

# Report to the Audit and Risk Committee - Phase 2

**Dated: 14 August 2023**

**Private & Confidential**

**Anonymised**

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Ms. Anne O'Leary, Chair  
Audit and Risk Committee  
RTÉ Board  
Raidió Teilifís Éireann  
Donnybrook  
Dublin 4

14 August 2023

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**Ref: PJ/RLS/AF**

Dear Ms. O'Leary

**REPORT TO THE AUDIT AND RISK COMMITTEE – PHASE 2**

Please find attached my Report in relation to my review under Phase 2.

Yours sincerely



**Paul Jacobs**

Partner

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# Executive Summary

## BACKGROUND

1. I am appointed by the Audit and Risk Committee of Raidió Teilifís Éireann (“RTÉ”) as the External Reviewer under the Terms of Reference (provided to me on 26 June 2023) (**Exhibit 1**) which state:

“The Audit and Risk Committee of RTÉ (the “Committee”) has directed that a review be conducted in relation to:

- 1.1 the contracts of RTÉ’s top 10 most highly paid on-air presenters to independently validate that all remuneration figures<sup>1</sup> have been correctly stated publicly and properly accounted for by RTÉ in each year during the period from 2008 to 2022 inclusive, i.e. the top 10 reported by RTÉ in each year during that period; and
  - 1.2 the understatement by RTÉ of Mr. Tubridy’s published remuneration by €120,000 in the period 2017-2019.
- (the “Review”).”

2. The Terms of Reference further state (paragraph 16):

“For the avoidance of doubt the Review and Second Report shall be limited to findings of fact. Facts shall be determined on the balance of probabilities. 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 recommendations as regards the potential application of RTE’s disciplinary proceedings or otherwise, such decisions shall be for RTE alone.”

3. On 12 July 2023, I issued an Interim Report in relation to the Top 10 Earners in RTÉ for the period 2010 to 2022.
4. On 20 January 2021, RTÉ published the earnings of top on-air earners for 2017 to 2019. On 22 June 2023, RTÉ restated the figures for Mr. Tubridy’s earnings (for 2017 to 2021). The differences between the RTÉ restated figures and those originally published are set out in Table 1 below:

**Table 1 – Identified differences between RTÉ restated and originally published earnings for Mr. Tubridy**

	2017 €	2018 €	2019 €	2020 €	2021 €	Total €
Published earnings – original	491,667	495,000	495,000	466,250	440,000	2,387,917
<b>Add adjustments made in 2023</b>						
RTÉ adjustment 1	20,000	50,000	50,000			120,000
RTÉ adjustment 2				56,250	75,000	131,250
<b>Restated earnings – June 2023</b>	<b>511,667</b>	<b>545,000</b>	<b>545,000</b>	<b>522,500</b>	<b>515,000</b>	<b>2,639,167</b>

*Note 1: Adjustment 1 – is the subject of this Report.*

*Note 2: Adjustment 2 – amounts of €75,000 are described in my First Report dated 16 June 2023. For 2020, €56,250 represents 9/12 of €75,000 being the period 1 April 2020 to 31 December 2020.*

<sup>1</sup> In my review of the documents, I have found that “earnings” is frequently used.

Executive Summary

5. In respect of 2017 to 2019, the adjustments made by RTÉ in June 2023 to restate the earnings of Mr. Tubridy (the “**2023 Restatement**”) reversed previous adjustments made by RTÉ in 2020 (the “**2020 Adjustments**”) to Mr. Tubridy’s published earnings for 2017 (€20,000), 2018 (€50,000) and 2019 (€50,000).
6. Prior to the 2020 Adjustments, the earnings of Mr. Tubridy were €511,667 (2017), €545,000 (2018) and €545,000 (2019) which is the position now after the 2023 Restatement.
7. Documents identify that at the time of the negotiations with Mr. Tubridy’s representatives in 2019 and 2020 in relation to the new contract, RTÉ were under significant pressure to cut costs.
8. I have reviewed a significant volume of documentation. Searches of RTÉ’s email system were undertaken by the IT Department in RTÉ at my behest adopting key word search terms, and/or parameters, that I devised. Several thousand emails and documents (e.g. Microsoft spreadsheets, word files, and pdf files) were provided to me by RTÉ’s IT Department on foot of the application of those search terms. In addition I have spent significant time meeting and/or otherwise interacting with 9 key individuals and three external organisations, together with members of the Audit and Risk Committee and Board of RTÉ.
9. There have been certain limitations on my work which I set out in Section 2.

**SUMMARY OF FINDINGS**

10. Based on my review of the information and documentation available to me, I set out my findings below. I reserve the right to amend my report should additional information or documentation be provided to me, or should any of the circumstances described as limitations in Section 2 change.

**Mr. Tubridy’s published earnings by RTÉ - 2017 to 2019**

11. The adjustments made by RTÉ in June 2023 to restate the published earnings of Mr. Tubridy for 2017 to 2019 were appropriate.
12. The corollary of that is that the published earnings figures in respect of Mr. Tubridy by RTÉ for 2017 to 2019 were understated.
13. In respect of 2017 to 2019, the published earnings following the 2023 Restatement, are the same as those recorded on RTÉ’s system, PeopleSoft (being the invoices issued by Mr. Tubridy’s company Tuttle Productions Limited (“**Tuttle**”)).
14. A payment of the €120,000 exit fee was not made by RTÉ to either Mr. Tubridy or Tuttle under the Tubridy 2015 Agreement, as Mr. Tubridy had, following negotiations waived the entitlement.
15. From a review of the documentation available to me, and from meetings held with individuals, Mr. Tubridy was not personally involved in the negotiations with RTÉ regarding his contract. In performing my review of emails and documents in relation to the negation of Mr. Tubridy’s 2020 Agreement I confirm that Mr. Tubridy was not identified as a sender or recipient in any of the emails I reviewed, nor was he identified as an attendee at any of the meetings between RTÉ and NK Management (being Mr. Tubridy’s Agent). In short, Mr. Tubridy had no involvement in the adjustments made by RTÉ in 2020 to published earnings totaling €120,000 for 2017 to 2019.

## Executive Summary

16. As a matter of fact, the 2020 Adjustments caused the published earnings figures for Mr. Tubridy in each year 2017, 2018 and 2019 to change to an amount below €500,000 from an amount above €500,000, and it was these lower amounts which were then published by RTÉ in 2021 for these years. I have found no spreadsheet or workings which provides a specific calculation that supports each of the adjustments of €20,000 (2017), €50,000 (2018) and €50,000 (2019) that were made in 2020.
17. There was no financial benefit made or gain to RTÉ or Mr. Tubridy, arising from the 2020 Adjustments.
18. On the balance of probabilities, there were several failures which I find significantly contributed to RTÉ publishing incorrect earnings in respect of Mr. Tubridy for 2017 to 2019. At the core, the significance arising from the changes made in the Marked up Version of the draft Agreement / draft Side Letter provided by NK Management to RTÉ were not properly detected, assessed, nor understood by certain key individuals in the RTÉ Finance team during March 2020 and April 2020:
  - (a) On 20 March 2020, NK Management sent to RTÉ a Marked up Version of the draft Agreement / draft Side Letter, which was sent internally within RTÉ on 23 March 2020. Readers of this report will see in Table 2 below, for example, deletions to the €20,000, €50,000 and €50,000 in paragraph 4 of the draft Agreement / draft Side Letter, and exclusion of the word “set off”. NK Management has confirmed that the “set off” or “offset” wording that had been presented to them by RTÉ, specifically in paragraphs 3 and 4 of the draft Agreement / draft Side Letter was rejected by NK Management and this position was ultimately accepted by RTÉ in the final signed version of the Agreement / Side Letter.  
  
On 23 March 2020, those involved in Finance in RTÉ had the opportunity to identify and raise a flag that the Marked up Version of the Agreement / Side Letter did not accord with the draft Agreement / draft Side Letter, and importantly that the earlier proposed accounting treatment of adjusting 2017, 2018 and 2019 was no longer appropriate.
  - (b) On 6 April 2020, there was a telephone call between RTÉ and Deloitte, which appears to have discussed the Marked up Version of the draft Agreement / draft Side Letter. Whilst it has been explained to me that they concluded that the substance of the final signed Agreement / Side Letter was not inconsistent with the earlier draft Agreement / draft Side Letter, in light of the information available to me I have reached a different conclusion.
  - (c) Further, the three Deloitte reports referred at paragraph 23 below, were provided by Deloitte to RTÉ Finance, but do not appear to have been subsequently provided to the Board of RTÉ or the Audit and Risk Committee. I observe that this is despite the Deloitte reports having been addressed as follows: “Independent Reasonable Assurance Report to the Board Members of RTÉ”. The schedules upon which Deloitte reported showed the adjustments of €20,000, €50,000 and €50,000.
  - (d) In combination, the above factors caused RTÉ’s Finance function to remain on the course set in February 2020 believing that it was appropriate offset the exit fee against a supposed refund of fees due from Tuttle to RTÉ for undelivered services. On the balance of probabilities I find that the dates of 20 March 2020 or 23 March 2020, and 6 April 2020 were dates on which RTÉ’s direction could have been changed.

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19. I am informed that the Remuneration and Management Development Committee of the RTÉ Board was not provided with the Top Talent earnings list prior to publication of earnings in January 2021. Further, I am informed that RTÉ is in the process of changing the terms of reference to ensure that in the future, the earnings figures will be sent to the Remuneration and Management Development Committee for review prior to publication.
20. In my opinion the factors identified in paragraphs 18(c) and 19 above, are not reflective of good corporate governance in place at that relevant time.
21. The 2020 Adjustments were made on spreadsheets which are used by RTÉ as a basis/calculations for its publication of Top Talent earnings. Readers of this Report should note that the 2020 Adjustments were not recorded in the General Ledger of RTÉ and therefore did not impact RTÉ's Financial Statements.
22. The Financial Statements for RTÉ for the year ended 31 December 2019 included an accrual of €120,000 in respect of the exit fee set out in the Tubridy 2015 Agreement.
23. As referred at paragraph 18(c) above, Deloitte provided three Independent Reasonable Assurance Reports on schedules of the Top Talent earnings for 2017 to 2019 prepared by RTÉ Management which included the adjustments of €20,000 (2017), €50,000 (2018) and €50,000 (2019). The three reports were issued on 20 August 2020 for each year 2017, 2018 and 2019. The Top Talent earnings published by RTÉ in January 2021 reflected those schedules. I am informed by Deloitte that they were not engaged to perform an audit and this is evident from the wording contained in Independent Reasonable Assurance Reports. In my view, it is reasonable to conclude that RTÉ Finance placed some reliance on the three Independent Reasonable Assurance Reports provided by Deloitte, in the context of the scope of work agreed between RTÉ and Deloitte.
24. It will be noted in this Report that several individuals who I met have views about their responsibilities and the responsibilities of others. I have taken all views into consideration, and have set out in my Report having had regard to the Terms of Reference the differing views expressed by some individuals that I met as part of my review.

**Mr. Tubridy's published earnings by RTÉ – 2020 to 2022**

25. On 12 July 2023, I issued an Interim Report in relation to the Top 10 Earners in RTÉ for the period 2010 to 2022. In that report I confirmed that in respect of 2008 to 2016, I had found no errors in the published earnings figures by RTÉ for Mr. Tubridy. I wish to confirm that in respect of 2020 to 2022, I found no other issues (apart from the €75,000 issue which RTÉ has adjusted for in the 2023 Restatement).

**OTHER FINDINGS**

**The “set off” or “offset”**

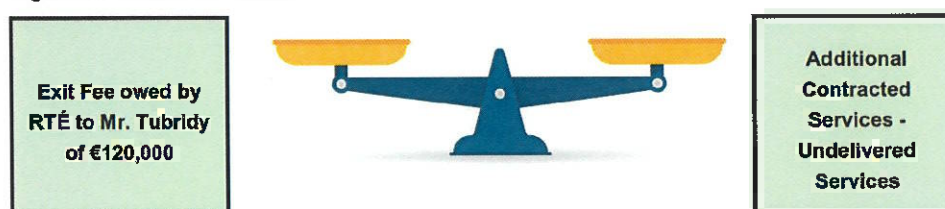
26. The re-statement of Mr. Tubridy's published earnings that was made by RTÉ in June 2023, reversed the previous 2020 Adjustments. Under my methodology, a significant proportion of my analysis relates to:
  - (a) establishing the facts surrounding, and leading to, the 2020 Adjustments; and



## Executive Summary

- (b) having established the facts, then forming an opinion as to whether the 2023 Restatement by RTÉ was appropriate (as stated above, the conclusion that I reached is that the adjustments made by RTÉ in June 2023 to restate the published earnings of Mr. Tubridy for 2017 to 2019 were appropriate).
27. The 2020 Adjustments by RTÉ were finalised in the period June 2020 to August 2020 following engagement with Deloitte since February 2020. Central to the 2020 Adjustments, is in my opinion, what is colloquially referred to in documentation provided to me as an “set off” or “off set” between two things as shown in Figure 1 below:
- (a) a fee of €120,000 due to Tuttle / Mr. Tubridy on the expiry date of the 2015 Tubridy Agreement i.e. the “exit fee”; and
- (b) the value of the additional contracted services set out in Schedule 1 to the 2015 Tubridy Agreement, being services that were not sought by RTÉ or provided by the Presenter (Mr. Tubridy) during the Contract Term. In the context of the documentation that I have reviewed, these additional services are commonly referred to as “undelivered services”.

Figure 1 – “set off” or “offset”



28. Documentation that I have reviewed describes a refund, otherwise referred to as a “recoupment” that was due to RTÉ from Tuttle / Mr. Tubridy in respect of the additional contracted services. Therefore, the “off set” or “set off”, was viewed at the relevant time during negotiations as being between; on the one hand, an exit fee of €120,000 owed by RTÉ to Tuttle / Mr. Tubridy; and on the other hand, a refund due from Tuttle / Mr. Tubridy to RTÉ. I find that no refund was due to RTÉ and also acknowledging that Mr. Tubridy waived his entitlement to the exit fee of €120,000. Whilst it may have been the case that the RTÉ negotiating team had an expectation as a negotiation strategy/tactic that a refund could be achieved, I am informed that RTÉ had no legal entitlement to a refund, and none was agreed as part of the negotiations held over 2019/2020 for the new agreement.
29. It is important to note that, whilst there was a draft Agreement / draft Side Letter that incorporated proposed terms of the “set off” between the exit fee and the additional contracted services, on the balance of probabilities I find that this is not what was agreed. A Marked up Version sent by NK Management to RTÉ on 20 March 2020 made it clear that they were not agreeing to the set off. The final signed Agreement / Side Letter excluded reference to set off. Table 2 below provides a comparison between the draft Agreement / draft Side Letter and the final signed Agreement / Side Letter.
30. I have reviewed a significant amount of email correspondence in addition to meetings and interactions with individuals. In my view, it is evident that the understanding relating to the setoff by some key individuals involved in the negotiations was not entirely clear, and differed between them. For example, there is an alternative understanding that the 2020 Adjustments represent the spreading of the benefit of the exit fee (which had been waived by Mr. Tubridy) across earlier years. The problem with that alternative explanation is that in my view it does not reflect the reality of what happened.



