵⁰ for the disclosure of information to certain third parties (including other regulatory bodies and certain professional bodies) provided that certain prescribed criteria are satisfied.

Pursuant to the foregoing provision, 7 referrals (2013: 11) were made to RABs during the year. Having regard to its statutory remit vis-à-vis the RABs, such referrals are always copied to IAASA.

Issues typically referred to RABs include:

- suspected instances of members purporting to conduct audits whilst not authorised by their professional bodies to do so or where otherwise precluded from doing so by virtue of law or professional obligations;
- non-reporting, or delayed reporting, of suspected indictable offences;
- matters relating to the nature of audit opinions provided in respect of companies limited by guarantee;
- failure to respond to queries raised by the Office subsequent to receipt of indictable offence reports.

In addition to the foregoing, the Office makes referrals to other regulatory bodies as considered necessary or otherwise appropriate.

Civil enforcement

Dissolved insolvent companies

As outlined earlier in this Chapter, in the case of companies that, at the time of being struck off the Register, were insolvent, it is the Office’s policy to consider seeking the disqualification of such companies’ directors in appropriate cases.

Several thousand companies are struck off the Register in any given year. However, only some of these would actually be insolvent. Many more would not have traded or would have discharged all outstanding liabilities prior to being struck off. Against this background, the Office seeks to identify companies where there is evidence of material unpaid debts having existed at the date of strike off.

During the year under review, 4 cases (2013: 14) involving applications by the Office for directors’ disqualification were determined by the High Court. In 2 of these cases, the Court made Disqualification Orders in respect of a total of 4 persons (2013: 25 Disqualification Orders and 3 Restriction Orders). In the other 2 cases, the Court declined to make Disqualification Orders. Having considered the judgements in the latter two cases, the Office decided to appeal both judgements. Consequently, Notices of Appeal were lodged with the Court of Appeal and, at year end, these appeals were pending.

As can be seen from the data above, there was a significant drop off in applications of this nature by the Office during the year under review. That was largely as a consequence of the decision to lodge appeals and to defer the making of further applications pending consideration of the issues involved by the Court of Appeal.

The Office determined a further 17 cases (2013: 41) without Court action and, at year end, determinations were awaited from the High Court in respect of a further 2 cases. Thus, a total of 23 cases (2013: 64) were dealt with during the year under review. Further details of Orders made by the High Court are set out in the Table below.

⁵⁰ Section 17 of the CLEA

Table 17
Disqualification Orders obtained pursuant to section 160(2)(h) of the Companies Act 1990

Company Name	Company Number	Persons Disqualified	Start Date	End Date
Peter Redmond Limited	384914	Peter Redmond	19.05.14	19.05.19
		Helena Redmond	19.05.14	19.05.19
Alford Construction Limited	372457	Derek Alford	01.09.14	01.09.18
		Denise Alford	01.09.14	01.09.17

Other civil enforcement proceedings

Aventine Resources plc/John Francis Liwosz and Anthony William Brown

As outlined in the 2013 Report, the Office initiated High Court disqualification proceedings against Messrs. John Francis Liwosz and Anthony William Brown, the directors of Aventine Resources plc, for Orders pursuant to sections 160(2)(b) (breach of duty) and 160(2)(f) (persistent default) of the 1990 Act. Following a hearing of the action during the year under review, the High Court made Disqualification Orders under sections 160(2)(b) and (f) respectively against both Mr. Liwosz (7 years) and Mr. Brown (6 years). In addition, the High Court awarded the Office its costs, to be taxed in default of agreement.

This litigation was noteworthy in that this was the first occasion on which the Office has obtained Disqualification Orders pursuant to section 160(2)(f) (persistent default). In that regard, the High Court held that not only had the Respondents shown a persistent failure to comply with the requirements of the Companies Acts, but they were also in breach of the terms of two High Court Orders, on which latter ground alone it would be reasonable and appropriate to make a Disqualification Order.

Messrs Michael and Thomas Bailey/Bovale Developments⁵¹

As has been adverted to in previous Annual Reports, the Office initiated disqualification proceedings against Messrs Michael and Thomas Bailey (the Respondents), the directors of Bovale Developments ("Bovale"), in 2006.

On 21 October, 2013, the case was heard before Ms. Justice Finlay Geoghegan and, on 9 December, 2013, the Court delivered judgement, making an order pursuant to section 160 of the 1990 Act (as amended) disqualifying Messrs Michael and Thomas Bailey for 7 years. In arriving at the term of disqualification, the Court held that, but for the mitigating circumstances, the appropriate period of disqualification would have been 14 years but that, taking the mitigating factors into consideration, a 7 year term was appropriate.

