



Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach
Office of the Director
of Corporate Enforcement

STATEMENT REGARDING THE HIGH COURT'S JUDGEMENT ON THE APPOINTMENT OF INSPECTORS TO INDEPENDENT NEWS & MEDIA PLC

In a judgment delivered today, the President of the High Court, Mr. Justice Peter Kelly, indicated his intention to grant the ODCE's application for the appointment of Inspectors to Independent News & Media plc ("INM"). He also indicated his intention to appoint, on the nomination of the ODCE, Mr. Richard Fleck, CBE and Mr. Seán Gillane, SC as the Inspectors.

The Inspectors will investigate the various matters set out in their Terms of Reference as determined by the Court. In doing so, the Inspectors will have at their disposal the wide range of powers provided to them under the Companies Act 2014.

The principal matters to be investigated by the Inspectors, as indicated by the High Court, include:

- the interrogation of INM's data;
- the proposed acquisition by INM of Newstalk radio;
- the proposed payment to Island Capital of a success fee associated with the disposal of INM's shareholding in APN;
- the Independent Review process; and
- possible breaches of Market Abuse Regulations.

Welcoming the decision of the President of the High Court, the Director of Corporate Enforcement, Mr. Ian Drennan commented:

"The ODCE's application for the appointment of Inspectors followed a lengthy and wide-ranging investigation that identified several issues of serious concern relating to INM. That investigation was initiated on foot of a protected disclosure made to the ODCE. The initial scope of the investigation was subsequently broadened in response to the receipt of a further expression of concern.

The ODCE's investigation was conducted over a period of approximately 15 months. Over the course of the investigation, a total of 33 statutory requirements for the provision of documents, explanations and assistance respectively were served on INM and on several other parties. This resulted in the ODCE assembling a substantial volume of documentary evidence, including email and text message communications.

Following a review of the materials assembled over the course of the investigation, the ODCE identified a number of matters of serious concern relating to INM. While extensive use was made of the ODCE's statutory powers, a point was reached where, in the ODCE's assessment, the further progression of this investigation necessitated the deployment of the more powerful investigative tools reserved by law to High Court Inspectors. It was on that basis that an application for the appointment of Inspectors to the company was lodged with the High Court on 23 March 2018.

INM subsequently took Judicial Review proceedings in the High Court seeking to quash the ODCE's decision to seek the appointment of Inspectors. In taking those proceedings, INM argued that the ODCE had been under an obligation to consult with the company prior to making an application to the High Court for the appointment of Inspectors. In a judgement delivered on 1 June 2018, Mr. Justice Seamus Noonan rejected that argument and dismissed INM's application.

Today's judgment by the President of the High Court indicating his intention to grant the ODCE's application means that the investigation will now be further progressed by Court-appointed Inspectors. The Inspectors are vested with significant statutory powers not available to the ODCE, including the powers of compellability and examination of relevant persons on oath.

Commenting on the topic of protected disclosures, Mr. Drennan added:

"This investigation commenced following receipt of a protected disclosure. The Protected Disclosures Act 2014 is an important piece of legislation that provides a statutory framework within which workers can raise concerns and disclose information regarding potential wrongdoing while enjoying protections against penalisation (such as suspension, dismissal, demotion, disciplinary action etc.). In this case, protected disclosures were made both internally within INM and directly to the ODCE. The protections afforded by the Protected Disclosures Act 2014 were a key factor in facilitating the ODCE's investigation of the issues that have led to the judgment delivered in the High Court today.

The matter is due back before the President of the High Court on Thursday, 6th September, at 10am when an application for costs by the ODCE will be considered and also to allow INM time to consider the judgement.

**OFFICE OF THE DIRECTOR OF CORPORATE ENFORCEMENT
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Enquiries

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Note for Editors

Legislative basis, structure and resources

The position of Director of Corporate Enforcement (“Director”) was established by the Company Law Enforcement Act 2001 (which was subsequently consolidated into the Companies Act 2014 (“the Act”). The Director is supported in discharging his statutory functions by the Office of the Director of Corporate Enforcement (“ODCE”). As provided for by the Act, the Director is independent in the discharge of his statutory functions.

The ODCE is an Office of the Department of Business, Enterprise & Innovation (“the Department”) and, as such, is staffed by officers of the Minister for Business, Enterprise & Innovation – some of whom are recruited through open competition and some of whom are allocated to the ODCE by the Department from time to time. In addition, and in accordance with its establishing legislation, the ODCE’s staff complement includes a cohort of members of An Garda Síochána. The assignment of the approved complement of Gardaí to the ODCE is a matter for the Garda Commissioner. To date, Gardaí assigned to the ODCE have been seconded from the Garda National Economic Crime Bureau.