**RTÉ's outline offer – December 2019**

31. On 19 December 2019, RTÉ sent an outline offer to NK Management. I identified spreadsheet workings which were used by RTÉ as part of its preparation for negotiations with Mr. Tubridy.
- I have identified two spreadsheet tables (i.e. Figure 3.2A and 3.2B) that both describe the “proposed offer” as follows: “RTÉ Fee per annum” of €420,000 and “Commercial deal with 3<sup>rd</sup> party facilitated by RTÉ” of €75,000 (i.e. which totals €495,000).
  - I have found from my electronic review that a spreadsheet table sent by RTÉ to Mr. Kelly on 19 December 2019 (i.e. Figure 3.2A) had also been sent internally within RTÉ on the previous day (i.e. Figure 3.2B). I have two findings arising from these spreadsheet tables, but I note that there is no mathematical differences in the computations presented in either spreadsheet tables. The differences relate to descriptions of some of the figures in the spreadsheet tables.

Finding number 1

- A key narrative difference between these spreadsheet tables is that on 18 December 2019 there is reference to an “Exit fee foregone” of €120,000 whilst on 19 December 2019 the reference differs being “Cross Platform loyalty fee” of €120,000. The reason for the change in the description is not evident from the information currently available to me (being a combination of interactions with individuals and spreadsheet analysis).
- In both spreadsheet tables, the figure of €120,000 is referenced (formula driven) from the “value of services not required / delivered” of €20,000, €50,000 and €50,000 located in a different part of the same spreadsheet table i.e. in either case the €120,000 (Exit fee foregone or Cross Platform loyalty fee) equaled the total of these 3 adjustments of €20,000, €50,000 and €50,000 (which was proposed to offset the exit fee of €120,000).

Finding number 2

- I have analysed both spreadsheet tables. In both instances the RTÉ analysis reached a “Per annum Earnings” / “Per annum fee” of €495,000. Included within that €495,000 p.a. in both cases, I have identified that there is an amount of €20,400 p.a. (which represents the exit fee of €120,000 in the then current contract less 15% and divided by 5 years) (see Appendix 1).
- In the case of Figure 3.2B, where the phrase “Exit fee foregone” is used instead of “Cross Platform loyalty fee”, it is reasonable to conclude that the exit fee is also added, and included in the total of €495,000 p.a. In the alternative, it is the Cross Platform loyalty fee that is added.

**Other matter**

32. On 16 January 2020, NK Management sent an email to RTÉ, which stated amongst other things: “... any PR set to be released by RTÉ needs to be discussed in advance of any publication, this includes both salaries and pay cuts.” NK Management state that RTÉ failed to properly engage with them / Mr. Tubridy in advance of RTÉ publishing the Top Talent earnings for 2017 to 2019 in January 2021 and that had RTÉ done so that the publication issues could have been avoided. I am informed that the RTÉ Finance team was not involved in any liaison process with the “Talent” or their Agent prior to publication of Top Talent Earnings for 2017 to 2019. It should be noted that person(s) from RTÉ who may be in a position to comment on NK Management’s assertion are not available at the moment to meet with me as part of my review.

Table 2 – Identification of amendments and changes made and agreed

Final – signed Letter of Agreement, dated 24 July 2020

Marked up Version – NK Management to RTE on 20 March 2020

Draft – RTE to Mr. Kelly on 13 February 2020 and 10 March 2020

[RTE headed paper]  
**LETTER OF AGREEMENT**

1. We refer to the contract for services between the Tuttle Productions Limited and RTE dated 1 September 2015 to 31 August 2020 (the "Agreement") in relation to the services provided by the Contractor to RTE.
2. The parties hereby agree to the early termination of the Agreement on 28 February 2020.
3. It is hereby agreed that the fee of €120,000 due on the expiry date of 31 August 2020 will not be paid either pro rata or in full but will be set off against the additional contracted services set out in the Schedule but not sought by RTE or provided by the Presenter during the Contract Term.
4. The termination payment will be offset against the Contractor's earnings on the following terms:  
€20,000 for Year 3,  
€50,000 for Year 4 and,  
€50,000 for Year 5.

Agreed and Accepted  
**RADIOÍ TELIFÍS ÉIREANN**  
Date:

for and on behalf of **TUTTLE PRODUCTIONS LIMITED**  
Date:

[RTE headed paper]  
**LETTER OF AGREEMENT**

1. We refer to the contract for services between the Tuttle Productions Limited and RTE dated 1 September 2015 to 31 August 2020 (the "Agreement") in relation to the services provided by the Contractor to RTE.
2. The parties hereby agree to the early termination of the Agreement on 28 February 2020.
3. In consideration of the parties entering into the Agreement and RTE providing related side letters, it is hereby agreed that all pre-existing agreements or entitlements terminated and neither party shall have any continuing obligations or entitlements hereunder. The fee of €120,000 due on the expiry date of 31 August 2020 will not be paid either pro rata or in full but will be set off against the additional contracted services set out in the Schedule but not sought by RTE or provided by the Presenter during the Contract Term.
4. The termination payment will be offset against the Contractor's earnings on the following terms:  
€20,000 for Year 3,  
€50,000 for Year 4 and,  
€50,000 for Year 5.

Agreed and Accepted  
**RADIOÍ TELIFÍS ÉIREANN**  
Date:

for and on behalf of **TUTTLE PRODUCTIONS LIMITED**  
Date:

**RTE Solicitors' Office**

**LETTER OF AGREEMENT**

1. We refer to the contract for services between the Tuttle Productions Limited and RTE dated 1 September 2015 to 31 August 2020 (the "Agreement") in relation to the services provided by the Contractor to RTE.
2. The parties hereby agree to the early termination of the Agreement on 28 February 2020.
3. In consideration of the parties entering into the Agreement and RTE providing related side letters, it is hereby agreed that all pre-existing agreements or entitlements terminated and neither party shall have any continuing obligations or entitlements hereunder.

Agreed and Accepted  
for and on behalf of  
**RADIOÍ TELIFÍS ÉIREANN**  
Date: 24 July 2020

Agreed and Accepted  
for and on behalf of  
**TUTTLE PRODUCTIONS LIMITED**  
Date: 24 July 2020

# 1. Introduction

## BACKGROUND

### 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 (provided to me on 26 June 2023) (**Exhibit 1**) which states:

The Audit and Risk Committee of RTÉ (the “**Committee**”) has directed that a review be conducted in relation to:

- 1.1 the contracts of RTÉ’s top 10 most highly paid on-air presenters to independently validate that all remuneration figures have been correctly stated publicly and properly accounted for by RTÉ in each year during the period from 2008 to 2022 inclusive, i.e. the top 10 reported by RTÉ in each year during that period; and
- 1.2 the understatement by RTÉ of Mr. Tubridy’s published remuneration by €120,000 in the period 2017-2019.

(the “**Review**”).

- 1.2 The Terms of Reference for my review also states, amongst other things:

- (a) “The Review arises from and is supplemental to the Report of Grant Thornton dated 16 June 2023 (the “**First Report**”).” (paragraph 3)
- (b) “The Review will consider all relevant available documentation, including without limitation commercial contracts, books of account, details of any relevant ‘barter’ accounts, electronic documents and information and accounting systems, where relevant, and Grant Thornton will meet with relevant personnel, as necessary.” (paragraph 4).
- (c) “The Review will be conducted in accordance with the principles of natural justice.” (paragraph 9).
- (d) “Subject to the timing considerations set forth in paragraph 15, on completion of the Review, Grant Thornton shall produce a report for RTÉ (the “**Second Report**”) in one or more parts as required for the purposes of paragraphs 1.1. and 1.2. In advance of completing the Second Report, where appropriate to respect the principles of fair procedures, a draft of the Second Report and/or relevant extracts will be provided to individuals to afford them an opportunity to comment on its content prior to its finalisation. (paragraph 11).
- (e) “The Second Report shall include details of the methodology adopted, relevant evidence gathered and Grant Thornton’s findings of fact based on Grant Thornton’s analysis of same.” (paragraph 13).
- (f) “Refusal or failure to co-operate with the Review by any party will not prevent the Reviewers proceeding and issuing a Second Report based on the information available.” (paragraph 14).

- (g) "For the avoidance of doubt the Review and Second Report shall be limited to findings of fact. Facts shall be determined on the balance of probabilities. 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 recommendations as regards the potential application of RTE's disciplinary proceedings or otherwise, such decisions shall be for RTE alone." (paragraph 16).

### 1.3 This Report:

- (a) sets out my methodology and process in **Section 2**;
- (b) addresses paragraph 1.2 of the 26 June 2023 Terms of Reference (see **Sections 3 to 7**);
- (c) addresses paragraph 1.1 of the 26 June 2023 Terms of Reference in so far as it relates to Mr. Tubridy (see **Section 8**);
- (d) provides supplemental information in **Section 9**; and
- (e) in **Appendix 1** provides an analysis of the RTÉ proposal regarding the new Tubridy contract.

## **PUBLISHED REMUNERATION – MR. TUBRIDY**

### **2017 to 2019**

- 1.4 On 20 January 2021 RTÉ published the earnings of top on-air earners for 2017 to 2019.<sup>2</sup> Mr. Collins states that the publication in January 2021 would have been done on the instruction of the Director General. On 22 June 2023 RTÉ restated the figures for Mr. Tubridy's earnings.
- 1.5 The differences between the RTÉ restated figures and those originally published are set out in Table 1.1 below based on information that has been provided to me by RTÉ:

**Table 1.1 – Differences between RTÉ restated and originally published earnings for Mr. Tubridy**

	2017 €	2018 €	2019 €	2020 €	2021 €	Total €
Published earnings - original	491,667	495,000	495,000	466,250	440,000	2,387,917
<b>Add adjustments made in 2023</b>						
RTÉ adjustment 1 (Note 1)	20,000	50,000	50,000			120,000
RTÉ adjustment 2 (Note 2)				56,250	75,000	131,250
<b>Restated earnings – June 2023</b>	<b>511,667</b>	<b>545,000</b>	<b>545,000</b>	<b>522,500</b>	<b>515,000</b>	<b>2,639,167</b>

**Note 1:** Adjustment 1 – is the subject of this Report.

**Note 2:** Adjustment 2 – amounts of €75,000 are described in my First Report dated 16 June 2023. For 2020, €56,250 represents 9/12 of €75,000 being the period 1 April 2020 to 31 December 2020.

<sup>2</sup> Source: <https://www.rte.ie/news/2021/0120/1190981-rte-on-air-earners/>

- 1.6 My appointment under the Terms of Reference provided to me on 26 June 2023 occurred after RTÉ published the restated earnings. I was not involved in any aspect of the RTÉ 2023 Restatement.
- 1.7 The published earnings are prepared on an accruals basis, not on a cash/paid basis. To explain briefly, under an accruals basis, transactions are recognised when an amount falls due. In contrast under a cash paid basis, transactions are recognised when payment is received/paid.
- 1.8 Mr. Collins has explained to me the chronology of events leading to the 2023 Restatement. He has informed me that, following receipt of my First Report on 16 June 2023 the Chair of RTÉ asked him to review Mr. Tubridy's published earnings against Mr. Tubridy's 2015 and 2020 main contracts, and that he compared the published earnings against (a) what was due under contract, (b) invoices and any credit notes submitted by Tuttle / Mr. Tubridy, and (c) payments made to Mr. Tubridy. Mr. Collins states that he established that Tuttle / Mr. Tubridy had invoiced for all amounts due for 2017-2019 under the contract and these invoices had been paid, and that no credit notes for undelivered services had been issued by Tuttle / Mr. Tubridy. Lastly, Mr. Collins explained that he reported his findings to the Chair on 18 June 2023 and that the matter was from then on handled by the Board of RTÉ.

## REVIEW OF TUBRIDY AGREEMENTS

- 1.9 I refer to an agreement (the “**Tubridy 2015 Agreement**”) dated 9 November 2015 between RTÉ and Tuttle Productions Limited (“**Tuttle**”).
- 1.10 I refer to an agreement (the “**Tubridy 2020 Agreement**”) dated 24 July 2020 between RTÉ and Tuttle.
- 1.11 Given the factual pattern, in order for me to address the Terms of Reference (paragraph 1.2), it was also necessary for me to consider the Tubridy 2020 Agreement between RTÉ and Tuttle dated 24 July 2020.

### The Tubridy 2015 Agreement

- 1.12 The Tubridy 2015 Agreement describes Tuttle as an Irish registered company. I note that filings at the Companies Registration Office show that the shares of Tuttle are held 100% by Mr. Tubridy. I have not considered the Financial Statements of Tuttle to any extent, as I do not believe that it is relevant to the 2023 Restatement by RTÉ.
- 1.13 The Tubridy 2015 Agreement states, amongst other things:
- (a) Mr. Tubridy is defined as the Presenter.
  - (b) RTÉ wishes Tuttle (defined as the “Company”) to provide the exclusive Services (as defined) of the Presenter and programmes by the Presenter to RTÉ on the terms set out in this Agreement.
  - (c) The Commencement Date is defined as 1 September 2015.
  - (d) The “Contract Term” is defined as five (5) years from the Commencement Date.

- (c) “Services” is defined as the services of the Presenter to be provided under this Agreement as set out in Schedule 1.
- (f) Under Fees:
- (i) Subject to various matters (as outlined in the Tubridy 2015 Agreement), RTÉ agrees to pay to Tuttle Productions Limited the following fees gross per Contract Year without any deduction (save withholding tax) plus VAT:
    - Year 1<sup>3</sup> - €495,000
    - Year 2<sup>4</sup> - €495,000
    - Year 3<sup>5</sup> - €545,000
    - Year 4<sup>6</sup> - €545,000
    - Year 5<sup>7</sup> - €545,000
  - (ii) In addition to the fees set out herein, RTÉ shall pay the Company a fee of €120,000 (plus VAT) on the conclusion of the contract (31 August 2020) provided that this Agreement continues in force and the Services are provided to RTÉ hereunder and that this Agreement is not subject to any earlier termination or expiry by agreement between the parties or otherwise.
  - (iii) The fees are to be paid in instalments in equal calendar monthly instalments in arrears within thirty (30) days of receipt by RTÉ.

1.14 Schedule 1 to the Tubridy 2015 Agreement, entitled “Services” states:

“The Company shall procure that the Presenter shall provide the following Services:

**1. Radio Services:**

...

**2. TV Services:**

- 2.3 Present up to three (3) additional television programme ‘one-offs or specials’ per annum (or four (4) in years where there are 37 Late Late Shows in a season), such programmes to be discussed and agreed between the Director of TV Programmes or her nominee and the Presenter. ...
- 2.5 Subject to the availability of the Presenter and subject to the prior consultation and agreement with the Managing Director of TV, the option of a further series, or series’ of up to eight (8) programmes, with a duration of up to fifty two (52) minutes each, such series to be discussed and agreed between the Director of TV Programmes or her nominee and the Presenter. In considering whether the Presenter shall be available for additional TV Services requirements, the requirements of the Radio Services shall be taken into account.”

<sup>3</sup> Year 1 would represent 1 September 2015 to 31 August 2016.

<sup>4</sup> Year 2 would represent 1 September 2016 to 31 August 2017.

<sup>5</sup> Year 3 would represent 1 September 2017 to 31 August 2018.

<sup>6</sup> Year 4 would represent 1 September 2018 to 31 August 2019.

<sup>7</sup> Year 5 would represent 1 September 2019 to 31 August 2020.



**The Tubridy 2020 Agreement**

1.15 I refer to the Tubridy 2020 Agreement dated 24 July 2020.

(a) The Tubridy 2020 Agreement defines the:

- (i) “Commencement Date” as 1 April 2020; and
- (ii) “Contract Term” as five (5) years from the Commencement Date.