The Court placed a stay on the coming into effect of the Order at that time given that the Respondents had indicated their intention to bring an application, pursuant to section 160(8) of the 1990 Act, seeking a degree of relief from the Disqualification Order. The Respondents' application for relief was heard on 1 May, 2014. At that hearing the Court lifted the stay (i.e., the Disqualification Order came into effect) but authorised the Respondents to continue as directors, or to be concerned in the management, of certain companies – as listed in a Schedule provided to the Court – up to and including 30 September, 2014 on condition that a minimum of two additional directors be appointed to the relevant companies.

Following a further application for relief by the Respondents, which came before the Court on 17 July, 2014, the Court directed that the aforementioned Order of 1 May, 2014 be varied to the effect that the Respondents be permitted to continue as directors, or to be concerned in the management, of the companies listed in the abovementioned Schedule on condition that a minimum of one additional director be appointed to each relevant company on or before 20 July, 2014.

National Irish Bank Limited (NIB)/National Irish Bank Financial Services Limited (NIBFS)

As has been outlined in previous Annual Reports, the Office has been involved in a series of inter-related civil cases, all of which stem from the Report of the Inspectors (appointed under Section 8 of the 1990 Act) to investigate the Affairs of NIB and NIBFS⁵².

In July 2005, the Office commenced Disqualification proceedings against nine persons who had formerly been directors and/or officers of NIB and/or NIBFS. At the beginning of 2014 the position was that 6 of the cases had been fully concluded and Supreme Court hearing dates were awaited in respect of 3 appeals⁵³ from earlier decisions of the High Court.

During the year under review, 2 of the appeals came before the Supreme Court. Both of these cases involved appeals by the Respondents against Disqualification Orders made by the High Court. By consent, the Supreme Court made Orders vacating the High Court Orders and it imposed Declarations of Restriction to take effect from the dates of the making of the Orders in 2014. In both cases, the Appellants made contributions towards the Office's legal costs. At year end, a date for the hearing of the one remaining Supreme Court appeal was awaited.

Applications for relief under section 152 of the 1990 Act

Section 152 of the 1990 Act provides, inter alia, that:

- a person who is subject to a restriction declaration may, within one year of the Court making the declaration, apply to the Court for relief, either in whole or in part, from the restriction and the Court may, if it deems it just and equitable to do so, grant such relief on whatever terms and conditions it sees fit; and
- on receipt of a notice of the intention to make such an application for relief, the liquidator shall forthwith notify such creditors and contributories of the company as have been notified to him/her or become known to him/her, that s/he has received such notice.

During the year under review, the Office became aware of intended applications for relief pursuant to section 152 in two separate instances. In one case, the Office engaged with the applicant and advised the applicant of the information that, in the Office's assessment, should be brought to the Court's attention in the context of the proposed application. The applicant subsequently withdrew the application. In the second case, the application was still pending at year end.

Other civil litigation

During the year under review, a Plaintiff instituted High Court proceedings against a number of Defendants, including the Office. Insofar as the Office was concerned, the Plaintiff alleged that the ODCE had failed to investigate properly a matter that had been referred to it by the Plaintiff some years prior.

At the earliest opportunity the Office issued a Motion to have the Plaintiff's proceedings dismissed as failing to disclose a cause of action and/or being both frivolous and vexatious. The High Court, having considered the matter, made an Order striking out the Plaintiff's claim against the Office and no Order as to costs was made against the Office.

⁵² The Inspectors were appointed by the High Court in March 1998 and carried on their investigations over a period of slightly in excess of 6 years. Their Report was published by Order of the High Court made in July 2004.

⁵³ One of those appeals had been taken by the Office against a decision of the High Court rejecting the Office's contention that the relevant respondents should be disqualified. Three of the appeals had been taken by respondents against decisions of the High Court affirming the Office's contentions that the respondents should be disqualified.

Criminal enforcement

Cases referred to the DPP for consideration as to whether to prosecute on indictment

Whereas the Director can initiate summary prosecutions before the District Court, the initiation of prosecution on indictment (i.e. before a jury in the Circuit Court) is a matter solely for the DPP.

The former Anglo Irish Bank Corporation plc (“Anglo”)

Previous Annual Reports have detailed the general nature of the issues that the Office has been investigating and the extent to which files have been submitted to the Office of the DPP as a result of those investigations.

