

Report to the Audit and Risk Committee

Report of Paul Jacobs

16 June 2023

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Audit and Risk Committee

Ms. Anne O'Leary
Chair, Audit and Risk Committee
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Ref: PJ/RLS/AF

Dear Ms. O'Leary,

Report to the Audit and Risk Committee

Please find attached my Report.

Yours sincerely



Paul Jacobs

Partner

Audit and Risk Committee

Report to the Audit and Risk Committee

INTRODUCTION

Terms of reference

- 1.1 I am appointed by the Audit and Risk Committee of Raidió Teilifís Éireann (“RTÉ”) as the External Reviewer under the Terms of Reference (dated April 2022) (Exhibit 1). The Terms of Reference for my review (the “Review”) states, amongst other things:
- (a) “The Audit and Risk Committee of RTÉ (the “**Committee**”) has directed that a review is to be conducted in relation to matters surrounding the payment of two sums of €75,000 each for and on behalf of RTÉ by a third party ... to ... in 2022. The purpose of this review is to ascertain the full circumstances and facts surrounding the said payments and the purpose for same (the “**Review**”).” (paragraph 1)
 - (b) “The focus of the Review will be to conduct a fact finding review to identify the full factual circumstances in relation to the payment referred to above. Facts shall be determined on the balance of probabilities” (paragraph 3)
 - (c) “The Review will consider all relevant available documentation, including without limitation commercial contracts, books of account, electronic documents and information and accounting systems, where relevant, and meet with relevant personnel, as necessary.” (paragraph 4)
 - (d) “All relevant documentation (as described above) shall be sourced and provided by RTÉ at the request of Grant Thornton directly or through Arthur Cox.” (paragraph 5).
 - (e) “The Review will be conducted in accordance with the principles of natural justice” (Paragraph 9)
 - (f) “For the avoidance of doubt the Review and Report shall be limited to findings of fact. Grant Thornton shall not offer any views on the culpability (or otherwise) of any individual or the gravity of any such culpability. Grant Thornton shall not make any observations or recommendation as regards the potential application of RTE’s disciplinary proceedings or otherwise, such decisions shall be for RTE alone” (paragraph 15)

Methodology

- 1.2 I have held meetings with the individuals set out below. In addition, where required, individuals below also provided me with supplemental information. All individuals fully co-operated with my review:
- (a) CFO of RTÉ;
 - (b) Commercial Director of RTÉ;

- (c) Director General of RTÉ;
- (d) [REDACTED]; and
- (e) Talent's Agent.

1.3 Searches of RTÉ's email system were undertaken at my behest adopting key word search terms, and/or parameters, that I devised.

1.4 I made written enquiries of RTÉ's Legal Department in relation to factual matters concerning the company's agreement with the Talent in so far as it pertains to the Terms of Reference.

1.5 For the purposes of fair procedures, I have previously issued relevant extracts of this Report to individuals in circumstances where I have quoted them and/or they have been referred to by other individuals.

Limitations

1.6 I reserve the right to amend my report should additional information or documentation be provided to me.

Assistants

1.7 I am Paul Jacobs, Partner and Head of the Forensic & Investigation Services unit at Grant Thornton. I am a specialist forensic accountant and have personally carried out much of the forensic accounting work in arriving at my conclusions. From time to time I have been assisted by colleagues in the Forensic & Investigation Services unit at Grant Thornton.

EXECUTIVE SUMMARY OF FINDINGS

1.8 There was a contractual obligation on RTÉ to pay the Talent the two amounts of €75,000 (in excess of his Presenter's Contract).

1.9 This contractual obligation was in the context of a wider agreement with the Talent, which for the purposes of my Report, I define as the "Five Year Contract". Under this Five Year Contract with the Talent, an annual income of €75,000 from commercial relationships was underwritten and guaranteed by RTÉ.

1.10 A Tri-partite Agreement was entered into between a Commercial Brand, RTÉ and the Talent, for October 2020 to 31 December 2021, being Year 1 of the Five Year Contract. The key requirements or services under this agreement was for the provision of a number of personal appearance events by the Talent to the Commercial Brand.

1.11 On the balance of probabilities, I find that at the time negotiations were being held for the Tri-partite agreement, RTÉ had an expectation that arrangements would be entered into with the Commercial Brand, aligning with years 2 through to 5 of the Five Year Contract. I am not in a position to identify as to what the terms/nature of such an agreement would have been had the Tri-partite agreement been extended or a new agreement entered into after Year 1.