(b) Under Fees it states:

- (i) Subject to various matters (as outlined in the Tubridy 2020 Agreement), RTÉ agrees to pay to Tuttle Productions Limited **€440,000** gross per Contract Year without any deduction (save withholding tax) plus VAT.

1.16 Following my review of the Tubridy 2020 Agreement, I observe that unlike the Tubridy 2015 Agreement, there was no wording providing for a payment by RTÉ of a fee on the conclusion of the contract; and there was no equivalent of paragraphs 2.3 or 2.5 of Schedule 1 of the Tubridy 2015 Agreement included in the Tubridy 2020 Agreement.

**REVIEW OF AMOUNTS INVOICED BY TUTTLE**

1.17 I have been provided with an extract from RTÉ’s PeopleSoft system<sup>8</sup> which shows the invoices received from Tuttle, and processed by RTÉ. Through the review work that I have undertaken, I am satisfied that the total amount (excluding VAT) on foot of these Tuttle invoices that was recognised in the books and records of RTÉ is:

2017 - **€511,666.64**

2018 - **€544,999.92**

2019 - **€544,992.92**

1.18 Mr. Kelly and Mr. Tubridy have confirmed to me that they are in agreement with the figures above, as representing all of the invoices issued by Tuttle to RTÉ relating to the year ending 31 December 2017 to 31 December 2019.

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8 PeopleSoft records the electronic HR data of current and retired RTÉ employees, including personal, employment and salary data. It facilitates employees’ access to the self-service function for recording annual leave and other administrative matters and it provides the workflow to create and approve fee payment request for (a) non-employees providing “people services” under a contract for service (presenters, programme contributors, musicians, etc.) and (b) employees who work irregular hours or very short-term contracts.



## 2. Methodology and process

### BACKGROUND

- 2.1 In Section 1, I noted that the Terms of Reference stated that this Report shall include, amongst other things, the methodology adopted and relevant evidence gathered by me. In this Section I summarise the methodology and process that I have adopted.

### METHODOLOGY AND PROCESS

#### Searches of RTÉ's IT system

- 2.2 Searches of RTÉ's email system were undertaken by the IT Department in RTÉ at my behest adopting key word search terms, and/or parameters, that I devised.
- 2.3 Several thousand emails and documents (such as Microsoft spreadsheets, word files, and pdf files) were provided to me by the RTÉ IT Department on foot of the application of those search terms. Against those above-mentioned emails and documents, I applied further specific search terms.
- 2.4 Following application of those specific search terms I personally reviewed a significant volume of emails and attachments, with the email communications between (including vice-versa):
- (a) RTÉ and Mr. Kelly / NK Management;
  - (b) RTÉ personnel; and
  - (c) RTÉ and external accounting firms / auditors.
- 2.5 In addition, I have reviewed documents obtained from the RTÉ server / network, following the application of targeted search terms. I have personally reviewed in excess of 1,000 emails and electronic documents.

#### Individuals met

- 2.6 I have held meetings with the individuals set out below. In addition, where required, individuals below also provided me with supplemental information.
- (a) Mr. Richard Collins, current CFO of RTÉ;
  - (b) Ms. Breda O'Keeffe, former CFO of RTÉ;
  - (c) Person 1;
  - (d) Person 2;

- (e) Mr. Noel Kelly;
  - (f) Mr. Ryan Tubridy;
  - (g) Mr. Joe O'Malley, Solicitor, of Hayes Solicitors (Mr. O'Malley is legal advisor to Mr. Tubridy and NK Management); and
  - (h) Person 3.
- 2.7 I decided to meet Mr. Kelly, Mr. Tubridy and Mr. O'Malley in the same meeting. I am advised that Mr. O'Malley attended one meeting (in October 2019) with RTÉ as legal advisor to Mr. Tubridy and NK Management. He was copied on a number of emails in the relevant period to my review.
- 2.8 For individuals I met I provided documents and questions in advance of these meetings. I also arranged that meetings were transcribed by a third party stenographer and that the draft transcript from the third party stenographer was shared with the individual and agreed. Finally, I shared with these individuals interviewed, either draft extracts or draft(s) of my Report prior to issuance of this Report.

#### **Individual interacted through correspondence**

- 2.9 I have corresponded with Person 4, who has provided written responses, at my request, to questions asked. I shared with Person 4 relevant extracts from my draft Report.

#### **RTÉ**

- 2.10 I have made enquiries of the Audit Risk Committee and the RTÉ Board.
- 2.11 I have liaised with the IT Department within RTÉ for searches to be performed across the network.

#### **Other entities**

- 2.12 I have reviewed e-mail communications between RTÉ and its external auditors (past (KPMG) and current (Deloitte)) together with documents and analysis exchanged between RTÉ and its external auditors. I had no questions with KPMG. I have interacted with the current external auditor, Deloitte, who have provided me with assistance on foot of requests that I made.
- 2.13 I shared relevant extracts of my draft Report with KPMG, Deloitte and Renault Ireland.

#### **Individuals not yet met**

- 2.14 I have requested to meet Ms. Forbes and Mr. Jennings.
- 2.15 I am advised that Ms. Forbes is unable to participate in the review for medical reasons. My draft Report was sent to Ms. Forbes' solicitor to give Ms. Forbes an opportunity to comment if that was possible. Ms. Forbes was unable to review and comment on or instruct her solicitor to respond to my draft Report for medical reasons. Ms. Forbes has therefore not had the opportunity to take part

in the process or comment on any matter in this report. Through her solicitor, Ms. Forbes reserves the right to comment further on all matters when she is medically fit to do so.

- 2.16 Mr. Jennings was unable to participate in the review. He has therefore not had the opportunity to take part in the process or comment on any matter in this report. Mr. Jennings should be afforded the right to comment further when he is able to do so.

### **Review of supplier list, Barter Agencies etc.**

- 2.17 In the context of paragraph 1.1 of the Terms of Reference (see **Section 1**) I have tested the completeness of remuneration figures provided to me. For example, I have reviewed the Supplier List contained in General Ledger (Agresso), as well as Statements issued by three Barter Agencies (i.e. Active, Miroma and Astus). For this testing, I also performed searches using a variety of search terms including those pertaining to Mr. Tubridy, Tuttle, Noel Kelly and related entities, and known bank account number(s).

### **Co-operation**

- 2.18 I have received full co-operation from all individuals met, the individual with whom I interacted through correspondence, the Audit and Risk Committee, the RTÉ Board, and other personnel in RTÉ (including the IT Department), KPMG and Deloitte. Renault Ireland has confirmed to me that it “does not comment on its commercial arrangements”.

### **LIMITATIONS**

- 2.19 In the circumstances it is understandable that Ms. Forbes and Mr. Jennings have been unable to meet or engage with me. Unfortunately, this may be a limitation on my review. If, for any reason, those who were unavailable during the preparation of this report, are in a position to clarify or add anything, Grant Thornton is happy to meet with those individuals and provide a supplemental report should that be necessary.
- 2.20 In some instances due to the elapse of time, some individuals I met do not appear to have full recall in response to questions that I have asked. This is a limitation on my review.
- 2.21 As explained above I made requests of the RTÉ IT Department. I have relied upon the RTÉ IT Department to extract the specific data that I requested. I have confined my searches to the RTÉ network, which I believe is appropriate and proportionate.

### **RIGHT TO AMEND MY REPORT**

- 2.22 I reserve the right to amend my report should additional information or documentation be provided to me, or should any of the circumstances described as limitations change.

### **ANONYMISATION AND OTHER MATTERS**

- 2.23 As at the time of issuing this Report, there has been a significant amount of information and documentation disclosed in Committees of the Oireachtas. The approach that I have taken to anonymisation is that if an individual gave evidence in that Committee process I have not anonymised their name in this Report. All other individuals are anonymised. This approach was set out in my draft Report provided to individuals.

- 2.24 With the exception of documents that are already in the public domain, any references in documentation to Mr. Jennings or Ms. Forbes have been redacted.
- 2.25 In addition, it has come to my attention that within RTÉ and NK Management certain individuals who were copied on email communications held/hold administrative roles. In these circumstances it is not appropriate for this Report to identify those individuals.

## CONTEXT, TIMING, ROLES AND RESPONSIBILITIES

- 2.26 In the course of my meetings, and subsequent engagement, with individuals, comments have been provided to me about context, timing, roles and responsibilities. As a matter of process, and bearing in mind natural justice, it is clearly evident to me that these comments are important to the individuals who provided them. I set out what I believe to be key comments provided to me. In this Section I do not express any view as to whether I accept any or all of these comments. I acknowledge that these are not all of the comments provided to me and I have used best efforts to compile the following. Separately, and in addition I quote from these individuals elsewhere in my Report.

### Mr. Collins

- For much of the relevant period in early 2020, I was new to RTÉ, having only been appointed to the role of Chief Financial Officer in mid-January 2020. For the first 2 and a half months of my tenure, the former Chief Financial Officer, Breda O'Keeffe, remained in the organisation and on the payroll until the 1<sup>st</sup> April 2020. Ms O'Keeffe had been involved in the negotiations and discussions relating to the Tubridy 2020 Agreement since their inception in October 2019, given the emergence of the Covid crisis, I was instructed by the Director General to focus on and prioritise the preparation and implementation of a survival plan for RTÉ. I was not involved in the negotiations relating to the Tubridy 2020 Agreement and had no dealings in this regard with NK Management. My role was not to re-open or re-audit the [earlier] proposed accounting treatment. It was not communicated to me that the intent had changed and whether this in anyway invalidated the proposed accounting treatment.
- RTÉ was in crisis just after I joined. Covid had hit and the licence fee income just collapsed completely and a load of sponsors cancelled advertising ... The Director General said to me that my number one priority was developing a Covid survival plan with the executive, with the banks, with the government. I was talking to the banks every day ... It all sounds very straight forward now, when you are in the thick of it, what it involved, there was a huge amount involved in it and I was pushing the Executive on every contract we negotiated on, like the sports contracts and that.

### Ms. O'Keeffe<sup>9</sup>

- I was not responsible for or involved in the reporting for Mr. Tubridy's earnings for 2017 to 2022. RTE reported earnings for Mr. Tubridy for the period 2017 to 2019 inclusive in January 2021. When I left RTE no agreement had been reached with Mr. Tubridy on his 2015 - 2020 contract termination or the terms of his new contract for the period 2020 – 2025.
- I stepped back as CFO in late February 2020 and left RTE in late March 2020. Mr. Collins was intimately involved in all aspects of the CFO role from February 2020.
- Most importantly significant changes were made post my leaving RTE in the negotiation of the €120,000 exit fee waiver that had not been agreed by the time I left RTE. The reporting of Mr. Tubridy's earnings in January 2021 was the responsibility of the CFO who replaced me and who, by January 2021, had been in that position for a year, and Deloitte, the RTE auditors.
- Despite the rejection by NK Management of the initial draft of the Side Letter relating to undelivered services, which was fundamental to the approval by Deloitte in February 2020 of the negotiation position adopted by RTE at that time, it is clear the CFO (Mr. Collins) and Deloitte, incorrectly in my view, agreed during their 6 April 2020 meeting to rely

<sup>9</sup> Ms. O'Keeffe was not employed by RTÉ after March 2020, and in my opinion any views expressed in relation to responsibilities of individuals after that March 2020 would appear not to be based on observations and/or contemporaneous knowledge of events within RTÉ.

on the revised Side Letter to make the earnings adjustments in 2017, 2018 and 2019. Thereafter, the responsibility for the single adjustment required in the 2020 earnings of €120,000 was with CFO (Mr. Collins).

- The agreed process as detailed in the memorandum to KPMG dated 22 May 2015 called "Documentation of Process to Compile Annual Top Talent Disclosure". This was a well-established process followed every year to the 2016 earnings release and was being followed up to the time I left RTE in March 2020. The process involved (a) the People Payments Manager preparing the schedule of earnings (which would then have included the agreed adjustments); and (b) this schedule of earnings would then be reviewed and approved by the Group Financial Controller and the CFO.
- The claim to the under delivered services formed part of the negotiation process. As it transpired a reduction in Mr. Tubridy's contracted earnings to the value equal to the exit fee was secured as a direct saving to RTE which I suggest justifies its inclusion in the negotiations. Had this point not been asserted by RTE the saving would never have been secured. It is therefore entirely reasonable to conclude that there was a legitimate expectation that a refund was due or could be negotiated with NK Management. There was a reasonable and legitimate expectation that a refund could be achieved given the belief by all parties involved in the negotiation (Finance, Legal, Content and the DG) that 5 not all of the Additional Services had been delivered. This assertion by RTE was constant throughout the process and openly communicated both internally and to NK Management. The value of this under-delivered service was subsequently valued and calculated at a value of €116,000. Therefore, it can be concluded that there was a legitimate expectation that a refund was due and had a reasonable basis for inclusion.

#### Person 2

- I was specifically excluded from the On Air Talent Review Group (On Air Group). It was proposed in 2019 by Ms. O'Keeffe that the person responsible for preparing the schedules and projections should sit on the On Air Talent Review Group and this was refused by a member of the Executive. If this role was allowed to sit on this group the information would be first hand.
- RTE published Top Talent Earnings 2017 to 2019 on the 20<sup>th</sup> January 2021. I did not see, review or even know that these were being published. The last time that I had seen these documents was August 2020.
- When 2020 Top Talent Schedules were being published I am not aware of what process was adhered to but based on the process that I am aware of the adjustments should have been flagged again at this point. I must state that I was not involved in the Release of these schedules in any way, part of any negotiations or any correspondence.
- I was not a part of the negotiation team. The majority of the Finance Team were not aware of any of these negotiations, schedules or processes.

#### Mr. Tubridy / NK Management

- RTE's updated (June 2023) 'Actual Earnings' for Mr. Tubridy for 2020 and 2021 do not reflect what Mr. Tubridy was actually paid by RTE in 2020 and 2021 – these are RTE's accounting treatments. Mr. Tubridy's actual earnings from RTE are reflected in the PeopleSoft extracts, which tally with the 'originally published earnings'.
- There is no basis for any suggestion of wrongdoing on the part of Mr. Tubridy or his agent in relation to RTE's under declaration of earnings for Mr. Tubridy for the period 2020-2022 as neither Mr. Tubridy nor NK Management could possibly have been aware of the alleged under declaration of his earnings for 2020 – 2022.

#### MY ASSISTANTS

- 2.27 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.
- 2.28 From time to time I have been assisted by colleagues in the Forensic & Investigation Services unit as well as colleagues in other units in Grant Thornton being Audit and Tax.



### 3. Negotiations leading to signing of the Tubridy 2020 Agreement

#### BACKGROUND

- 3.1 In order for me to address paragraph 1.2 of the Terms of Reference, I have established that it is necessary to consider the negotiations which led to the signing of the Tubridy 2020 Agreement.
- 3.2 As stated above, I have reviewed a significant volume of emails and documents. Some of these relate to the negotiation of the Tubridy 2020 Agreement. As an example, during the negotiations of the Tubridy 2020 Agreement there was mention of the €120,000 exit fee (under the Tubridy 2015 Agreement) being set off against the additional contracted services set out in the Schedule but not sought by RTÉ or provided by the Presenter during the Contract Term.
- 3.3 So that I can consider and assess the adjustments made by RTÉ in June 2023 in respect of 2017, 2018 and 2019, I need to review in detail, amongst other things, terms such as “set off”, the “additional contracted services set out in the Schedule ...” used throughout the negotiation process.
- 3.4 In performing my review of emails and documents in relation to the negotiation of Mr. Tubridy’s 2020 Agreement I confirm that Mr. Tubridy was not identified in any of the email I reviewed, nor was he identified as an attendee at any of the meetings between RTÉ and NK Management.
- 3.5 For ease of the reader, under the following headings I set out key aspects as I consider they relate to the €120,000 outlined in the Terms of Reference:
- (a) Period up to the December 2019 outline offer and workings.
  - (b) The month of January 2020.
  - (c) The month of February 2020 and liaison with Deloitte.
  - (d) The negotiation – the back and forth.
  - (e) The set-off Agreement / Side Letter.
  - (f) Invoicing and end of year reconciliation.