At the beginning of 2014 the position was that the DPP had directed that three persons, i.e., Mr. William McAteer, Mr. Patrick Whelan and Mr. Sean FitzPatrick – all former directors of Anglo – should be tried on indictment, each in respect of 16 alleged breaches of the provisions of section 60 of the 1963 Act⁵⁴. The DPP had further directed that one of those persons, i.e., Mr. Sean FitzPatrick, should be tried on indictment in respect of 12 alleged breaches of the provisions of section 197 of the 1990 Act⁵⁵.

During the year under review, the trial of the alleged contraventions of section 60 was heard in the Dublin Circuit Criminal Court before His Honour Judge Martin Nolan and a jury. The trial ran for more than 10 weeks between February and April, with a final sentencing hearing being held in July. In addition to the existing charges for alleged breaches of section 60 on foot of which all three defendants had been returned for trial, the DPP added 7 further charges to the indictment against Mr. Whelan alleging offences contrary to section 243 of the 1990 Act⁵⁶.

Mr. McAteer and Mr. Whelan were each found guilty of 10 of the section 60 charges brought against them and not guilty in respect of the other 6 such charges. Mr. Whelan was furthermore found not guilty, by direction of the trial Judge, of the 7 section 243 charges for which he had been indicted and tried. Arising from having been convicted on indictment of an offence under the Companies Acts, pursuant to section 160(1) of the 1990 Act, Mr. McAteer and Mr. Whelan are both subject to Disqualification Orders for a period of 5 years commencing on the date of conviction.

Mr. FitzPatrick was found not guilty of all the charges against him. In the case of 10 of those charges, the jury returned verdicts of not guilty and, in the case of the other 6 charges, the trial Judge directed the jury to return verdicts of not guilty.

On 31 July, 2014, His Honour Judge Nolan sentenced Mr. McAteer and Mr. Whelan to 240 hours of community service each, in respect of the charges of which they had been found guilty.

Regarding the prosecution of Mr. Sean FitzPatrick for alleged contraventions of section 197 of the 1990 Act, this trial had been provisionally fixed for hearing on 7 October, 2014. In July 2014, the Court acceded to an application brought on Mr. FitzPatrick's behalf for the adjournment of the trial, and it is now listed to commence on 13 April, 2015.

A further set of proceedings arising from the ODCE's Anglo-related investigations was initiated by the DPP in August 2014. Mr. William McAteer and Mr. Patrick Whelan are the defendants in those proceedings, which concern alleged offences contrary to section 297⁵⁷ of the 1963 Act. In each instance it is alleged that the accused, on 29 September, 2008, was

“...knowingly a party to the carrying on of the business of a company, for a fraudulent purpose, namely the granting by Anglo Irish Bank Corporation plc of a loan to [William McAteer] in an amount of €8,426,307.00 secured only upon [Mr. McAteer's] shares in Anglo Irish Bank Corporation plc so that [Mr. McAteer] could pay off a loan to Bank of Ireland in that amount for which [Mr. McAteer was] personally liable, which in the circumstances then pertaining to Anglo Irish Bank Corporation plc caused a gain to [Mr. McAteer] and, a loss to the said bank.”

54 Section 60 deals with the provision of financial assistance by a company for the purchase of its own shares

55 Section 197 deals with false statements to auditors

56 Section 243 deals with the destruction, mutilation or falsification of documents

57 Section 297 deals with criminal liability of persons concerned with fraudulent trading of a company

In November 2014 the Court listed these proceedings for trial in the Dublin Circuit Criminal Court over a four week period beginning on 16 January, 2017.

As regards the pending trials, the Office continued, during the course of the year under review, to commit substantial resources to assisting the Office of the DPP in the discharge by that Office of its obligations to disclose to the defence all relevant evidence in its possession. That obligation of disclosure⁵⁸ extends not simply to the material which the DPP's Office has seen fit to include in the Books of Evidence (on the basis that it is evidence on which the prosecution proposes to rely at trial), but also to

*"...any [other] material which may be relevant to the case which could either help the defence or damage the prosecution"*⁵⁹.

In addition, the Office continued to gather further evidence as it became available or in response to directions from the DPP's Office as to further investigative steps that it considered necessary or desirable.

Regarding the two other files which this Office has previously submitted to the DPP (which have been dealt with in previous Annual Reports), no charges have been directed by the DPP to date in respect of one of those matters⁶⁰. Regarding the other matter, the DPP directed that a charge be preferred against a named individual. However, that charge is no longer in being and, consequently, the Office's involvement in this matter has come to a conclusion.