- 1.12 In relation to the Tri-partite Agreement, the evidence available to me is that the Commercial Brand agreed to enter this agreement on the basis that it would be cost neutral to them. In accordance with this:
- (a) the Talent's Agent raised an invoice in July 2020 for €75,000 (net of VAT) with the Commercial Brand on behalf of the Talent for personal appearance events; and
 - (b) RTÉ raised a credit in July 2020 of €75,000 with the Commercial Brand on their airtime spend so in effect RTÉ funded the €75,00 payment to Talent.
- 1.13 The underwriting and guarantee provision under the Five Year Contract was triggered for years 2 (2021) and 3 (2022) because there was no subsequent extension or new agreement to the above mentioned Tri-partite agreement with the Commercial Brand.
- 1.14 From the evidence available to me, I find that:
- (a) On 9 May 2022 and 6 July 2022, the Talent's Agent raised invoices of €75,000 each with the Barter Company. Each invoice had the description "Consultancy Fees".
 - (b) On the balance of probabilities, the description on the invoices, "Consultancy Fees" did not reflect the substance of the transactions:
 - (i) the substance of the transaction was that the invoice was being issued due to the underwriting and guarantee contained in the Five Year Contract;
 - (ii) the Talent Agent did not provide consultancy; and
 - (iii) the Talent did not provide consultancy.
 - (c) The evidence is inconclusive as to who came up with the phrase "Consultancy Fees".
 - (d) On the balance of probabilities these two invoices that referenced "Consultancy Fees" related to Year 2 and Year 3 of the Talent's contract and the arrangement identified under the "Commercial relationship".
 - (e) These two invoices issued by the Talent's Agent relate to Year 2 (2021) and Year 3 (2022) of the Five Year Contract.
 - (f) The two invoices issued by the Talent's Agent did not mention the Talent's name.
 - (g) These two amounts of €75,000 were received by the Talent (via the Talent's Agent).
 - (h) The Barter Company, recorded these payments on the Barter Account held between RTÉ and the Barter Company. I also find that:
 - (i) On the Barter Account each payment was recorded at a value of €115,380 (gross) (€75,000 (net)), with transaction dates of 25 May 2022 and 20 July 2022 respectively.

- (ii) The Barter Account Statement issued by the Barter Company describes each expenditure as "Fee agreed by Director General".
- (iii) In the context of the way that the Barter Account operates, I find that the grossed up value of €115,380 is appropriate.
- (iv) The Barter Account Statement for 2022 contains 25 transactions in relation to purchases (i.e. expenditure). The two transactions of €115,380 each account in total for 70% of total purchases shown on the Statement for 2022. Therefore, the existence of these two transactions would be quite obvious from a review of the Barter Account Statement.
- (v) The Barter Account Statement does not mention the Talent's name.

1.15 On the balance of probabilities, the Barter Account was used because:

- (a) It was in a credit position (there were available funds in it).
- (b) It would appear that there was no budget available for these amounts of €75,000 in year 2 or 3 of the agreement.