#### PERIOD UP TO THE DECEMBER 2019 OUTLINE OFFER AND WORKINGS

- 3.6 Documents that I have reviewed identify that at the time of the negotiations with Mr. Tubridy’s representatives, RTÉ were under significant pressure to cut costs in the organisation. In addition, from my own research I note:

- In a Briefing Note, dated 17 January 2022, by RTÉ for the Public Accounts Committee<sup>10</sup> (reference R1013 PAC33), RTÉ set out its financial sustainability and capacity to perform as the national public service broadcaster and financial challenges faced by the organisation. The following is an extract from the above Briefing Note:

"2020 has been another financially challenging year for the organisation. Although RTÉ returned a surplus for the year, revenue fell significantly short of expectations ... RTÉ remained resolute in its drive to remove €60m from our operating cost-base by 2023 ...".

- As stated in RTÉ's 2021 financial review<sup>11</sup> "Operating costs, including the costs of special events, of €331.3 million were €23.6 million higher than 2020 levels as production increased following the significant curtailment in activity in 2020 and the additional costs of covering Euro 2020, Olympics and World Cup qualifiers."

3.7 As stated above, in order for me to address paragraph 1.2 of the Terms of Reference, I have established that it is necessary to consider the negotiations which led to the signing of the Tubridy 2020 Agreement.

3.8 There is an additional factor, which is in my opinion, relevant to putting the negotiations into context. That additional factor is that prior to any negotiated reduction in Mr. Tubridy's earnings (e.g. the waiver of the exit fee), it would have been expected by RTÉ that earnings for Mr. Tubridy for 2020 would have exceeded €600,000. I note:

- (a) There was a fee of €120,000 due to Mr. Tubridy at the end of the duration of the Tubridy 2015 Agreement (see Section 1).
- (b) In the ordinary course and prior to any negotiated reduction, it appears that RTÉ would have recognised that amount in 2020, and thus included that €120,000 in the published earnings of Mr. Tubridy in 2020. In that regard I refer to:
  - (i) a note prepared by Person 1 dated 27 May 2015 and sent to the External auditor, sets out the practice for the treatment of exit fees payable to top talent in 2012 and 2013. This note noted that "it is considered an exit payment due on expiry of the contract and is therefore treated as an expense/earnings in the year."
  - (ii) a spreadsheet with projections for earnings for Top Talent, shows:

	Fee €	Earnings €
2018	545,000	545,000
2019	545,000	545,000
2020	610,000	646,000

*The €610,000 comprises €120,000 plus €490,000 (I assume that, at the time, the amount of €490,000 was the expected fee for 2020).*

*The €646,000 comprises €120,000 plus  $(€545,000 / 12 * 8) + (€490,000 / 12 * 4)$ .*

<sup>10</sup> [https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/committee\\_of\\_public\\_accounts/submissions/2022/2022-01-18\\_briefing-document-dec-forbes-director-general-rte-r1013-pac33\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/committee_of_public_accounts/submissions/2022/2022-01-18_briefing-document-dec-forbes-director-general-rte-r1013-pac33_en.pdf)

<sup>11</sup> <https://www.rte.ie/annual-report-2021/business-review/financial-review.html>



3.9 Discussions between RTÉ and Mr. Kelly appear to have commenced in or around October 2019. There was a meeting on **24 October 2019** between Mr. O'Malley, Mr. Kelly, NK Management, Ms. O'Keeffe, [REDACTED] and Person 3. I asked RTÉ and NK Management about this meeting (see paragraphs 3.10 to 3.13 below).

3.10 I asked Person 3 what their recollection was of this meeting. They noted the following:

MR. JACOBS: ... I suppose a couple of things ... Number one is an exit fee, and number two is undelivered services.

...

PERSON 3: Yeah, so again coming back to my understanding of that meeting, there was, as you say there were two things. So the exit fee was a fee of €120,000 that was payable on the completion of his contract; so when the five years were up, that was going to be paid. It wasn't related to anything, it was just an exit fee. Separate to that, within Ryan's contract, year-on-year for each year of the five years RTÉ had paid for additional -- or had negotiated for additional TV services. For various reasons they weren't called upon budgets may not have been there or proposals might have come in that he was deemed to be suitable for. So, you might say that he underdelivered, and on the basis of that, when we went into those negotiations we said, look, we are not in a position to pay you the exit fee because we don't have the money and we are going to publish earnings and we don't want to put in those earnings that you have earned a huge amount of money when we're trying to reduce what's paid to everybody else. And secondly, the reason why we believe we can talk to you about this is because you know that you were contracted to provide certain services for us; we didn't call upon you to provide those services. So, it was a negotiation essentially asking him not to look for the exit fee because, as we felt, he had underdelivered. ... the contract is framed in a way that you are to do these services for the year, but if we don't call upon you to do them, that's our loss, not -- it's not that he can't invoice for them. That we agree what we're going to use him for. If for whatever reason we don't use him for that, unless there is a negotiation, he is not -- he is entitled to be paid for it.

MR. JACOBS: Yes. I think you used the phrase "use it or lose it"?

PERSON 3: "Use or lose", yeah, that would be my understanding. So you use it or you lose it.

MR. JACOBS: And then Tubridy -- Sorry, RTÉ was not entitled to a refund on that basis.

PERSON 3: Well no. I mean a contract is a contract so you have got to do X, Y and Z and we're going to call on you to do X, Y and Z. However, if we don't call on you to do that and you are available to do it, you are entitled to invoice. Now, if we had called upon him to do a series and he says oh, that doesn't really suit what I like to do, that's a different negotiation. But essentially he was not called upon to provide those additional TV services. So, my understanding of this meeting was that we hadn't called upon him to do that and it was a negotiation to say look, we didn't call upon you, and on the basis of that we're asking you not to invoice for the exit fee. So it's a gesture of goodwill.

MR. JACOBS: Was anything mentioned about, I suppose, those undelivered services having a value?

PERSON 3: Yes. So because the exit fee was €120,000, that was the fee that was being negotiated.

3.11 Person 3 stated that it was suggested that RTÉ would write-off a portion of the 2017 fees. I asked if they recalled who made that suggestion. They stated that anything to do with finance would have come from Finance.

- 3.12 On 25 October 2019 Mr. Kelly sent an email to [REDACTED], Ms. O’Keeffe, Person 3, copied to Mr. O’Malley and NK Management, stating:

“... for the elimination of any doubt Ryan is not prepared to contemplate any reduction in relation to agreed payments sums that arise during the extant contract. We can have further discussions around the level of payments that are denoted as service payments for 2017 and beyond ...In relation to the new contract – can you please send through your offer in light of our discussions? ...”.

- 3.13 I have been informed by NK Management that:

- (a) Our email to RTÉ on 25 October 2019 at 16:10 was sent following a meeting with RTÉ representatives on the **previous day**. RTÉ confirmed its position that it wished to reduce the contract fees before the expiration of the 2015 to a sum of €420,000 – being a reduction of €125,000 per contract year and to bring about this change as soon as possible.
- (b) It was further confirmed by RTÉ that they did not intend making payment of the exit fee provided for in the 2015 contract in the amount of €120,000. RTÉ also indicated to us at this meeting that it was constrained in moving from this position.
- (c) For these reasons, we maintained that all payments under the 2015 contract were required to be paid in full and we would not tolerate any reduction in relation to such payments during the operation of the 2015 contract.
- (d) In relation to the exit fee of €120,000 we indicated that we were prepared to discuss having this apportioned over the contract term. However, in the event this fee was waived or not claimed by Mr. Tubridy. Ultimately, Mr. Tubridy agreed to a significant reduction in the contract fee and to allow that to operate before the expiry of the 2015 contract.

- 3.14 On 20 November 2019 Person 3 sent an email to Mr. Kelly and NK Management, copied<sup>12</sup> to Ms. O’Keeffe and [REDACTED], stating:

“I understand that you met with [REDACTED] since our meeting on the 24th October last and that Ryan will also have been contacted in writing by [REDACTED] seeking a 15% reduction on current contracted fees. You are no doubt aware of the scale of the challenges facing RTÉ ... reduce our costs. It was against this backdrop that a combined offer of €420,000 for Radio and TV services was made. As Breda explained at our meeting, this figure represents a 15% cut on Ryan’s published fees for 2016 (€495,000). When we met you were understandably disappointed ... but the media landscape has changed significantly even since we last negotiated ...”.

- 3.15 From a RTÉ spreadsheet with a file name: “Top Talent Strategy & Projections 2018 to 2021 Oct 19.xlsx” which was a spreadsheet used by RTÉ as part of its preparation for negotiations with Mr. Tubridy. See Figure 3.1 below. From this spreadsheet I note:

- (a) the average over the last 5 years excluding the €120,000 exit fee was €525,000 ((€495,000 + €495,000 + €545,000 plus €545,000 plus €545,000) divided by 5));

<sup>12</sup> I note that in this email and others, there may be additional persons, who hold administration roles within organisations. In these instances I have not included their names in my list of recipients.

- (b) whilst RTÉ used an average over the last 5 years, had it used the last year's fee of €545,000 (excluding the exit fee), mathematically the percentage saving would have been higher;
- (c) the first round of negotiations RTÉ would offer €400,000 (which was seen as a 24% cut from the €525,000);
- (d) the spreadsheet has the word "Target Fee" of €435,000. At €435,000 the spreadsheet showed a 17% saving  $((€525,000 - €435,000) / €525,000)$ . I have identified another spreadsheet which had a "Target Fee" of €420,000 but that spreadsheet appears to have been created in February 2020; and
- (e) in Panel B, entitled "adjustment needed in 2017, 2018, 2019 Fees":
  - the figures of €20,000, €50,000 and €50,000 are entered into the spreadsheet (i.e. they are not derived by the application of a referenced formula);
  - no further description is provided as how these amounts are calculated; and
  - that the exit fee, of €120,000 would be used to "cover the retrospective adjustment on fees".

Figure 3.1 – Extract from RTE spreadsheet

Ryan Tubridy					
Current Contract					
- Duration	5 Years, 1/9/2015 to 31/8/2020	Hours	CPH £	Fee £	
- Radio	5 shows per week x max 2 hours x minimum 42 weeks	420	643	270,000	
- TV	LLS : 38 episodes x 2 hours Specials / On Offs x 3 programme (duration not specified) say 2hrs Series / 8 Programmes of 1 hour each	76 6 8 90	3,056	275,000 <b>545,000</b>	
Fee Split is as designated by RTE and is not specified in the contract					
Year 1 2015/2016: €495k					
Year 2 2016/2017: €495k					
Year 3 2017/2018: €545k					
Year 4 2018/2019: €545k					
Year 5 2019/2020: €545k					
Average Rate over contract					
525,000 x 5 years					
2,625,000					
120,000					
Value of Current Contract					
2,745,000					
"Published Reduction" we are trying to achieve?					
Latest Published Earnings 2016 of €495,000. We know 2017, 2018, 2019 are higher					
Then Fee needs to be ....					
12% 9.0% 19% 0% 7%					
Proposed Contract					
- Duration	5 Years, 1/1/2020 to 31/12/2024 (start 8 months early)	Hours	CPH £	Fee £	% CUT v €525k
- Radio	5 shows per week x max 2 hours x minimum 42 weeks	420	512	215,000	
- TV	LLS : 38 episodes x 2 hours	76			
		76	2,895	220,000	
		-16%		435,000	-17%
				200,000	-24%
Fee Split is as designated by RTE and is not specified in the contract					
Not yet published					
2017 2018 2019 Total					
Earnings (on current basis)					
511,667 545,000 545,000					
Reduction in fees					
(20,000) (50,000) (50,000) (120,000)					
Revised Earnings					
491,667 495,000 495,000					
Exit fee of €120,000 use to cover the retrospective adjustment on fees					

### RTÉ outline offer

3.16 On 19 December 2019, Ms. O’Keeffe sent to Mr. Kelly an email, copying Person 3, with an outline offer. Ms. O’Keeffe has informed me that she wrote the outline offer on behalf of the RTÉ negotiation team, and that the purpose of the document was to achieve real cost savings to RTÉ. Attached to this 19 December 2019 email was a spreadsheet which I display at **Figure 3.2A** below, and this shows that the outline offer was based on:

- (a) a 15% cut to fees;
- (b) write off portion of 2017, 2018 and 2019 fees; and
- (c) a new contract to apply from 1 January 2020 or soonest.

3.17 From my review of the IT systems, I have identified the spreadsheet at Figure 3.2A had a file name “**RT Dec 2019 offer.xlsx**”. From searches on the RTÉ IT network, I have identified that a spreadsheet with the same file name (i.e. “**RT Dec 2019 offer.xlsx**”) (displayed at **Figure 3.2B**) was sent by email internally within RTÉ on 18 December 2019 i.e. the day before the outline offer was sent to Mr. Kelly.

3.18 I have found from my electronic review that a spreadsheet table sent by RTÉ to Mr. Kelly on 19 December 2019 (i.e. Figure 3.2A) had also been sent internally within RTÉ on the previous day (i.e. Figure 3.2B). I note that there is no mathematical differences in the computations presented in either tables, but there are two differences that I have identified comparing Figure 3.2A (sent by RTÉ to Mr. Kelly) and Figure 3.2B (sent internally within RTÉ) are:

#### First difference ☐

- (a) sent to Mr. Kelly (Figure 3.2A): uses the phrase “**Target annual fee level Less 15% Cut**” €467,000; and
- (b) sent internally within RTÉ (Figure 3.2B): uses the phrase “**Fee level**” €467,000.