Director of Public Prosecutions v Mr. Ignatius Forde

At the beginning of the year under review, and arising from files submitted to the DPP by this Office, the position was that the DPP had directed that Mr. Ignatius Forde should be tried on indictment in respect of 50 alleged offences contrary to sections 187⁶¹ and 242⁶² of the 1990 Act.

During the year under review, Mr. Forde was arraigned and pleaded guilty to 13 counts on the indictment on a full facts basis as follows:

- 11 counts of producing false audit reports contrary to section 242(1) of the 1990 Act; and
- 2 counts of acting as an auditor whilst disqualified from so doing contrary to sections 187(6) and 187(9) of the 1990 Act.

Mr Forde was subsequently sentenced in the Circuit Criminal Court as follows:

- on 1 count of producing a false audit report contrary to section 242(1) of the 1990 Act, on which he had entered a guilty plea, convicted and fined €1,000;
- the other 12 counts on which he had entered a guilty plea (i.e., 10 counts of producing a false audit report contrary to section 242(1) of the 1990 Act and 2 counts of acting as an auditor whilst disqualified from doing so contrary to sections 187(6) and 187(9) of the 1990 Act), were taken into consideration;
- the remaining 37 counts on the indictment were taken into consideration without pleas having been entered.

58 Which has its roots in the constitutional rights to a trial in due course of law (found in Article 38.1 of the Constitution of Ireland) and to fair procedures (found in Article 40.3).

59 *McKeivitt v DPP*, unreported, Supreme Court, 18 March, 2003

60 It is important to emphasise, however, that the use of the phrase "no charges have been commenced by the DPP to date" is not intended to convey the impression that further charges will definitely, or probably, be directed at some future date. The DPP is independent in the performance of her functions. Accordingly, it is entirely a matter for her to determine if, and to what extent, any investigation files submitted to her Office warrant prosecution; and, if so, what particular charges ought to be prosecuted. Those decisions are based on a number of considerations, further information regarding which can be found in Chapters 4 and 6 of the Guidelines for Prosecutors published by the Office of the DPP and available at <http://www.dppireland.ie/publications/category/14/guidelines-for-prosecutors/>

61 Section 187 deals with the qualifications necessary for appointment as an auditor

62 Section 242 deals with the furnishing of false information

Having consulted with this Office and having considered the matter, the DPP appealed the above sentence on the grounds of undue leniency. This appeal was determined during the year under review by the Court of Appeal, which found that the sentence imposed on Mr. Forde by the Circuit Criminal Court was unduly lenient. The Court of Appeal increased the penalties imposed such that Mr. Forde was ordered to serve 200 hours community service in lieu of a 12 month term of imprisonment and the fine of €1,000 was increased to €3,000⁶³.

Arising from having been convicted on indictment of an offence under the Companies Acts, pursuant to section 160(1) of the 1990 Act, Mr. Forde is also the subject of a Disqualification Order for a period of 5 years commencing on the date of his conviction, i.e., 1 May, 2014.

Other criminal cases referred to the DPP

Following a lengthy investigation and the subsequent submission of a file to the DPP, a suspect was arrested in May 2014 and charged with alleged offences contrary to section 242 of the 1990 Act⁶². In September 2014, the accused was charged with further alleged offences contrary to section 242. The total number of charges before the Courts now stands at 37. By year end, a Book of Evidence had been served and the accused had been sent forward for trial in the Circuit Court.

Other criminal investigations

In addition to the foregoing, a number of other criminal investigations were ongoing at year end that, depending upon their outcomes, may result in matters being referred to the DPP for consideration.

Summary prosecutions

In accordance with the provisions of the CLEA, the Director can bring summary prosecutions before the District Court. During the year the Office brought and prosecuted summary proceedings on 10 occasions (2013: 5), resulting in:

- 19 convictions (2013: 17), with the Probation of Offenders Act 1907 being applied in respect of a further 3 charges in 2 of the aforementioned cases;
- aggregate fines of €27,500 (2013: €10,000) being imposed; and
- the Office being awarded costs of €4,750 (2013: €6,250).

Details of those prosecutions are summarised in the Table below.