DETAILED FINDINGS

RTÉ'S CONTRACTUAL OBLIGATION

- 2.1 In determining the facts and circumstances under the Terms of Reference, I considered that I needed to understand the relevant background to the payment of two sums of €75,000. It is not within the scope of the Terms of Reference for me to review the commercial basis of the agreements between RTÉ, the Talent and any other party(s).
- 2.2 I am informed by the Director General that:
- (a) In early 2020, RTÉ began discussions around the Talent's contract renewal. All of these discussions involved RTÉ's then CFO, a Solicitor from RTÉ'S legal team, and from time to time regarding programming details, the Director of Content and the Director General.
 - (b) At this time, RTÉ was facing some major challenges organisationally. RTÉ had committed at the end of 2019 to the RTÉ Board and to Government to reducing top talent fees by 10% as part of a wider cost cutting strategy.
 - (c) The task was made all the more complex with the terms of the Talent's existing contract as an end of contract payment was due at the end of the contract i.e. 2020. This contract was negotiated and in place prior to the Director General's arrival. RTÉ was keen to make a cost saving in respect of this "end of contract payment". RTÉ was at the same time re-negotiating the Talent's contract with the 10% cost cutting objective in mind.
 - (d) As discussions, which finance and legal were also fully involved in, progressed RTÉ sought to negotiate away this "end of contract payment" and looked to see if any solutions could be found to negotiate this with the main objective being to reduce the cost to RTÉ and also to retain the talent in RTÉ's commercial interests.
 - (e) The Commercial Brand had been a valued client and long serving sponsor of RTÉ.
 - (f) RTÉ looked at the Commercial Brand's contract which was out of line timing wise with the Talent's contract and began to consider the merits of aligning both timing wise and to consider if the Commercial Brand might take on a commercial relationship with Talent.
 - (g) Discussions progressed and culminated in a cost saving agreement reached by RTÉ with the Commercial Brand and with the Talent via the Talent's Agent that Commercial Brand would enter into a separate commercial contract with the Talent for €75,000 for the provision of personal appearance events annually. The terms of this potential agreement were set out by Talent's Agent and these were discussed and considered by all parties, including RTÉ 's legal and finance departments. Over a long period of time an agreement was drawn up between the Talent, the Commercial Brand and RTÉ. The Director General was not involved in the drafting, signing or implementation of this agreement (being the Tri-partite).
 - (h) On the basis of this negotiated cost saving agreement, RTÉ would no longer be liable for the end of contract fee that was due in 2020. It was a condition of this cost saving agreement, as negotiated by the Talent's Agent that the €75,000 payments for this Commercial relationship

must be guaranteed by RTÉ.

- (i) This cost saving agreement meant that RTÉ was no longer liable for the end of contract payment, and due to Commercial Brand's strong record with RTÉ, RTÉ was satisfied that this agreement was a good commercial decision for reducing costs, and it was viewed as a nil risk that Commercial Brand would not perform the agreement.
- (j) The Commercial Brand agreed to enter a new business relationship with the Talent on the understanding that it required this change to be cost neutral for it as they it was in the final year of a 3 year sponsorship contract with RTÉ. This was achieved by issuing a credit note for €75,000 against the Commercial Brand's airtime.

2.3 I met with the Talent's Agent in relation to this Review. He advised me that:

- (a) Sponsorship agreements between Commercial Brands and RTÉ were entered into by the Commercial team in RTÉ and that these agreements did not include the Talent.
- (b) That sometimes, RTÉ would propose that talent could perform personal appearances or additional work for a commercial brand. However, this was not governed by the Sponsorship agreements entered into between RTÉ and commercial brands, in relation to shows, and did not entitle the commercial brand to personal appearances, beyond perhaps one photoshoot. The Talent's Agent noted that given this backdrop, it was necessary to formalise any such Personal Appearance agreements between the Talent and the Commercial Brand through a separate agreement.
- (c) If a commercial brand wanted to enter an agreement for personal appearance with the Talent, they would need to do this separate to the overall Sponsorship Agreement with RTÉ.
- (d) He believed that these personal appearance events would endorse and embellish the Commercial Brand separate to their (Commercial Brand's) tv sponsorship.
- (e) That a Tri-partite agreement was entered into between the Commercial Brand, the Talent and RTÉ and that this was separate to the Talent's agreement to perform their TV and radio work for RTÉ.
- (f) That in this instance, RTÉ agreed to underwrite and guarantee the annual payments of €75,000 for commercial relationship to mitigate any risk arising in terms of a change in the relationship between RTÉ and the Commercial Brand.
- (g) The Talent's Agent understood from this, that in a situation where the Commercial Brand relationship with RTÉ no longer existed or the Commercial Brand did not pay the €75,000 to the Talent that RTÉ would be obliged to step in and pay the Talent this sum.
- (h) The Talent's Agent also understood that RTÉ served to benefit from the Commercial Brand having a separate engagement with the Talent insofar as it maintained good relations with the Commercial Brand and avoided RTÉ having to be involved with such arrangements other than acting as underwriter of the Commercial Brand's fees in the event the contract was not extended/renewed.

2.4 I have reviewed correspondence dated 2020 between RTÉ and the Talent's Agent. From the correspondence, in so far as it is relevant to the Terms of Reference, I have identified and extracted the following:

- (a) A five year contract from 1 February 2020 (representing an immediate saving on the Talent's contract fees).
- (b) Annual income of €75,000 for the Talent from commercial relationship. The terms and conditions of this:
 - (i) Underwritten and guaranteed by RTÉ.
 - (ii) Invoiced from Talent's Agent to the commercial brand.
 - (iii) Maximum of three events per annum by the Talent which have to be in association with RTÉ.
 - (iv) All activity and contract details to be all agreed with Talent's Agent before discussing with the commercial brand.
- (c) The exit fee owed to the Talent under their current presenter contract would be agreed to be foregone.