#### Second difference ☐

- (a) sent to Mr. Kelly (Figure 3.2A): uses the phrase “**Cross Platform loyalty fee**” €120,000; and
- (b) sent internally within RTÉ (Figure 3.2B): uses the phrase “**Exit fee foregone**” €120,000;

**Figure 3.2A – Attachment in email from Ms. O’Keeffe sent to Mr. Kelly**  
on 19 December 2019  
(File name: RT Dec 2019 offer.xlsx)

STRICTLY PRIVATE AND CONFIDENTIAL	
<b>Proposed Offer Based on :</b> <ul style="list-style-type: none"> <li>- 15 % cut to fees</li> <li>- Write off portion of 2017, 2018 and 2019 fees</li> <li>- New contract to apply from 1/1/2020 or soonest</li> </ul>	
<b>1 Current Contract</b>	€'000
Year 1 2015/2016	495
Year 2 2016/2017	495
Year 3 2017/2018	545
Year 4 2018/2019	545
Year 5 2019/2020	545
Exit Fee of	120
Total Fees over the 5 year contract	2,745
Average fee (incl exit per annum)	549
Target fee level Less 15% Cut	467
<b>2 Exit fee offset</b>	
By agreement, the exit fee of €120k to be written off on the basis that the additional services contracted for in 2017, 2018 and 2019 were not required and were not delivered.	
	€'000
Value for services not required/delivered in 2017	20
Value for services not required / delivered in 2018	50
Value for services not required / delivered in 2019	50
	120
<b>3 Proposed value of new Contract</b>	
Target annual fee level Less 15% Cut	467
Fee for 5 years	2,333
Cross Platform loyalty fee	120
Total Value required over 5 years	2,453
Per annum Earnings	495
<b>4 Proposed Offer</b>	
RTE Fee per annum	420
Commercial sponsorship with 3rd party facilitated by RTE	75

**Figure 3.2B – Attachment in email Internal within RTE**  
sent on 18 December 2019  
(File name: RT Dec 2019 offer.xlsx)

<b>Desired outcomes for new contract</b>	
15 % cut of fees	
Write off portion of 2017, 2018 and 2019 fees	
New contract to apply from 1/1/2020 or soonest	
<b>1 Current Contract</b>	€'000
Year 1 2015/2016	495
Year 2 2016/2017	495
Year 3 2017/2018	545
Year 4 2018/2019	545
Year 5 2019/2020	545
Exit Fee of	120
Total Fees over the 5 year contract	2,745
Average fee (incl exit per annum)	549
Target fee level Less 15% Cut	467
<b>2 Exit fee offset</b>	
Exit fee of €120k to be written off on the basis that the additional services contracted for in 2017, 2018 and 2019 were not required and were not delivered.	
	€'000
Value for services not required/delivered in 2017	20
Value for services not required / delivered in 2018	50
Value for services not required / delivered in 2019	50
	120
<b>3 Proposed value of new Contract</b>	
Fee level	467
For 5 years	2,333
Exit fee foregone	120
Total Value required over 5 years	2,453
Per annum fee	495
<b>4 Proposed Offer</b>	
RTE Fee per annum	420
Commercial deal with 3rd party facilitated by RTE	75

3.19 Figure 3.2A and Figure 3.2B, albeit on different dates one day apart, are sourced from the same excel spreadsheet file i.e. with the same name i.e. “RT Dec 2019 offer.xlsx”.

3.20 Some key points that I have identified from **Figure 3.2A** (sent by RTE to Mr. Kelly), and **Figure 3.2B** (sent internally within RTE) are as follows:

- Both spreadsheets: target a 15% reduction (last 5 year average (including exit fee) of €549,000 to be reduced to €467,000).
- Both spreadsheets: Exit fee of €120,000 “to be written off on the basis that the additional services contracted for in 2017, 2018 and 2019 were not required and were not delivered”.



- (c) Figure 3.2A (sent to Mr. Kelly): onto the fees for 5 years of €2,333,000 (being 5 x €467,000) a “**Cross Platform loyalty fee**” of €120,000 is added. From my examination of the electronic spreadsheet, the formula in the spreadsheet for the Cross Platform loyalty fee of €120,000 references / is drawn from the cell showing €120,000 in Panel 2 (being the total of the €20,000, €50,000 and €50,000). (I inserted the purple arrows onto Figures 3.2A and 3.2B to show this formulae in the respective cells).
- (d) Figure 3.2B (internal): onto the fees for 5 years of €2,333,000 (being 5 x €467,000) an “**Exit fee foregone**” of €120,000 is added. I note that, consistent with Figure 3.2A, the formulae for the Exit fee foregone of €120,000 is also referenced /is drawn from the cell showing €120,000 from Panel 2 above.
- (e) Both spreadsheets: proposed offer is identified “RTÉ Fee per annum” of €420,000 and “Commercial deal with 3<sup>rd</sup> party facilitated by RTÉ” of €75,000 (i.e. a total of €495,000).
- (f) Both spreadsheets: from a mathematical perspective, the per annum earnings / fee of €495,000 includes €20,400 per annum relates to the “exit fee of” €120,000 less 15% and translated into an annual figure. ( $€120,000 \text{ less } 15\% = €102,000$ , divided by 5 = €20,400).
- (g) Figure 3.2B (internal): in addition to (f) the mathematical implication of adding €120,000 onto the total “for 5 years” of €2,333,000, and then dividing that total of €2,453,000 into an annual figure (i.e. €495,000) is that the €495,000 includes a second exit fee element.
- (h) Figure 3.2A (sent to Mr. Kelly): conversely to 3.20(g), the mathematical implication is that the annual figure of €495,000 includes an annual element for “Cross Platform loyalty fee”.
- 3.21 It has not been explained to me at meetings or in subsequent interactions, why on the one hand terminology “exit fee foregone” was used (on the spreadsheet circulated internally within RTÉ – Figure 3.2B) and on the other hand “Cross Platform loyalty fee”<sup>13</sup> was used (on the spreadsheet sent by RTÉ to Mr. Kelly – Figure 3.2A). The reason for the change in the description is not evident from the information currently available to me (being a combination of interactions with individuals and spreadsheet analysis).
- 3.22 I asked Ms. O’Keeffe about Figure 3.2B and she noted the following:
- MR. JACOBS: ... And this page here is really around what I think RTE is doing is getting its figures together to make a proposal to kick off what I believe was the negotiations. I believe, and I’ll ask you the question, I think this page was sent to Mr. Tubridy in December 2019
- MS. O’KEEFFE: I don’t recall. It may have been.
- MS. O’KEEFFE: It may have been. I recall we had a waiver. One of the objectives of the negotiations was that the exit fee which was in the contract would be waived.
- MS. O’KEEFFE: And the reason we wanted that is exit fees in all contracts were a difficulty.
- MS. O’KEEFFE: You know, they’re a lumpy payment. We didn’t want them in there. So we wanted to negotiate it out of the contract.

<sup>13</sup> I am advised that, the term “Cross Platform” is used in RTE generally to describe events that spanned over TV, radio and digital. No further explanation has been provided to me in relation to Figures 3.2A and 3.2B.



MS. O'KEEFFE: As it also represented a real saving.

MS. O'KEEFFE: I recall approaching the auditors, [redacted] in Deloitte, because it was a new transaction.

MS. O'KEEFFE: To say, "how do you treat this?" I don't recall when that happened, but I've said that we modelled options as to the treatment of the waiver.

3.23 I further note that Ms. O'Keeffe noted the following in relation to Figure 3.2B:

MR. JACOBS: ... So in relation to exit fee, what it says is and I'm quoting here, "exit fee of €120,000 to be written off on the basis that the additional services contracted for in 2017, 2018 and 2019 were not required and were not delivered." ..... You see it says additional services contracted for in 2017, 2018 and 2019 that were not required and were not delivered. What do you think was meant by that?

MS. O'KEEFFE: I have absolutely no recollection of additional services. Only when you sent your questions did it talk about the additional services and I have no recollection of what they were at that time. And that is, I'm absolutely clear on that. I know you're saying that's my, I don't remember what they were.

### THE MONTH OF JANUARY 2020

3.24 There was a meeting with RTÉ and the agent on 15 January 2020 where, I am informed by Person 3 that, the agent:

- (a) expressed confusion about the proposal to write off the exit fee over the years 2017, 2018 and 2019;
- (b) wanted the exit fee added to the new offer and requested a fee of €450,000 per annum; and
- (c) was told [by RTÉ] that this was too high and that the exit fee had already been factored into the revised offer of €495,000 (broken down as €420,000 from RTÉ and sponsorship of €75,000).

3.25 I am advised on behalf of Mr. Kelly and Mr. Tubridy that: (a) the confusion that they had expressed is because we could not understand why RTÉ were planning to write-off the fee which Ryan waived, against his 2017-2019 earnings, (b) it made no sense to us and we expressed that to RTÉ, and (c) there was no confusion, per se, we were actually very clear; we did not agree with what they were doing. I am advised on behalf of Mr. Kelly and Mr. Tubridy that it was NK Management's understanding from discussions on 15 January 2020 that RTÉ were prepared to offer a contract fee of €420,000 in addition to facilitating a separate Commercial Arrangement with the sponsor that could generate €75,000 per annum fees for Mr. Tubridy and at same, RTÉ were seeking a waiver on the exit fee.

3.26 On 16 January 2020, NK Management sent an email to [REDACTED] and Ms. O'Keeffe, which stated amongst other things: "... any PR set to be released by RTÉ needs to be discussed in advance of any publication, this includes both salaries and pay cuts."

3.27 On 29 January 2020, a draft side letter dealing with the write-off of the exit fee was circulated internally between the RTÉ Solicitors Office and RTÉ Finance.

- 3.28 On **29 January 2020** at 6:14pm Person 2 received an email from Ms. O’Keeffe which attached a draft side letter. In that email Ms. O’Keeffe requested that Person 2:

“... cast your eye over this please and see if you think we need any edits before I run by the auditors  
It’s not negotiated / agreed yet by in the mix”.

- 3.29 Figure 3.3 below is a copy of the draft Agreement / draft Side Letter, which provided that it is

“... hereby agreed that the fee of €120,000 due on the expiry date of 31 August 2020 will not be paid either pro rata or in full but will be set off against the additional contracted services set out in the Schedule but not sought by RTÉ or provided by the Presenter during the Contract Term.”

**Figure 3.3 – Draft Agreement / draft Side Letter**

<p style="text-align: center;">[RTÉ headed paper] <b>LETTER OF AGREEMENT</b></p> <ol style="list-style-type: none"> <li>1. We refer to the contract for services between the Tuttle Productions Limited and RTÉ dated 1 September 2015 to 31 August 2020 (the “Agreement”) in relation to the services provided by the Contractor to RTÉ.</li> <li>2. The parties hereby agree to the early termination of the Agreement on 28 February 2020.</li> <li>3. It is hereby agreed that the fee of €120,000 due on the expiry date of 31 August 2020 will not be paid either pro rata or in full but will be set off against the additional contracted services set out in the Schedule but not sought by RTÉ or provided by the Presenter during the Contract Term.</li> <li>4. The termination payment will be offset against the Contractor’s earnings on the following terms:  €20,000 for Year 3, €50,000 for Year 4 and; €50,000 for Year 5.</li> </ol> <p>_____</p> <p><b>RAIDÍÓ TEILIFÍS ÉIREANN</b> Date:</p> <p>Agreed and Accepted</p> <p>_____</p> <p>for and on behalf of <b>TUTTLE PRODUCTIONS LIMITED</b></p> <p>Date:</p>
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#### **THE MONTH OF FEBRUARY 2020 AND LIAISON WITH DELOITTE**

- 3.30 During January and February 2020 negotiations continued. On **12 February 2020**, Ms. O’Keeffe and Deloitte had a call and three emails were exchanged between RTÉ and Deloitte. Ms. O’Keeffe provided Deloitte with a copy of the draft Agreement / draft Side Letter. See paragraphs 4.19 to 4.23 in Section 4.

**THE NEGOTIATION – THE BACK AND FORTH**

- 3.31 There is an email chain which shows dialog between RTE and Mr. Tubridy's agent which commences on 19 February 2020. I have had access to the original email chain, and the underlying emails, from my review of emails extracted from the RTÉ IT network. I set out an extract in so far as elements relate to my Terms of Reference below.

*Light black italics* – Mr. Kelly (19 February 2020)

**Red** – RTÉ (provided by Ms. O'Keeffe on 20 February 2020)

**Blue** – Mr. Kelly (25 February 2020)

**Bold Black** – Mr. Kelly (28 February 2020)

**Figure 3.4 – Extracts of email trail between RTÉ and Mr. Kelly and others**

On 28 Feb 2020, at 14:44, Noel [REDACTED] wrote:

**Dear Dee,**

**It was great to see you this morning and I am delighted that we are now in a position to go to draft stage for the new contract.**

**Please see final contract details below and we will look forward to receiving the first draft from your office.**

**Please see final mark-ups in black below**

*We can agree to a fee of €435,000 per contract year for 38 Late Late Shows and 205 radio shows, with a sign off fee of €75,000 at the end of the 5 year contract in a side letter agreement. This represents a 41% reduction over the past five years. The inclusion of a sign off fee was not discussed at our meeting and should it have been, we would have relayed to you that as a policy we no longer pay exit fees as they are problematic for us. We explained our position yesterday on the €435,000 pa fee and also agreed to extend the start date to 1st April 2020 as a modest gesture in this regard. €435,000 has never been our agreement or understanding, you brought this up at the last meeting after we had previously discussed €450,000 which represents a €95,000 reduction per annum as well as the €120,000 sign off from Ryan's current contract is not being paid by RTÉ. This offers RTÉ a saving of €595,000 over the five years for the new proposed contract based on RTÉ's remuneration [sic] for services set out below for a fee of €450,000.*

**Remuneration for Ryan from RTE € 440,000 per contract year of the new 5 year contract for 38 Late Late Shows and 205 radio shows**

*As discussed the fee from the commercial agreement would be €75,000 per contract year to cover three Late Late Show host style appearances (one Dublin and two outside of Dublin) we would also need a side letter agreement from RTE to guarantee and underwrite this fee for the duration of this contract and beyond into the next contract. We made good progress on what the commercial agreement would be and we agree to one in Dublin and two outside Dublin which are RTÉ led LLS events and we can provide you with a side letter to underwrite this fee for the duration of the contract. This is fine and we will need full view of this contract before it is signed.*

**This is fine and we will need full view of this contract before it is signed and CMS Marketing and NK Management to be introduced to client.**

The exit fee of €120,000 due under the current contract will be written off and offset against 2017, 2018 and 2019 fees as outlined in the attached letter and in email of 13th February 2020. This is only agreed based on the fee level of €450,000 PA for services to RTÉ as outlined below as it is owed by RTE But not paid by RTE.

A letter of guarantee from the Director General will be provided that there will be no further cuts to the new contract. Agreed subject to any changes in legislation which may cap or curtail presenter fees which are outside our control. Of course this is outside of your control so there is no need to state that in the letter of guarantee.

**A letter of guarantee from the Director General**

Permission for Ryan to work outside would be reviewed on a case by case basis and final sign off with the Director General. Agreed We need a guarantee that this is reasonable and will only be in the case if it conflicts with sponsors of the Late Late Show and The Ryan Tubridy Radio Show.