Table 18
Summary prosecutions determined – 2014

Case	District Court hearing, date & venue	Charges	District Court Outcome
ODCE v. Mr. Lauri Quinn t/a Quinn & Company	1 April, 2014 Sligo District Court	7 offences contrary to section 187(1) ⁶⁴ of the Companies Act 1990 and 7 offences contrary to section 242(1) ⁶⁵ of the same Act	1 conviction recorded. Aggregate fines of €1,500 imposed in respect of one of the section 187 offences, taking all other offences into consideration. Prosecution costs of €1,250 to be paid by the defendant.
ODCE v. Mr. Patrick Gleeson	7 April, 2014 Dublin Metropolitan District Court	2 offences contrary to section 56(1) and (3) of the Company Law Enforcement Act 2001	On a plea of guilty, the Defendant was convicted and fined €250 on each of the two offences. Prosecution costs of €1,250 to be paid by the defendant.
ODCE v. Deneview Management Company Ltd	26 May, 2014 Dublin Metropolitan District Court	2 offences contrary to Section 119(3) of the Companies Act 1963, as amended.	Defendant was convicted and fined the sum of €2,000 on each of the two offences. Prosecution costs of €1,250 to be paid by the defendant.
ODCE v. Castle Elms Management Ltd; Carmel Bolger; Enda Heneghan; Michael O'Flynn and Jerry Beades.	10 March, 2014 Dublin Metropolitan District Court This case continued for a further 3 dates.	4 offences contrary to Section 131(6) of the Companies Act 1963, as amended. 1 offence contrary to Section 145(4) of Companies Act 1963, as amended.	On pleas of guilty, Defendant Carmel Bolger was convicted on one offence under section 131(6) and fined €250. Section 1(1) of the Probation of Offenders Act 1907 was imposed in respect of one offence under Section 131(6). The other 3 offences were struck out.
ODCE v. Castle Elms Management Ltd; Carmel Bolger; Enda Heneghan; Michael O'Flynn and Jerry Beades.	2 July, 2014 Dublin Metropolitan District Court	3 offences contrary to Section 131(6) of the Companies Act 1963, as amended. 1 offence contrary to Section 145(4) of Companies Act 1963, as amended.	On pleas of guilty, Defendant Enda Heneghan was convicted on one offence under section 131(6) and fined €750. Section 1(1) of the Probation of Offenders Act, 1907 was imposed in respect of one offence under Section 131(6) and one offence under Section 145(4). The other offence was struck out. Prosecution costs of €250 to be paid by the defendant.

64 Acting as an auditor whilst not qualified to do so

65 Furnishing false information

Case	District Court hearing, date & venue	Charges	District Court Outcome
ODCE v. Castle Elms Management Ltd; Carmel Bolger; Enda Heneghan; Michael O'Flynn and Jerry Beades.	2 July, 2014 Dublin Metropolitan District Court	3 offences contrary to Section 131(6) of the Companies Act 1963, as amended. 1 offence contrary to Section 145(4) of Companies Act 1963, as amended.	On pleas of guilty, Defendant Michael O'Flynn was convicted on two offences under section 131(6) and fined a total of €1,000. The other two offences were struck out. Prosecution costs of €250 to be paid by the defendant.
ODCE v. Castle Elms Management Ltd; Carmel Bolger; Enda Heneghan; Michael O'Flynn and Jerry Beades.	28 July, 2014 Dublin Metropolitan District Court	4 offences contrary to Section 131(6) of the Companies Act 1963, as amended. 1 offence contrary to Section 145(4) of Companies Act 1963, as amended.	On pleas of guilty, Defendant Castle Elms Management Limited was convicted on each of the 5 offences against the company and was fined €9,000. Prosecution costs of €250 to be paid by the defendant.
ODCE v. David Cleary	8 October, 2014	2 offences contrary to Section 56(1) and (3) of the Company Law Enforcement Act 2001.	Summonses were struck out. Prosecution costs of €1,250 to be paid by the Defendant.
ODCE v. Castle Elms Management Ltd; Carmel Bolger; Enda Heneghan; Michael O'Flynn and Jerry Beades.	10 November, 2014 Dublin Metropolitan District Court	4 offences contrary to Section 131(6) of the Companies Act 1963, as amended. 1 offence contrary to Section 145(4) of Companies Act 1963, as amended.	Defendant Jerry Beades was convicted on each offence and fined €10,500. Prosecution costs of €250 to be paid by the defendant. The Accused has since appealed to the Circuit Court from the decision of the District Court. That appeal has not yet been determined.
ODCE v. Anonymous ⁶⁶	25 November, 2014	2 offences contrary to Section 56(1) and (3) of the Company Law Enforcement Act 2001	Summonses were struck out.