For the purposes of my Report only, I refer to this (being (a) to (c)) as the "Five Year Contract".

2.5 The RTÉ Legal Team's understanding of the contractual obligations in relation to the phrase €75,000 from commercial relationship is:

- (a) That €75,000 of the RTÉ sponsorship income from the third party commercial sponsor would be paid directly to the Talent by the third party commercial sponsor.
- (b) That the agreement to underwrite and guarantee the €75,000 was approved by the Director General.
- (c) That the underwriting of the guarantee was for the full duration of the contract, being 5 years, and:
 - (i) the start date was July 2020;
 - (ii) the end date was March 2025; and
 - (iii) to the best of their knowledge there is an obligation to pay for every year between the start and the finish dates.
- (d) That an agreement would be entered into between the third party sponsor (being the Commercial Brand) and the Talent directly but in the unlikely event of a change in sponsorship during the term of the contract or a failure to pay by the sponsor RTÉ would pay the Talent.

Tri-partite Agreement with Commercial Brand

The Agreement

- 2.6 I have reviewed an agreement between the Commercial Brand, RTÉ, and the Talent, for October 2020 to 31 December 2021 (the "Tri-partite Agreement").
- 2.7 Key aspects of the Tri-partite Agreement are:
- (a) Dates identified on cover page of agreement are October 2020 to 31 December 2021.
 - (b) The Commercial Brand agrees to engage the Talent from 29 September 2020 to 31 December 2021 for the sole purposes of this agreement.
 - (c) Requirements or Services – these were for the provision of personal appearance events to take place before the end of the Television Broadcast Sponsorship Agreement dated 20 March 2018 between RTÉ, the Commercial Brand, and the Commercial Brand's Agent.
 - (d) Signed by:
 - (i) an individual on behalf of Commercial Brand on 15 April 2021;
 - (ii) an individual on behalf of the Talent on 21 April 2023; and
 - (iii) the version of the agreement that Grant Thornton have received is not signed by RTÉ.
 - (e) That whilst there was a mention for valid consideration for the agreement there was no mention of a monetary amount for the provision of Requirements or Services under the agreement. This was dealt with separately.
- 2.8 The Commercial Director, advised me that:
- (a) She asked the Commercial Brand, if they would be interested in 3 year extension and a restructuring of the original contract in order to try and tie into the 4 year contract with Talent. Unfortunately the Commercial Brand was not in a position to do this.
 - (b) She continued a discussion with Commercial Brand on what they could do within the current contract. The Commercial Brand were prepared to engage but their engagement would have to be cost neutral to Commercial Brand.
 - (c) The deal was done in early 2020 with reference to the calendar year 2020 (Year 1 of Five Year Contract).
 - (d) The hope was that this would have been the first of 4 years of deals, however there was no such commitment from the Commercial Brand.
 - (e) As part of these negotiations personal appearance events were to be run.

- (f) The personal appearance events identified in the agreement were originally expected to have been in 2020, however these moved to 2021 (as documented in agreement), due to COVID and finally occurred in 2022.
- (g) The personal appearance events which were run in 2022 related to the first of the €75,000 invoiced by Talent's Agent to Commercial Brand (July 2020) (Year 1 of the Five Year Contract).
- (h) One €75,000 payment by the Commercial Brand to the Talent's Agent was under this agreement (with corresponding credit from RTE to the Commercial Brand to make it cost neutral to the Commercial Brand).
- (i) The Commercial Brand only received one credit in 2020.
- (j) The term covered by the Agreement dated October 2020 to 31 December 2021 covered Year 1 of the Five Year Contract. The Commercial Director advised that she did not renegotiate with the Commercial Brand for Year 2 or 3 of the Five Year Contract.

2.9 The Tri-partite Agreement provided for the provision of delivery of personal appearance events. The Director General noted in the meeting with me, in relation to the Tri-partite Agreement, that the 2020 events were only delivered in 2022 due to COVID and its impact meant that the commercial contract did not work for the Commercial Brand.