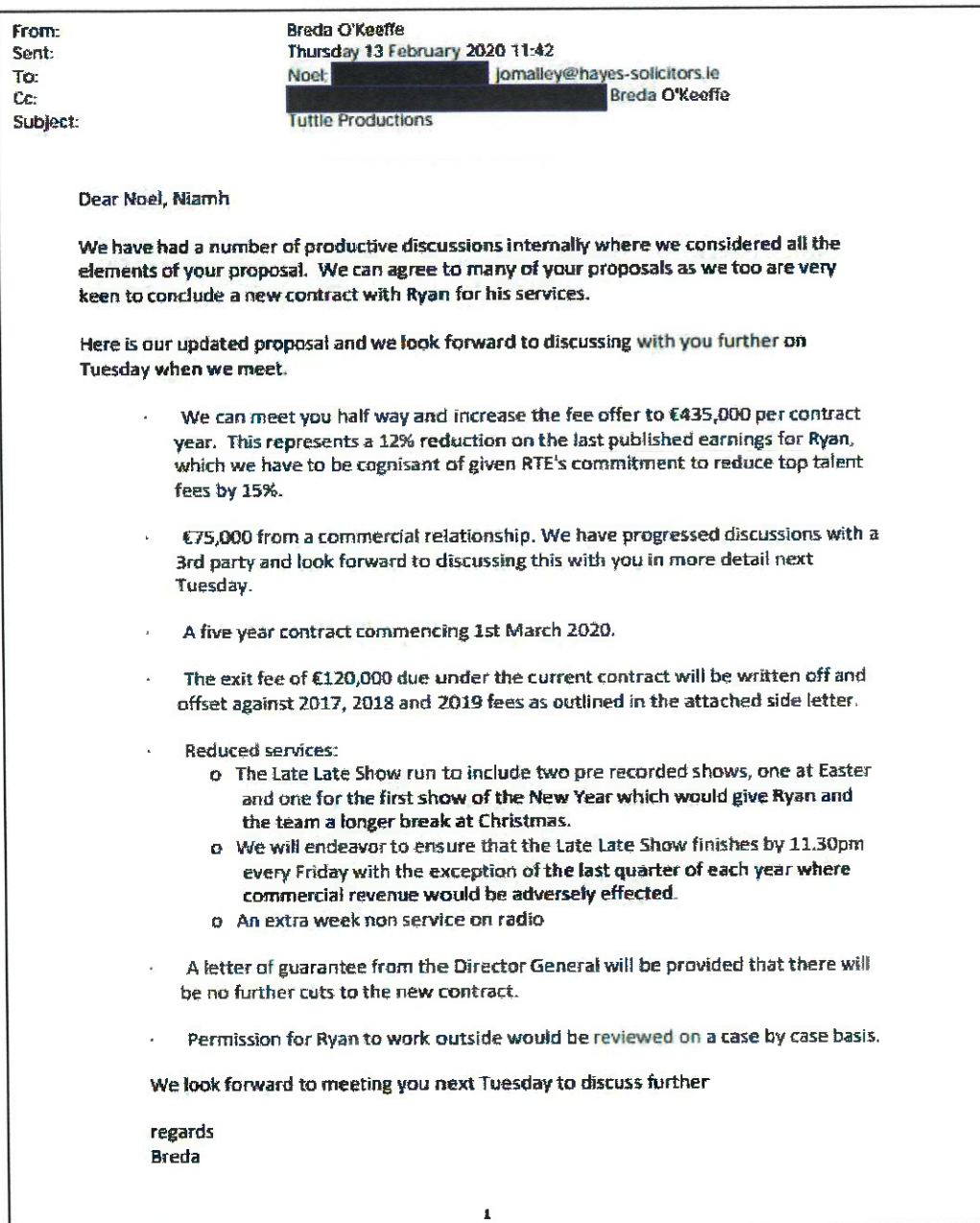
**Permission for Ryan to work outside would be reviewed on a case by case basis and final sign off with the Director General. Agreed We need a guarantee that this is reasonable and will only be in the case if it conflicts with sponsors of the Late Late Show and The Ryan Tubridy Radio Show.**

3.32 I have four preliminary comments:

- (a) In Section 4 I outline several email exchanges on 12 February 2020 between RTÉ and Deloitte, and I note that they occurred before any of the emails that I set out in the email trail at Figure 3.4 above.
- (b) Regarding the Mr. Kelly quantification of savings. The Kelly figure of €595,000 represents €545,000 less €450,000 = €95,000 for 5 years, plus €120,000. I observe that this calculation does not take into account the value of the commercial relationship of €75,000 per year ( $5 \times €75,000 = €375,000$ ). I am informed by Mr. Kelly and Mr. Tubridy that in relation to the first payment of €75,000 that it was made without any knowledge on the part of Mr. Kelly or Mr. Tubridy that RTÉ had provided Renault with a credit note, and in relation to the second and third payments these were made by Astus and not RTÉ.
- (c) Regarding exit fees, it is stated that as a policy RTÉ no longer pays exit fees.
- (d) On 20 February 2020, Ms. O’Keeffe noted in the email to Mr. Kelly in red text above, that she had also included the point on the exit fee (in red also) under the current contract which was included in Ms. O’Keeffe’s email of 13 February 2020 (see Figure 3.5 below).

- 3.33 On 13 February 2020, Ms. O’Keeffe an email to Mr. Kelly, Mr. O’Malley, copied to [REDACTED] and Person 3. This email attached the draft Agreement / draft Side Letter at Figure 3.3.

Figure 3.5 – Email from Ms. O’Keeffe to NK Management



- 3.34 Person(s) from RTÉ who may be in a position to comment on the above-mentioned 13 February 2020 email are not available at the moment for my review.
- 3.35 I note that the reference to the 12% is calculated by comparing €495,000 (the latest published earnings in 2016 (also see Figure 3.1)) against €435,000 (i.e. the 12% did not count the commercial sponsorship, nor the saving from waiver of the exit fee).



### THE SET-OFF AGREEMENT / SIDE LETTER

- 3.36 On 12 February 2020, Ms. O’Keeffe sent to Deloitte an “attached side letter for review” and also stated:
- “... Our intention is to reflect this side letter by reducing the presenters reported earnings for 2017, 2018 and 2019 accordingly by the amounts includes for each year. Can you please confirm that the attached side letter appropriate and underpins this proposed reporting treatment ...”.
- 3.37 The attached draft side letter is that document copied at Figure 3.3 above. This email was not sent to Mr. Kelly or Mr. Tubridy or any of their representatives.
- 3.38 As stated above (paragraph 3.33) on 13 February 2020 Ms. O’Keeffe sent an email to Mr. Kelly, amongst others, attaching the same draft Agreement / draft Side Letter copied at Figure 3.3 above.
- 3.39 On 10 March 2020 Person 3 sent an email to Mr. Kelly and NK Management (copied to Ms. O’Keeffe) and stated: “I attach for your attention the draft contract and the two side letters discussed and agreed in relation to this matter. The sponsorship agreement will be handled by our Commercial team and will agreed separately to these documents.” Person 3 attached three documents, one of which was the draft Agreement / draft Side Letter shown at Figure 3.3 above.
- 3.40 On 20 March 2020 NK Management emailed Person 3 and Mr. Kelly (copied to Ms. O’Keeffe) and included four attachments. Importantly one of those was Figure 3.6:
- See Figure 3.6 - in respect of the draft Agreement / draft Side Letter, changes were made by NK Management removing the wording regarding “set off” etc., and deleting paragraph 4 in its entirety. In my report I refer to this as the “**Marked up Version**”.
- This Marked up Version became the final signed version between the parties (see below).

Figure 3.6 - Draft Agreement / draft Side Letter with changes made by NK Management

<div><div><div>IRÉ headed paper]</div><div>LETTER OF AGREEMENT</div></div><div><div>1. We refer to the contract for services between the Tuttle Productions Limited and RTE dated 1 September 2015 to 31 August 2020 (the "Agreement") in relation to the services provided by the Contractor to RTE.</div><div>2. The parties hereby agree to the early termination of the Agreement on 28 February 2020.</div><div>3. In consideration of the parties entering into the Agreement and RTE providing related side letters, it is hereby agreed that all pre-existing agreements are terminated and neither party shall have any continuing obligations or entitlements thereunder, the fee of €120,000 due on the expiry date of 31 August 2020 will not be paid either pro-rata or in full but will be set off against the additional contracted services set out in the Schedule but not sought by RTE or provided by the Presenter during the Contract Term.</div><div>4. The termination payment will be offset against the Contractor's earnings on the following terms:<div><div>€20,000 for Year 3;</div><div>€30,000 for Year 4 and;</div><div>€50,000 for Year 5.</div></div></div></div></div>	<div><div>Joe O'Malley</div><div>Formatted: Normal, Justified, Indent: Left: 0 cm, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm, Tab stops: 0.63 cm, 1st tab + Not at 1.27 cm</div></div>
<div><div><div>RAIDÍÓ TEILIFÍS ÉIREANN</div><div>Date:</div><div>Agreed and Accepted</div></div><div><div>for and on behalf of TUTTLE PRODUCTIONS LIMITED</div><div>Date:</div></div></div>	



- 3.41 On **23 March 2020**, the Agent's email of 20 March 2020 was circulated by Person 3 to Ms. O'Keeffe, Mr. Collins, copying [REDACTED] with a request for instructions on a number of things, including the Agent's proposed amendments to the termination/exit letter (i.e. **Figure 3.6** above).
- 3.42 On **6 April 2020**, Mr. Collins emailed Person 3 to confirm that the attached side letter (i.e. the Marked up Version which excluded any reference to "set off") for the auditors was fine.
- 3.43 Person 3 has advised that on **1 May 2020** they had a call with NK Management in which the Agent insisted on the contracted fees being guaranteed throughout the negotiation process.
- 3.44 On **14 May 2020** Person 3 sent an email to Mr. Kelly and NK Management and attached the "... side letters as agreed ...".
- 3.45 The final signed Agreement / Side Letter, dated **24 July 2020**, is set out below (see Figures 3.7 and 3.8 below). No changes were made compared with the Marked up Version (see Figure 3.6).
- 3.46 Of the two signed versions I have obtained, Figure 3.8 has a handwritten amendment to the date of termination changing it from 28 February 2020 to 31 March 2020, and is also signed by Mr. Tubridy.

**Figure 3.7 - Signed Agreement / Side Letter**

**RTÉ Solicitors' Office**


**LETTER OF AGREEMENT**

1. We refer to the contract for services between the Tuttle Productions Limited and RTÉ dated 1 September 2015 to 31 August 2020 (the "Agreement") in relation to the services provided by the Contractor to RTÉ.

2. The parties hereby agree to the early termination of the Agreement on 28 February 2020.

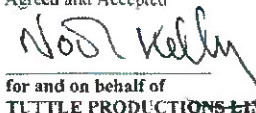
3. In consideration of the parties entering into the Agreement and RTÉ providing related side letters, it is hereby agreed that all pre-existing agreements are terminated and neither party shall have any continuing obligations or entitlements thereunder.

Agreed and Accepted

  
for and on behalf of  
**RAIDÍO TEILIFÍS ÉIREANN**

Date: 24<sup>th</sup> July 2020

Agreed and Accepted

  
for and on behalf of  
**TUTTLE PRODUCTIONS LIMITED**

Date: 24<sup>th</sup> July 2020

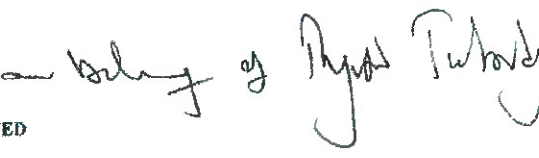



Figure 3.8 - Signed Agreement / Side Letter

**RTÉ Solicitors' Office**

**LETTER OF AGREEMENT**

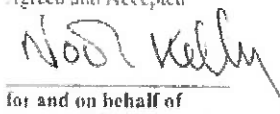
1. We refer to the contract for services between the Tuttle Productions Limited and RTÉ dated 1 September 2015 to 31 August 2020 (the "Agreement") in relation to the services provided by the Contractor to RTÉ.
2. The parties hereby agree to the early termination of the Agreement on 31<sup>st</sup> March 2020 **ATF**
3. In consideration of the parties entering into the Agreement and RTÉ providing related side letters, it is hereby agreed that all pre-existing agreements are terminated and neither party shall have any continuing obligations or entitlements thereunder.


Agreed and Accepted

  
for and on behalf of  
RAIDÍÓ TEILIFÍS ÉIREANN

Date: 24<sup>th</sup> July 2020

Agreed and Accepted

  
for and on behalf of  
TUTTLE PRODUCTIONS LIMITED

Date: 24<sup>th</sup> July 2020 

**INVOICING AND END OF YEAR RECONCILIATION**

- 3.47 I have identified from my email review communications about an end of contract reconciliation. I mention these below from the perspective that as set out in Section 6 below, Person 2 described to me an exercise to review the Tubridy 2015 Agreement.
- 3.48 In the context of arrangements under the new contract with Tuttle / Mr. Tubridy:
- (a) On 7 May 2020, Mr. Collins emailed Mr. Kelly (copied to NK Management). He mentioned that arising from an investigation from the Revenue Commissioners in relation to RTÉ's tax treatment of contractors, RTÉ needed to make changes to the invoicing process. Mr. Collins, stated that a reconciliation would be done at the end of the year against the contracted services for the year – any under / over delivery of services would be charged / deducted in his final invoice. In that email, Mr. Collins concluded by stating that he would like to implement this system of invoicing in relation to Mr. Tubridy from April 2020.
  - (b) Following several emails after 7 May 2020, on 18 May 2020, Mr. Kelly responded to Mr. Collins (copied to [REDACTED] and [REDACTED] and stated that we believe that there should be no need to do a reconciliation at the end of the year on the basis that it is a flat retainer with minor adjustments that are agreed in advance, however, in the event that a reconciliation is required, it can be done at the end of the year in any particular case and the amount that would be billed over the course of the year would equate to the contractual fee ultimately.
- 3.49 When I met with Mr. Collins he informed me that the communications with Mr. Kelly referred to above, were forward looking and not going back into the past. Having reviewed the above-mentioned email correspondence, I have not identified anything which required an amendment to historical invoices issued by Tuttle, nor to there being any refund due to RTÉ.

## 4. Assurance reports provided by external accountancy firms

### BACKGROUND

- 4.1 During the time period relevant to this Report, RTÉ has had two external auditing firms who have opined on the Financial Statements of RTÉ.
- (a) KPMG were the external auditors in place for the year ended 31 December 2017. KPMG resigned as auditors on 1 October 2018.
  - (b) Deloitte were external auditors to RTÉ for the years ended 31 December 2018 and 31 December 2019.
- 4.2 Both KPMG and Deloitte provided additional services to RTÉ in terms of reviewing RTÉ Top On-Air Talent Earnings.
- 4.3 The additional services provided by KPMG were that of an audit, performed to obtain reasonable assurance as to whether the RTÉ Earnings Statement was free from material misstatement.
- 4.4 The additional services provided by Deloitte were that of an assurance report to assess whether the Schedule of RTÉ Top On-Air Talent Earnings had been prepared, in all material respects, in accordance with the International Financial Reporting Standards as adopted by the European Union. As set out below (paragraph 4.42(g)) Deloitte note that in light of the scope of the Deloitte engagement, which was not an audit, Deloitte were not required to seek confirmations from third parties of amounts set out.
- 4.5 It is not within my Terms of Reference to assess, or otherwise critique the work carried out by the external accountancy firms, including the reports issued by them.

### KPMG - 2017

- 4.6 On 4 September 2018, KPMG issued a report on the RTÉ Top On-Air Talent Earnings for the year ended 31 December 2017. KPMG's report noted:
- (a) "In accordance with the terms of our audit engagement letter dated 13 September 2017 that you agreed with us, we have audited the accompanying Statement of RTÉ Top On-Air Talent Earnings ("Earning Statement" or the "Statement") for the year ending 31 December 2017 (Annex 1 of this Report)."
  - (b) "An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the Earnings Statement. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the Earnings Statement, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the entity's preparation and fair presentation of

the Earnings Statement in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of the basis of preparation used and the reasonableness of accounting estimates, if any made by the directors, as well as evaluating the overall presentation of the Earnings Statement."

- (c) "We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion."

4.7 KPMG's audit opinion is stated as follows:

"In our opinion, the Earnings Statement of RTÉ for the year ended 31 December 2017 has been properly prepared in accordance with the basis of preparation set out therein."

4.8 The annex to the KPMG Audit report identified that the total Top Talent Earnings in respect of Mr. Tubridy / Tuttle for the year ended 31 December 2017 was €511,667.

#### **DELOITTE – 2017 TO 2019**

4.9 As set out at paragraph 4.22 below, although KPMG had audited the 2017 Top Talent Earnings, in light of the subsequent adjustment made in 2020 to 2017 (i.e. €20,000 in relation to Mr. Tubridy) it was necessary for Deloitte to review that year.

#### **The three Deloitte Reports**

4.10 On 20 August 2020, Deloitte issued three signed Independent Reasonable Assurance Reports in respect of RTÉ Top On-Air Talent Earnings for the years ending 31 December 2017, 31 December 2018 and 31 December 2019.

