



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

STATEMENT

In delivering his ruling this morning, and in indicating that he intends to direct the jury to acquit Mr. Sean FitzPatrick on all counts, the trial judge heavily criticised the ODCE investigation that preceded that trial. In particular, the judge criticised the manner in which the statements of two witnesses central to the prosecution – i.e., two audit partners from Ernst & Young - were obtained. Specifically, the judge ruled that both witnesses were coached by the ODCE and that, as a result, their evidence was contaminated.

The ODCE fully accepts that criticism. However, the practices that were so heavily criticised by the trial judge date as far back as to early 2009. Over the intervening years, the ODCE has undergone substantial organisational change and as a result, some 8 years later, it is a very different organisation to what it was at that time. It is clear at this remove that, at that time, the ODCE was simply not equipped to undertake parallel investigations on the scale involved. As a result of what have transpired to be very serious failures, a course of action was adopted at that time under which the lead role in obtaining statements from the two Ernst & Young witnesses was assumed by a small number of senior civilian staff. Regrettably however, none of those individuals had any training or experience of taking witness statements. Moreover, the inappropriateness of the approach that was subsequently adopted in obtaining those statements was not sufficiently appreciated nor were the attendant risks responded to appropriately.

Following the retirement of the former Director, a new Director was appointed in the latter half of 2012 and, over the intervening period, the ODCE's:

- organisational structures have undergone significant change;
- staffing capabilities have been considerably enhanced, through the recruitment of several investigative accountants as well as a digital forensics specialist;
- investigative procedures have been completely overhauled, with members of An Garda Síochána now taking the lead on all criminal investigations; and
- risk management practices have been enhanced.

Another significant feature of this trial has been the shredding of a number of documents by an ODCE staff member. Up until today, reporting restrictions have meant that the full facts surrounding those events could not be made public. Those actions clearly should not have occurred. However, they occurred at a time during which the staff member concerned was under enormous stress and against a backdrop of significant mental health issues, certain of which pre-dated the incident and which culminated in the staff member concerned being hospitalised for almost two months in the immediate aftermath of those events.

This case has been the most high profile with which the ODCE has been involved and, as such, has understandably attracted considerable media interest. However, in the interests of balance, sight should not be lost of the other work that the ODCE does on an ongoing basis. Investigations undertaken by the ODCE have resulted in:

- the conviction during 2014 of both Mr. William McAteer and Mr. Pat Whelan for the giving of unlawful financial assistance by Anglo for the purchase of its own shares;
- the conviction of Mr. William McAteer during 2016 for fraudulent trading on foot of a plea of guilty; and
- the conviction of Mr. Pat Whelan during 2016 for failing to maintain a licensed bank's register of loans to directors on foot of a plea of guilty.

Further, in recent months the Director of Public Prosecutions directed, on the basis of an ODCE file submitted, that a person be charged with fraudulent trading based on an invoice discounting fraud and, on 24 April 2017, the person charged with that offence was arrested by Gardaí from the ODCE and entered a plea of guilty to that charge. A range of other serious investigations and enquiries, both civil and criminal, are also at various stages of progression as well as the ODCE's ongoing supervision of insolvent companies and their directors' behaviour.

ODCE staff were excluded for much of the very extensive legal argument that was a feature of this trial. Our immediate priority, therefore, is to seek to obtain copies of the transcripts of the trial in order that, to any extent that further measures are required in order to address the mistakes of the past, that we can identify such steps and implement them as a matter of priority. Other challenges in the immediate future include securing the appointment of a Detective Inspector to fill the post that has been vacant since last Autumn.

ENDS/