2.10 From the evidence available to me, I do not have any evidence as to what the terms of an agreement would have been, had the Tri-partite agreement been extended past Year 1.

2.11 From all of the evidence available to me, I can confirm that personal appearance events were run between March 2022 and May 2022. I also corroborated these events to searches on Facebook.

Invoice from the Talent's Agent to the Commercial Brand

2.12 I have identified that an invoice was raised in July 2020 by the Talent's Agent to the Commercial Brand for €75,000. I note the description on this invoice stated:

"Talent Bespoke Partnership between the Commercial Brand and the Talent to include (sic) personal appearances. Programme of activity to be agreed between Commercial Brand, RTE (sic) and Talent's Agent"

2.13 From the evidence available to me I find that this amount of €75,000 was received by the Talent in 2020 (via its Agent).

Credit note issued by RTE

2.14 In relation to the Tri-partite Agreement, the evidence available to me is that the Commercial Brand agreed to enter this agreement on the basis that it would be cost neutral to them. In 2020 the Finance Team in RTE was requested to raise a credit note for the Commercial Brand.

2.15 From the evidence available to me, I have identified that on 31 July 2020 a credit note was issued for the full amount of the original sponsor invoice, and an invoice was issued on the same date for a

reduced amount, which in combination provided a reduction of sponsorship due from the Commercial Brand of €75,004. In terms of wording, the credit note and the revised invoice identified that they were for "Sponsorship".

Period after the Tri-partite Agreement

- 2.16 As stated above the Tri-partite Agreement provided that the Commercial Brand agreed to engage the Talent from 29 September 2020 to 31 December 2021. The evidence available to me, including from my meetings, is that no additional or follow-on Tri-partite Agreement was entered into between the Commercial Brand, RTÉ, and the Talent following this first agreement.
- 2.17 Based on my interpretation of the Five Year Contract, evidence gathered from the RTÉ Legal Team, and the individuals that I met, the underwriting and guarantee provision was triggered for years 2 and 3 of the Five Year Contract. Therefore, I find that RTÉ had a contractual obligation to make two payments of €75,000 to the Talent for 2021 and 2022.

PAYMENT OF €75,000 IN YEAR 2 AND 3 OF THE FIVE YEAR CONTRACT

Barter Account

- 2.18 I note that the two payments in 2022 of €75,000 were paid through a Barter Account maintained between the Barter Company and RTÉ.
- 2.19 The Commercial Director provided me with an overview as to the operation of the Barter Account. She noted that:
- (a) A number of deals are posted in this account. For example a company may pay for their advertising into this account. If a company pays for their advertising into the Barter Account, 50% of the total Advertising Revenue goes in to the cash account and 50% goes to credits.
 - (b) The use of these Barter accounts is standard practice in advertising.
 - (c) The credits were used for trips, client entertainment etc.
 - (d) If the credits are not used they can be cashed out at 65% (e.g. if €100,000 in credit account, €65,000 can be cashed out).
 - (e) When credits were used for expenses etc, these credits were also done at 65%. (e.g. €75,000 would be assigned as €115,380).
 - (f) Statements are received by RTÉ monthly on the Barter Account.
- 2.20 I also met with the CFO of RTÉ who provided the following explanation:
- (a) The Barter Account was operated by the Commercial Director.
 - (b) The Barter Account was previously off balance sheet.

- (c) That he brought the transactions going through the Barter Account onto Balance Sheet two years ago but noted that it still rested outside the normal internal control system.
- (d) That the commercial team would have processed transactions through the account without seeking advance approval from Finance.
- (e) The Barter Account was used for Commercial entertainment and where overruns arose or no budget for events (e.g. Golf events, matches etc.). Income (which came through the Barter Account) was not included in budget for year.
- (f) That at the end of the year he would identify the balance in the Barter Account and that Finance would then recognise the net figure (which was a net of income and costs) in the RTÉ Income Statement. This was done shortly after the year-end as part of the Financial Statement close process.

Why was Barter Account used?