4.11 From my review of the RTÉ IT network, it is evident that on 20 August 2020:

- (a) Deloitte sent by email the three signed Independent Reasonable Assurance Reports to Person 1; and
- (b) Person 1 forwarded them to Mr. Collins and Person 2.

4.12 The three Deloitte reports are entitled:

"Independent Reasonable Assurance Report to the Board Members of RTÉ in respect of whether the schedule of RTÉ Top On-Air Talent Earnings for the year ended [2017, 2018, 2019] prepared by RTÉ (the "Schedule") (the "Subject Matter") is in accordance with International Financial Reporting Standards as adopted by the European Union ("IFRS") (the "Applicable Criteria")."

4.13 Deloitte noted in their reasonable assurance reports for the years ended 31 December 2017 to 31 December 2019 that:

"We were engaged by RTÉ to provide a reasonable assurance report (the "engagement") as to whether the Schedule is in accordance with the applicable criteria. The engagement has been performed in accordance with ISAE 3000 (Revised) "Assurance Services Engagements other than Audits or Reviews of Historical Financial Information" ("ISAE 3000") issued by the International Auditing and Assurance Standards Board, and our

engagement as agreed by RTÉ in the engagement letter between Deloitte and RTÉ dated 12 August 2020 (the "Engagement Letter")."

4.14 Deloitte's conclusion for each of the three years 31 December 2017 to 31 December 2019 was:

**"Based on the procedures we have performed and the evidence we have obtained, the Schedule has been prepared, in all material respects, in accordance with the applicable criteria."**

4.15 In Table 4.1 below I set out extracts from the schedules of Top On-Air Talent Earnings prepared by RTÉ Management upon which Deloitte reported:

**Table 4.1 - Schedule of RTÉ Top On-Air Talent Earnings**

				Pay Group	Gross Euro Earnings YTD €	Late Adjustment €	Adjustment €	Total Cost to Employer €
2017	Tuttle Productions	Ryan Tubridy	Fees		511,667	(20,000)		491,667
2018		Ryan Tubridy	Fees		545,000		(50,000)	495,000
2019	Tuttle Productions	Ryan Tubridy	Fees		545,000		(50,000)	495,000

4.16 In each year, Deloitte showed the gross euro earnings, the adjustment and the total cost to employer i.e. RTÉ. Therefore, **I find that the existence of the adjustments for €20,000, €50,000 and €50,000 was clear in the RTÉ schedules subjected to the Deloitte procedures.** At this juncture I note that, in my Report I find that the restatement that was made by RTÉ in 2023 was appropriate, which reversed the above-mentioned adjustments of €20,000, €50,000 and €50,000.

4.17 On 17 August 2020, Deloitte emailed Person 1 requesting that Person 1 sign the representation letter as Mr. Collins at that time did not have access to a printer and scanner. On 18 August 2020, Mr. Collins authorised Person 1 to sign on his behalf.

#### **My review of email communications between RTÉ and Deloitte**

4.18 Having described the reports issued by KPMG and Deloitte, from my review of emails I now provide some of relevant communications that I have identified.

**12 February 2020**

4.19 On 12 February 2020, Ms. O'Keeffe, sent an email to Deloitte (copied to Mr. Collins, Person 1 and Person 2) as follows:

"Following up on our phone call, please see attached side letter for review. As we discussed we are in negotiations with Ryan Tubridy for the renewal of his presenting services, and one aspect of the negotiation deals with the recoupment of fees for 2017, 2018 and 2019 as the presenter under delivered on the services in the contract for those years. It is proposed that the recoupment is done by way of offsetting an exit fee of €120,000 which is owing (sic) in the contract against amounts due back from the presenter for undelivery of services.

Our intention is to reflect this side letter by reducing the presenters reported earnings for 2017, 2018 and 2019 accordingly by the amounts included (sic) for each year. Can you please confirm that the attached side letter appropriate and underpins this proposed reporting treatment. Separately we will need to arrange for the 2017 Top Talent figures to be audited by Deloitte."



- 4.20 The draft Agreement / draft Side Letter attached to that email dated 12 February 2020 sent to Deloitte was document set out at **Figure 3.3 in Section 3** (i.e. including the set off against the additional contracted services (paragraph 3) and the offset against the Contractor's earnings of €20,000, €50,000 and €50,000 for 2017, 2018 and 2019 respectively (paragraph 4).
- 4.21 Later on 12 February 2020, Deloitte responded to Ms. O'Keeffe (copied to Mr. Collins, Person 1 and Person 2) as follows:
- "That will be okay from our perspective in terms of the netting of expense in those years for the purposes of Top Talent on the basis that 17 and 18 have not yet been closed."
- 4.22 Also on 12 February 2020, Ms. O'Keeffe responded to Deloitte (copied to Mr. Collins, Person 1 and Person 2) as follows:
- "Thank you for the confirmation [redacted]
- 2017 Top Talent earnings were audited by KPMG and would need to be amended & reconfirmed for the 2017 adjustment. 2017 Top Talent Earnings have not yet been published & released.
- 2018 Top Talent earnings were audited by Deloitte and would need to be amended & reconfirmed for the 2018 adjustment. 2018 Top Talent Earnings have not yet been published and released."<sup>14</sup>
- 4.23 When I met Ms. O'Keeffe, she informed that, she recalled approaching the auditors, Deloitte, because it was a new transaction to say "how do you treat this?", and RTÉ had modelled options as to the treatment of the waiver.
- 4.24 I observe that the email exchanges on 12 February 2020 between RTÉ and Deloitte occurred before any of the emails that I set out in the email trail (Figure 3.4) at paragraph 3.31 above.
- April 2020**
- 4.25 On 6 April 2020 at 5:34pm, Mr. Collins emailed Deloitte and said "... when would you be free for a call?".
- 4.26 At 7.01pm on 6 April 2020, Mr. Collins emailed Deloitte. The Subject of the email was "RT side letter for auditors". There was one attachment to this email. This attachment is the Marked up Version copied at **Figure 3.6** above which excluded any reference to set off.
- 4.27 Deloitte have advised me that they have a record of the e-mail being received from Mr. Collins and an e-mail requesting a call that evening.
- 4.28 In my meeting with Mr. Collins he stated that Deloitte came back to him, and they discussed it verbally and Deloitte said they could live with this and the accounting treatment. When I met Mr. Collins, we discussed this in further detail as follows (extract shown below):

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<sup>14</sup> Deloitte state that they did not audit the schedules, but the schedule as prepared by RTÉ Management were subject to an Independent Reasonable Assurance Report. They further state that no report was issued until August 2020.

- MR. JACOBS: ... I think what you are saying is the attached side letter for the auditors is fine, being this one here?
- MR. COLLINS: ... I suppose, the accounting treatment on this was devised before I came in, okay. So, what I said all along my role in this was just the auditors, as you saw in February, they agreed with the treatment. My role here, I wasn't going to open this up or anything, you know, I was looking about going forward not going back. So, my role was to get this over the line then, there was some changes in this and getting it over the line then with the auditors.
- MR. JACOBS: All right, so this is important, right. So at that time and on that call, is it your recollection that what Breda had explained to Deloitte as in the e-mails of the 12th February 2020, that we went through in quite a bit of detail, with the attached draft of this side agreement, that was still the situation with regards to recoupment of 2017 and '18 and '19 –
- MR. JACOBS: – and the offset against the exit fee?
- MR. JACOBS: I have spoken quite a few words there, is that the – was that your understanding –
- MR. COLLINS: Understanding –
- MR. JACOBS: -- on that call, that that would be the situation?
- MR. COLLINS: Yes.
- MR. JACOBS: Okay. So, the importance lies in this, did your auditor ... [Deloitte] you were speaking to, was it?
- MR. COLLINS: Yes.
- MR. JACOBS: Did either of you two ask the question as to whether the marked up version i.e. with all the strikeouts, yeah --
- MR. JACOBS: -- whether that still encapsulated the -- the earlier draft?
- MR. COLLINS: Well the conversation was that -- was this sufficient if you relied on the previous draft, was this amended draft sufficient now still to rely on.
- 4.29 Subsequently, on 6 April 2020, Mr. Collins emailed Person 3 to confirm that the attached side letter (i.e. the Marked up Version which excluded any reference to “set off”) for the auditors was fine.
- 4.30 I have been advised by Deloitte that:
- (a) In relation to the evidence provided by RTE, we had noted, both through enquiry of the client and review of the draft side agreement provided by the CFO in February 2020, that there were undelivered elements in the 2015 contract which were required to be accounted for in accordance with paragraph 27 of IAS 1, (whereby an expense is recognised only when it satisfies the definitions and recognition criteria to be expensed). On 12 February 2020, on a telephone call, RTE's chief financial officer, verbally outlined that based on RTE's review of the services provided by Tuttle Productions, a credit was due to RTE for the under provision of services during 2017 2018 and 2019. As outlined previously, the undelivered elements were set out by the client CFO as relating to clause 2.3 and clause 2.5 of schedule 1 of the 2015 contract. No additional evidence was provided subsequently on 6 April to counter this position.
  - (b) In relation to the final signed agreement, it states "In consideration of the parties entering into the agreement and RTE providing related side letters, it is hereby agreed that all pre-existing agreements are terminated and neither party shall have any continuing obligations or entitlements thereunder." We concluded that the substance of the final signed agreement was not inconsistent with the previous draft received such that there were undelivered services in the 2015 contracts, and it was negotiated between the parties that this undelivered service was not now being sought by RTE in return for the final loyalty bonus being waived. The circumstances which were contemplated during the drafting of the initial side agreement subsequently transpired i.e. the corresponding obligations of both parties regarding undelivered services and exit fees were offset and extinguished. In effect, the intent and purpose of the initial side agreement was retained in the final signed agreement.

- (c) We note from documents reported in the public domain by Mr. Noel Kelly that the undelivered elements of the 2015 contract were addressed in e-mail correspondence between Mr. O’Keeffe or [REDACTED] and Mr. Kelly between 19 December 2019 and 28 February 2020, ahead of the final letter of agreement being signed. Based on those documents, the undelivered elements of the contract were acknowledged by both parties which is consistent with the evidence provided by RTE at the time.

4.31 In relation to paragraph 4.30(b) above, and in particular to Deloitte’s comment: “... We concluded that the substance of the final signed agreement as not inconsistent ... In effect, the intent and purpose of the initial side agreement was retained in the final signed agreement”, Mr. Collins states that:

“I wish to note that my understanding of the substance of the final signed agreement was in line with Deloitte’s understanding as set out above and I too understood and believed that ‘the intent and purpose of the initial side agreement was retained in the final signed agreement’. It was never communicated to me by the negotiating team that the intent had changed.”

4.32 As stated above Deloitte was not engaged to perform an audit of the Top Talent earnings, but the schedules prepared by management were subject to an Independent Reasonable Assurance Report. During my review I have had the benefit of meeting Person 3, Mr. Noel Kelly and Mr. O’Malley, amongst others, which has enabled me to conclude that the final signed Agreement / Side Letter did not encapsulate the draft Agreement / draft Side Letter. Access to this information has enabled me to establish that:

- (a) the additional services in the Tubridy 2015 Agreement were use it or lose it see paragraph 3.10);
- (b) consequently, no refund was due to RTÉ (see paragraph 3.10);
- (c) Mr. O’Malley has stated to me that the set off that wording in paragraphs 3 and 4 of the draft Agreement / draft Side Letter was rejected (see paragraph 6.25); and
- (d) the final signed Agreement / Side Letter excludes any reference to “set off” (Figures 3.7 and 3.8).

4.33 Whilst Deloitte and Mr. Collins have explained to me that they concluded that the substance of the final signed agreement is not inconsistent and in effect, the intent and purpose of the initial side agreement was retained in the final signed agreement, in light of the information available to me (e.g. see above) I have reached a different conclusion.

From mid-June 2020

4.34 It is evident from my review of the emails that RTÉ commenced the provision of detailed earnings information to Deloitte in or around mid-June 2020 following the high-level discussions which had been ongoing since February 2020.

4.35 It is evident from my review of emails that during the course of Deloitte’s review of RTÉ Top On-Air Talent Earnings for the years ended 2017, 2018, and 2019, documentation was uploaded by RTÉ onto the Deloitte platform called “Connect”.

- 4.36 I was provided, from Person 2, with an excel workbook, entitled “Query List 28.07.2020” which they state is a contemporaneous document. Deloitte commented: “is there difference in relation to the new agreement? Has this been signed yet?”.

Figure 4.1 – Extract from excel workbook entitled “Query List 28.07.2020”

No.	Presenter	Total Fees per Summary Sheet	Total fees per Invoices (Net)	Difference Deloitte Comments	Comments RTÉ
		491,667			Yes, I will upload the signed letter. This was reviewed previously by [REDACTED]
	1 Ryan Turbidity		511,667	- 20,000 Is there difference in relation to the new agreement? Has this been signed yet?	

- 4.37 Deloitte have confirmed to me that RTÉ provided them with the signed Agreement / Side Letter dated 24 July 2020 set out at Figure 3.7 in Section 3 above.

August 2020

- 4.38 The engagement with Deloitte lasted until Deloitte issued the three reports for 2017, 2018 and 2019 respectively on 20 August 2020. I have not identified any further relevant communications with Deloitte until June 2023.

June 2023

- 4.39 On 18 June 2023, Deloitte sent an email to Mr. Collins noting the following:

“Attached is a copy of the side letter that we were provided with. The total column shows the amounts that were invoices by Tuttle, however there was a payment due to Tuttle in 2020 of €120,000. On the basis that the number of days per year in the contract was not met, we were told it had been agreed that this would not be paid and given that it related to days not provided, the cost had been apportioned across the various years.

So in effect, for those periods, a refund was due for services not provided, which was agreed as being €120,000.”

Deloitte then set out a table as follows:

Table 4.2 – Extract from email from Deloitte to Mr. Collins on 18 June 2023

	Invoice Net	VAT	Total	Adjustment	Cost recognised	
2019	545,000	125,350	670,350	-50,000	495,000	
2018	545,000	125,350	670,350	-50,000	495,000	
2017	511,667	117,683	629,350	-20,000	491,667	
				-120,000		

- 4.40 The draft Agreement / draft Side Letter referenced above by Deloitte, is that shown at Figure 3.3 in Section 3. My engagement with Deloitte has identified that RTÉ had in addition provided to Deloitte the final signed Agreement / Side Letter signed on 24 July 2020 (see Figure 3.7 in Section 3 above, and paragraph 4.42(i) below).<sup>15</sup> In summary RTÉ had provided Deloitte with the following:

- the draft Agreement / draft Side Letter at **Figure 3.3**;

<sup>15</sup> As stated in Section 3, there are two signed Side Letter / Agreement documents (Figures 3.7 and 3.8). In respect of Figure 3.8 is also signed by Mr. Turbidity, and the date of termination is amended by hand from 28 February 2020 to 31 March 2020.

- the Marked up Version at **Figure 3.6** (i.e. with insertions and deletions to paragraphs 3 and 4 etc.); and
- the final signed Agreement / Side Letter at **Figure 3.7** (there are only two differences to Figure 3.8 (Mr. Tubridy signed Figure 3.8, and there is a manual change to the early termination date in Figure 3.8)).