The ODCE currently has a staff complement of 38¹, which includes (in addition to the Gardaí referred to above) accountancy, legal and digital forensics professionals. Its budget for 2018 is €5m, comprising of €3m for pay and €2m for non-pay. Under public sector financial regulations, the ODCE is not permitted to use its non-pay budget for pay purposes.

Principal statutory functions

Under the Companies Act 2014, the Director’s principal functions are to:

- i. encourage compliance with company law;
- ii. investigate instances of suspected offences under the Companies Act;
- iii. enforce the Companies Act, including through the prosecution of offences by way of summary proceedings (i.e., in the District Court);
- iv. refer cases, at his discretion, to the Director of Public Prosecutions for consideration as to whether charges should be directed on indictment (in such instances, prosecutions occur before a jury in the Circuit Criminal Court);
- v. exercise, insofar as he feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Act. This function involves the receipt of, and adjudication upon, reports from the liquidators of insolvent companies.

High Court Inspectors - relevant provisions of the Companies Act 2014

The judgment of the President of the High Court indicating his intention to appoint Inspectors to INM follows an application brought by the ODCE under section 748 of the Companies Act 2014.

The statutory provisions governing High Court-appointed Inspectors, including their powers, are set out in sections 746 to section 762 of the Companies Act 2014.

Inspectors

The President of the High Court has indicated his intention to appoint Mr. Richard Fleck, CBE and Mr. Seán Gillane, SC as the Inspectors. These individuals were nominated by the ODCE.

¹ Whole Time Equivalents

Mr Richard Fleck, CBE is a solicitor by profession. Mr Fleck was formerly a Partner (and is currently a Consultant) with the firm of Herbert Smith Freehills LLP. He is currently Deputy Chairman of the International Ethics Standards Board for Accountants. He was a Director of the Financial Reporting Council from 2004 to 2015, Chairman of the Financial Reporting Review Panel from 2012 to 2015 and served as Chairman of the Auditing Practices Board from 2003 to 2012. Mr. Fleck's other relevant experience includes an appointment as an Inspector by the Bank of England and advising on several investigations and statutory inspections under UK company law.

Mr Seán Gillane is a Senior Counsel. He was called to the Inner Bar in 2009, having been called to the Outer Bar in 1997. Mr. Gillane is a highly experienced practitioner, specialising in criminal law (both prosecution and defence). He was previously Senior Counsel to the O'Higgins Commission of Investigation.

Inspectors' Terms of Reference

The Inspectors' terms of reference are set out in the judgement delivered by the President of the High Court today.

Inspectors' Report

Section 758 of the Companies Act 2014 provides that Inspectors may, and if directed by the Court shall, make Interim Reports to the Court. In this regard, the President of the High Court has proposed that the Inspectors should present an Interim Report not later than 12 April, 2019. On the conclusion of their investigation, the Inspectors are required to make a Final Report to the Court. Section 759 of the Companies Act 2014 deals with distribution of Inspectors' Reports.

Costs of the Inspectorship

Section 762 of the Companies Act 2014 specifies how the expenses of, and incidental to, the investigation by the Inspectors are to be met. In the first instance, the expenses will be defrayed by the ODCE. However, the Court may direct that a company dealt with in the Inspectors' Report shall be liable for so much of the expenses as the Court directs. The Court may also direct that other parties should meet some or all of the costs in the circumstances set out in the section.

Timeframe

Subject to the supervision of the High Court, it will be a matter for the Inspectors to determine their proposed investigation methodology. Section 749 of the Companies Act 2014 provides that the Court may give such directions as it thinks necessary – whether to the Inspectors or to any other person – with a view to ensuring that the investigation is carried out as quickly and inexpensively as possible.

Protected Disclosures Act and other relevant documents

Set out below are links to documents of relevance:

- Protected Disclosures Act 2014;²
- Protected Disclosures Act 2014 (Section 7(2)) Order 2014 (which prescribes the ODCE as a prescribed person under the Act);³
- Industrial Relations Act 1990 (Code of Practice on Protected Disclosures Act 2014) (Declaration) Order 2015⁴.

² <http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/html>

³ <http://www.irishstatutebook.ie/eli/2014/si/339/made/en/print?q=Protected+Disclosures&years=2014-2018>

⁴ <http://www.irishstatutebook.ie/eli/2015/si/464/made/en/print?q=Protected+Disclosures&years=2014-2018>