- 2.21 The Director General stated that as this was effectively a commercial arrangement that did not work out and it was decided to pay the invoices to the Talent's Agent from the Barter Account, which was in credit.
- 2.22 In conducting my review, the Commercial Director advised me that:
- (a) the Barter Account was used to pay outstanding payments to the Talent as there was no contract in place with a Commercial Partner for years after year 1 of the Five Year Contract.
 - (b) the Director General asked her to use the Barter Account to raise the payments.
 - (c) she agreed with the Talent's Agent to invoice the Barter Account for two invoices, each for €75,000.
- 2.23 In conducting my review, I asked the [REDACTED] to explain if anyone identified with her as to why the Barter Account was used in this instance. She advised me that she assumed there was no budget elsewhere to make these payments.
- 2.24 The [REDACTED] stated that she surmised that RTÉ's Commercial Department were asked to put payment through the Barter Account as there was an awareness that the Commercial Department had use of the Barter system.

Barter Account statement issued by Barter Company

- 2.25 The two invoices raised by the Barter Company for €75,000 were included in the Barter Company's monthly statements issued to RTÉ. The Statements showed in respect of each of the two payments:
- (a) a value of €115,380 (being the amount of €75,000 grossed up by 1 divided by 0.65); and
 - (b) under "analysis of expenditure" the phrase "Fee agreed by Director General".

- 2.26 The Barter Account Statement for 2022 contains 25 transactions in relation to purchases (i.e. expenditure). The two payments of €75,000 each (grossed up to €115,380 each) account for 70% of total purchases shown on the Statement for 2022.¹
- 2.27 I find on the balance of probabilities that RTÉ did not achieve a financial gain or suffer a financial loss by using the Barter Account.

Raising of two invoices in 2022 by Talent's Agent to Barter Company

- 2.28 In the context of identifying the circumstances of the two payments, I have identified from documentation that in March 2022 there was a conference call between RTÉ and the Talent's Agent to discuss overdue payments to the Talent for €75,000 for Year 2 of the Five Year Contract and to agree that this and the payment for Year 3 of the Five Year Contract would be made promptly. The document states that the Talent's Agent said that he had spoken to the Commercial Director about Year 2 of the Five Year Contract but she said that it was not her problem and he said that it was not their's either and that they should not have to come up with solutions.
- 2.29 Two invoices were subsequently raised in 2022 by the Talent's Agent for €75,000 each (no VAT applicable) to the Barter Company, both with a description of "Consultancy Fees". The dates on these invoices are noted below:
- (a) 9 May 2022; and
- (b) 6 July 2022.
- 2.30 The [REDACTED] advised me that the normal process for arranging payments to be made through the Barter Company, using these two payments of €75,000 as examples, would follow the below steps:

Step 1: The Talent's Agent send invoice to [REDACTED] addressed to Barter Company.

Step 2: [REDACTED] send same invoice to Barter Company.

Step 3: Barter Company send Booking Form to [REDACTED] – Invoice amount, trade amount - €115K, description etc.

Step 4: Once [REDACTED] happy that relates to invoice, she signs as approved and sends back.

Step 5: Barter Company take authority from this approval and pay, the payment is also entered on to the Barter account by Barter Company at this time.

- 2.31 In relation to these payments, I asked the [REDACTED] what her role was in arranging these two payments of €75,000. The [REDACTED] advised me that:

¹ Within the remaining 30% there are other costs relating to the delivery of the events.

- (a) She was asked by Commercial Director to organise the raising of these invoices; and
- (b) She advised the Talent's Agent of address details that were to be included on the invoice, and also that the Invoices were to be sent to her.

2.32 The Commercial Director advised me that the Director General mentioned these payments (e.g. the 2021 and 2022 €75,000 amounts) on a number of occasions and that the Director General= asked to use the Barter Account to pay these Year Two and Year three amounts. The Commercial Director noted that she did not ask whether these payments could be paid through RTÉ, and that she organised, (following the Director General's suggestion), through ██████████ that these invoices be raised by Talent's Agent and paid by the Barter Company.

Determination of phrase "Consultancy Fees" on the invoices issued by the Talent's Agent

2.33 In order to determine the facts and circumstances around the raising of these invoices by the Talent's Agent, I met with the Talent's Agent. He advised me that:

- (a) Instruction was received from RTÉ as to who and where the invoices were to be addressed to, the VAT reference and the description.
- (b) He believes that the Commercial Director and/or the ██████████ identified on a call with him what the description on the invoice was to be.
- (c) The words "Consultancy Fees" did not mean anything to him or raise any concerns. He further noted that in issuing invoices for other talent, there may be situations where the phrase "Consultancy Fees" is used, other examples of descriptions could be "producer fees", "contributor fees" etc. He noted, the description would be dependent on the individual and the work they were performing. He advised me that in this instance, it is likely that he assumed such reference was a generic description made in connection with the Talent agreeing to perform personal appearances for the Commercial Brand.
- (d) He noted that this €75,000 was not salary (noting that the Talent is in any event an independent contractor and not employed by RTÉ), that it was an amount ultimately underwritten and guaranteed by RTÉ in relation to separate Commercial Relationships between the Talent and a Commercial Brand.

2.34 The Talent's Agent has also advised me that they have identified a substantial number of invoices on behalf of various other clients where the term "Consultancy Fees" is used, particularly in the context of commercial dealings with non-broadcaster or third parties.

2.35 In relation to the wording of "Consultancy Fees" on the two invoices issued by the Talent's Agent, the Commercial Director advised to me that:

- (a) She does not remember the specifics around the wording and who suggested it.
- (b) She could not remember who had agreed the form of words for the invoice.

- (c) She does not remember the precise detail about either suggesting the words used or whether it was part of a discussion between the Director General and herself.

2.36 In relation to the wording of "Consultancy Fees" on the two invoices issued by the Talent's Agent, the [REDACTED] advised me that:

- (a) She does not know who determined the description "Consultancy Fees" as included in the two invoices dated 9 May 2022 and 6 July 2022.
- (b) She believed that the Talent's Agent came up with the reference "Consultancy Fees" as they needed to get paid.
- (c) The Talent's Agent never spoke with her with regards to the description of what should be included on the invoice.
- (d) To the best of her knowledge a call probably did take place where the decision on how the invoice should be worded was discussed but as to whom the call was between she was not privy to.

2.37 I find that the evidence is inconclusive as to who came up with the phrase "Consultancy Fees" given the inconsistency in beliefs: Talent's Agent (paragraph 2.33 (b)) and [REDACTED] (paragraph 2.36 (b)) amongst other explanations provided to me.

2.38 When meeting with the Director General, I asked whether she thought that the description "consultancy fees" was a reasonable description for the Talent's Agent to be using on its invoice. The Director General advised me that she did not recall the conversations around it and that she could probably understand why they might have used this phrase because of confidentiality around the contract.

DETAILED FINDINGS

Contractual obligation

- 3.1 There was a contractual obligation on RTÉ to pay the Talent the two amounts of €75,000.
- 3.2 The above mentioned obligation arose because an underwriting and guarantee provision under what I describe as a Five Year Contract was triggered for years 2 and 3 because there was no subsequent extension or new agreement to the above mentioned Tri-partite agreement with the Commercial Brand.
- 3.3 In determining the facts and circumstances under the Terms of Reference, I considered that I needed to understand the relevant background to the payment of two sums of €75,000. It is not within the scope of the Terms of Reference for me to review the commercial basis of the agreement between RTÉ, the Talent and other parties. In the course of my meetings with both individuals from RTÉ and the Talent's Agent the commercial benefits to RTÉ have been asserted to me of the Five Year Contract.

Five Year Contract

- 3.4 This contractual obligation was in the context of a wider agreement, which for the purposes of my Report, I define as the "Five Year Contract". I have extracted from contemporaneous documentation key extracts as they are relevant to the Terms of Reference:
- (a) A five year contract from 1 February 2020 (representing an immediate saving on the Talent's reduced contract fees).
 - (b) Annual income of €75,000 from commercial relationship. The terms and conditions of this:
 - (i) Underwritten and guaranteed by RTÉ.
 - (ii) Invoiced from Talent's Agent to the commercial brand.
 - (iii) Maximum of three events per annum by the Talent which have to be in association with RTÉ.
 - (iv) All activity and contract details to be all agreed with Talent's Agent before discussing with the commercial brand.
 - (v) That an exit fee owed to the Talent under their current presenter contract would be agreed to be foregone.

Year 1 of Five Year Contract

- 3.5 In the first year of the Five Year Contract, a Tri-partite Agreement was entered into between a Commercial Brand, RTÉ and the Talent, for October 2020 to 31 December 2021. The key requirements or services under this agreement was for the provision of a number of personal appearance events by the Talent to the Commercial Brand.
- 3.6 Undoubtedly COVID was a significant limiting factor that influenced the delivery of the personal appearance events identified under the Tri-partite agreement. The personal appearance events were not delivered until early 2022.
- 3.7 On the balance of probabilities, I find that at the time negotiations were being held for the Tri-partite agreement, RTÉ had an expectation that arrangements would be entered into with the Commercial Brand, aligning with years 2 through to 5 of the Five Year Contract. I am not in a position to identify as to what the terms/nature of such an agreement would have been had the Tri-partite agreement been extended or a new agreement entered into after Year 1.
- 3.8 In relation to the Tri-partite Agreement, the evidence available to me is that the Commercial Brand agreed to enter this agreement on the basis that it would be cost neutral to them. In accordance with this:
- (a) the Talent's Agent raised an invoice in July 2020 for €75,000 (net of VAT) with the Commercial Brand on behalf of the Talent for personal appearance events; and
 - (b) RTÉ raised a credit in July 2020 of €75,000 with the Commercial Brand on their airtime spend.

Year 2 and 3 of Five Year Contract

- 3.9 The underwriting and guarantee provision under the Five Year Contract was triggered for years 2 and 3 because there was no subsequent extension or new agreement to the above mentioned Tri-partite agreement with the Commercial Brand.
- 3.10 From the evidence available to me, I find that:
- (a) On 9 May 2022 and 6 July 2022, the Talent's Agent raised invoices of €75,000 each addressed to the Barter Company. Each invoice had the description "Consultancy Fees".
 - (b) On the balance of probabilities, the description on the invoices, "Consultancy Fees" did not reflect the substance of the transactions:
 - (i) the substance of the transaction was that the invoice was being issued due to the underwriting and guarantee contained in the Five Year Contract;
 - (ii) the Talent Agent did not provide consultancy; and
 - (iii) the Talent did not provide consultancy.

- (c) On the balance of probabilities these two invoices that referenced “Consultancy Fees” related to Year 2 and Year 3 of the Talents contract and the arrangement identified under the “Commercial relationship”.
- (d) These two invoices issued by the Talent’s Agent relate to Year 2 (2021) and Year 3 (2022) of the Five Year Contract.
- (e) The two invoices issued by the Talent’s Agent did not mention the Talent’s name.
- (f) These two amounts of €75,000 were received by the Talent (via the Talent’s Agent).
- (g) The Barter Company, recorded these payments on the Barter Account held between RTE and the Barter Company. I also find that:
- (i) On the Barter Account each payment was recorded at a value of €115,380 (gross) (€75,000 (net)), with transaction dates of 25 May 2022 and 20 July 2022 respectively.
 - (ii) The Barter Account Statement issued by the Barter Company describes each expenditure as “Fee agreed by Director General”.
 - (iii) In the context of the way that the Barter Account operates, I find that the Grossed up value of €115,380 is appropriate.
 - (iv) The Barter Account Statement for 2022 contains 25 transactions in relation to purchases (i.e. expenditure). The two transactions of €115,380 each account in total for 70% of total purchases shown on the Statement for 2022. Therefore, the existence of these two transactions would be quite obvious from a review of the Barter Account Statement.
 - (v) The Barter Account Statement does not mention the Talent’s name.
- (h) I find that the evidence is inconclusive as to who came up with the phrase “Consultancy Fees” given the inconsistency in beliefs: Talent’s Agent (paragraph 2.33 (b)) and [REDACTED] (paragraph 2.36 (b)) amongst other explanations provided to me.
- 3.11 In response to sharing extracts of this Report with the Director General, the Director General is of the view that I should find that there was no particular significance to the use of the term “consultancy fees” on the invoices raised by the Talent’s Agent, and further that there was commercial sensitivity and commercial brand confidentiality that arose in respect of these invoices. Having considered this, in my opinion my findings at paragraph 3.10 still stand.
- 3.12 Whilst I acknowledge confidentiality, I note that in the invoice for year 1, the description is quite comprehensive.
- 3.13 On the balance of probabilities the Barter Account was used because:
- (a) It was in a credit position (there were available funds in it).

(b) It would appear that there was no budget available for these amounts of €75,000 in year 2 or 3 of the Five Year Contract.

3.14 Whilst acknowledging 3.13 (a) and (b) above, I find that RTÉ could have made the two payments of €75,000 by an alternative means, for example, payment from RTÉ to Talent's Agent or Talent's company.

Audit and Risk Committee

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