4.41 In Section 3 of this Report, I discussed the differences between Figures 3.3, 3.6 and 3.8.

### **My engagement with Deloitte**

4.42 I now set out what Deloitte have informed me through my interaction with them (and I consider various aspects of that in later sections of my Report):

- (a) Deloitte was engaged to provide RTÉ management assurance against a schedule of RTÉ Top On-Air Talent Earnings (the "Schedule") prepared by management for each of the years 2017-2019.
- (b) Deloitte were not engaged to report for 2018 until 2020.
- (c) Deloitte did not perform an audit of the Top Talent listing. Deloitte was engaged to provide an independent reasonable assurance report. Deloitte's work was performed in accordance with International Assurance Standard, ISAE 3000.
- (d) Deloitte was engaged by RTE management to provide similar assurance to RTE management on the Top Talent earnings and related adjustments for 2018 and 2019. The engagements were performed at the same time with the same client contacts as for the 2017 engagement. The assurance engagement procedures were performed during 2020 and the three reports issued on 20 August 2020.
- (e) The Schedules against which Deloitte performed the assurance engagements were prepared on an accruals basis. The Schedules, as prepared by RTÉ management, are based off payments made during the relevant year, adjusted to reflect the accruals basis of accounting, such as unpaid earnings, earnings paid in prior years or payments not yet earned, as necessary. As a result of the accruals basis of accounting, the Schedules, as prepared by RTÉ, set out earnings, and not payments to the employees and contractors, during each year. Deloitte state that this is evident from the Schedules where adjustments were made to reflect the accruals concept for others on the Top Talent Schedule.
- (f) On 12 February 2020, on a telephone call, RTE's chief financial officer, verbally outlined that based on RTE's review of the services provided by Tuttle Productions, a credit was due to RTE for the under provision of services during 2017 2018 and 2019. The €120,000 was the amount RTE set out as being the credit due. The verbal assertions by RTE's chief financial officer was reiterated in the e-mail of 12 February 2020, where evidence was provided as regards the under-provision of services in those years, including the unsigned side agreement.
- (g) The €20,000, €50,000 and €50,000 amounts in the period from 2017 to 2019, as per the client-prepared schedule, reflect undelivered obligations for services provided by Mr. Tubridy. In light of the scope of the Deloitte engagement, which was not an audit, Deloitte were not required to seek confirmations from third parties of amounts set out. Deloitte based its conclusions, as required under its engagement letter and applicable professional standards, on the information and explanations provided by RTÉ management. In Deloitte's communication with the [then] RTÉ CFO on 12 February 2020, the [then] CFO stated that clause 2.3 and clause 2.5 of the 2015 contract were not fulfilled, resulting in an overpayment to Tuttle Productions Limited.
- (h) The Engagements related to the Top Talent earnings performed in 2020 and was an independent reasonable assurance report to RTE on the Top Talent schedule as provided by RTE management. As the work centered on

agreeing the underlying evidence which underpinned the Top Talent schedules, Deloitte did not need to or ask to see journals relating to any individual adjustments.

- (i) Deloitte received a copy of the signed Agreement / Side Letter dated 24 July 2020 which provided, amongst other things that: "The parties hereby agree to the early termination of the Agreement on 28 February 2020" i.e. the document at Figure 3.7 in Section 3 above.
  - (j) Deloitte note that the Schedule that it reported on, dated 20 August 2020 and as appended to the Deloitte report, is not the Top Talent Earnings Report as published by RTÉ. Deloitte notes that the table published by RTÉ is entitled "Top 10 Highest Paid Presenters on an Earnings Basis for 2017, 2018 and 2019"<sup>16</sup> whereas table appended to the Deloitte report is described (using 2017 as an example) as "Schedule of RTÉ Top On-Air Talent Earnings for the year ended 31 December 2017." I believe that Deloitte are referencing that there is a difference between the terms "paid" and "accruals". In my view, the point raised is merely one of the use of language the figures in both schedules have been prepared on an accruals basis.
- 4.43 Deloitte has also informed me that it notes from documents entered into the public domain by Mr. Noel Kelly that these adjustments were proposed and agreed in e-mail correspondence between Mr. O'Keeffe or [REDACTED] and Mr. Kelly between 19 December 2019 and 28 February 2020. I observe that period of time referred to by Deloitte firstly pre-dated the final agreed position, and secondly, pre-dates the Marked up Version of the Agreement / Side Letter sent by NK Management to RTÉ on 20 March 2020 which excluded any reference to set off.
- 4.44 Ms. O'Keeffe has identified to me that her email of 12 February 2020 to Deloitte (see paragraph 4.22) shows that she believed at that time that the 2018 Top Talent earnings were already reviewed by Deloitte and would need to be amended and reconfirmed for the 2018 adjustment.<sup>17</sup>

#### **Non provision of three Deloitte Reports to Audit and Risk Committee and Board**

- 4.45 As a result of my interactions with the RTÉ Audit and Risk Committee, the Board of RTÉ, and the relevant individuals I met, I am advised that the three Deloitte reports referred to above, do not appear to have been provided to the Audit and Risk Committee nor to the Board of RTÉ. I observe that this is despite the Deloitte reports having been addressed as follows: "Independent Reasonable Assurance Report to the Board Members of RTÉ".
- 4.46 Mr. Collins states that:
- "I wish to record that I am not aware if previous audit assurance reports, prior to the year ending 2017, were provided to the Audit and Risk Committee and/or the Board of RTÉ. Indeed, on commencing in RTÉ and in the handover period with the former CFO, I was not informed of any such practice or requirement.
- I would suggest that if those reports are to be provided to the Audit and Risk Committee and the Board of RTÉ, this is a task which falls within the remit and authority of the [named role] ... As such, the [named role] was perfectly placed to include the Deloitte Reports on the Audit and Risk Committee meeting agenda, and to provide those Reports to the Audit and Risk Committee and to the Board."

<sup>16</sup> <https://www.rte.ie/news/2021/0120/1190981-rte-on-air-earners/>

<sup>17</sup> Deloitte state that they did not audit the schedules, but the schedule as prepared by RTÉ Management were subject to an Independent Reasonable Assurance Report. They further state that no report was issued until August 2020.



4.47 Person 1 has responded to the above assertions made by Mr. Collins as follows:

"To suggest that it was the responsibility of the .... to provide these reports directly to the ARC and Board is a ... task that I was never instructed to perform. This was never part of [the] role, either when Breda was CFO or when Richard was CFO ... I reported to the CFO and acted under their instruction at all times. To suggest that in relation to the Top Talent Earnings I would report directly to the ARC and Board is not a reflection of my role as outlined by my manager. ...

The statement that the Top Talent Audit reports were sent directly to me and I just sent as an "FYI" to the CFO implies that the CFO's involvement was minimal and I was the main person responsible. I also strongly disagree with this suggestion ...

Finally, I never had any part in the agenda setting for the ARC meetings. My role in relation to these meetings included assisting the CFO in the preparation of financial presentations. These were ultimately the responsibility of the CFO but I would have contributed to their preparation ...".

## 5. Waiver of exit fee

### BACKGROUND

5.1 As stated in Section 1 above, the Tubridy 2015 Agreement states, amongst other things:

- (a) Mr. Tubridy is defined as the Presenter.
- (b) RTE wishes Tuttle (defined as the “Company”) to provide the exclusive Services (as defined) of the Presenter and programmes by the Presenter to RTE on the terms set out in this Agreement.
- (c) Under Fees:
  - In addition to the fees set out herein, RTE shall pay the Company a fee of €120,000 (plus VAT) on the conclusion of the contract (31 August 2020) provided that this Agreement continues in force and the Services are provided to RTE hereunder and that this Agreement is not subject to any earlier termination or expiry by agreement between the parties or otherwise.

### WAIVER OF EXIT FEE

5.2 The fee described in paragraph 5.1(c) above, is commonly referred to as an exit fee. On review of the wording in the Tubridy 2015 Agreement, since it is commonly referred to in communications as an exit fee I adopt that term, although perhaps the phrase “retention fee” may be more apt.

5.3 It is common ground that Tuttle / Mr. Tubridy waived the fee of €120,000. By way of example, Mr. O'Malley states that:

- (a) Mr. Tubridy was entitled to the exit fee of €120,000 in circumstances where all parties agree that he was entitled to same and waived such entitlement.
- (b) Mr. Tubridy waived a fee of €120,000 to which he was entitled at the conclusion of his 2015/2020 contract.
- (c) Mr. O'Malley states that it is unambiguous, simple, and clear that Mr. Tubridy waived his right to the fee of 120,000 and that no accounting treatment by RTE can in any way imply that he was somehow the beneficiary of that sum at any stage.

5.4 I find that the exit fee was waived. I further find that no payment of €120,000 was made by RTE to Tuttle / Mr. Tubridy for the fee described in the Tubridy 2015 Agreement.

## 6. Undelivered services - €120,000 (€20k/€50k/€50k)

### BACKGROUND

6.1 In earlier sections of this Report, I referred to a number of documents which mention under delivery of services, or undelivered services in the context of an off set (or set off) against the exit fee of €120,000 due to Mr. Tubridy under the Tubridy 2015 Agreement. In this Section of my Report I address the following issues:

- (a) What was meant by undelivered services? (“Issue 1”).
- (b) Were there undelivered services? (“Issue 2”).
- (c) What value was placed on the undelivered services? (“Issue 3”).
- (d) What was agreed in July 2020 in respect of undelivered services, and in that context was an offset agreed? (“Issue 4”).
- (e) Are there any other related matters to consider? (“Issue 5”).

### ISSUE 1 – WHAT WAS MEANT BY UNDELIVERED SERVICES?

6.2 Sections 3 and 4 of this Report provided a number of references to undelivered services, with similar terms also being used. Without traversing the terrain again in full, the following are summarised examples:

Table 6.1 – Examples of references to undelivered services

My report reference	My summary
	<u>19 December 2019</u>
Paragraph 3.18 Figure 3.2A	Outline offer: Exit fee of €120,000 to be written off on the basis that the additional services contracted for in 2017, 2018 and 2019 were not required and were not delivered. 2017: €20,000, 2018: €50,000, 2019: €50,000
	<u>12 February 2020</u>
Paragraph 4.19	Email from Ms. O’Keeffe to Deloitte: one aspect of the negotiation deals with the recoupment of fees for 2017, 2018 and 2019 as the presenter under delivered on the services in the contract for those years. It is proposed that the recoupment is done by way off offsetting an exit fee of €120,000 which is owing under the contract against amounts due back from the presenter for undelivery of services. Our intention is to

My report reference	My summary
	reflect this side letter by reducing the presenters reported earnings for 2017, 2018 and 2019 ...
	<p><u>13 February 2020</u></p> <p>The exit fee of €120,000 due under the current contract will be written off and offset against 2017, 2018 and 2019 fees as outlined in the attached side letter.</p> <p><i>Side letter paragraph 3</i></p> <p>Paragraphs 3.33, 3.29 and Figure 3.3 It is hereby agreed that the fee of €120,000 due on the expiry date of 31 August 2020 will not be paid either pro rata or in full but will be set off against the additional contracted services set out in the Schedule but not sought by RTÉ or provided by the Presenter during the Contract Term.</p> <p><i>Side letter paragraph 4</i></p> <p>€20,000 for Year 3, €50,000 for Year 4, and €50,000 for Year 5.</p>
Paragraph 3.31, Figure 3.4 (coloured email chain)	<p>RTÉ stated: The exit fee of €120,000 due under the current contract will be written off and offset against 2017, 2018 and 2019 fees as outlined in the attached letter and in the email of 13<sup>th</sup> February 2020.</p> <p>Mr. Kelly stated: "This is only agreed based on the fee level of €450,000 PA for services to RTÉ as outlined below as it is owed by RTÉ But not paid by RTÉ.</p>
Paragraph 4.39	On 18 June 2023 Deloitte sent an email to Mr. Collins which stated that: "... On the basis that the number of days per year in the contract was not met, we were told it had been agreed that this would not be paid and given that it related to days not provided, the cost had been apportioned across the various years. So, in effect, for those periods, a refund was due for services not provided, which was agreed as being €120,000."

6.3 When I met Ms. O'Keeffe, we discussed additional services and she noted:

"So I really do not remember additional services ... I would refer back to what was negotiated after I left. I don't know if additional services were involved. I still don't know what's part of the contract, whether there was a separate arrangement document, I do not know."

6.4 In my meetings with Person 3 and Person 2 it was identified to me that the undelivered services related to paragraphs 2.3 and 2.5 of Schedule 1 to the Tubridy 2015 Agreement. Schedule 1 is entitled "Services" and states that the Company shall procure that the Presenter shall provide the following Services: "Radio Services" and "TV Services". Under TV Services it states:

Schedule 1, paragraph 2.3: "Present up to three (3) additional television program "one-offs or specials" per annum (or four (4) in years where there are 37 Late Late Shows in a season), such programmes to be discussed and agreed between the Director of TV Programmes or her nominee and the Presenter."

Schedule 1, paragraph 2.5: "Subject to the availability of the Presenter and subject to the prior consultation and agreement with the Managing Director of TV, the

option of a further series, or series' of up to eight (8) programmes, with a duration of up to fifty two (52) minutes each, such series to be discussed and agreed between the Director of TV Programmes or her nominee the Presenter. In considering whether the Presenter shall be available for additional TV Services requirements, the requirements of the Radio Services shall be taken into account."

- 6.5 As an accountant reading paragraphs 2.3 and 2.5 of Schedule 1 to the Tubridy 2015 Agreement, I note that in respect of:
- (a) paragraph 2.3, it says "up to three", and in my view this could mean 1, 2, 3 or none at all. This interpretation was agreed by Person 3, Person 2 and Mr. Collins when I met with them; and
  - (b) paragraph 2.5, it says "subject to" and "option" which in my view implies that there are/were elements to be worked through and agreed.
- 6.6 I asked Person 3 about the draft Agreement / draft Side Letter (i.e. **Figure 3.3**) dealing with the exit fee in the context of the undelivered services and they explained that there were three sets of services in the 2015 to 2020 contract, being his radio show, the Late Late Show, and then RTÉ bought hours for a series (that was to do with the additional services), which were an eight-episode series for each contract year and three one-off specials. It was further mentioned that both Mr. Tubridy and RTÉ were keen to do them but funding is always a problem.
- 6.7 I further inquired of Person 3 and they stated (extracts provided below):
- PERSON 3: So we would buy hours. So essentially the hours were there but not used. Now, strictly speaking it's use or lose. So we contract for them; if we don't use them, we don't have any right to recoup them but a conversation had been had with the agent saying look it, for three years in a row we didn't use the hours we had, we need to get something back here, we're hemorrhaging money and it was on that basis that this was, that was the reference.
- So, sorry, in terms of when I'm doing my piece in the negotiations, I would say to the content managers what do you need for the next contract, what did he do, what did he not do, are you happy with everything. So they would have said we definitely don't want additional TV hours. So it was probably at that point that it was flagged that he hadn't done – not that he hadn't, we hadn't used.
- I mean he's no culpability in this at all in the sense that, as I said, we buy the hours. If we don't use them, we don't use them.
- MR. JACOBS: Okay, so would you say that an amount was due from Mr. Tubridy back to RTÉ in circumstances where RTÉ had not requested that?
- ...
- PERSON 3: No, I wouldn't, no, and I think that what we do is ... we were trying to end his contract early.
- To start a new contract and the reason we wanted to start a new contract is we wanted to do it at a reduced rate and to reduce the services ... It gives you a bit of flexibility. But as I said, my understanding is always, and any time the agents or the lawyers are across this, it's use or lose. So if we don't use it, we can't recoup the money unless there's a clause which we sometimes put in to say we're going to carry it over for six months into the new contract.
- And I don't believe that there was.

MR. JACOBS: And did that exist on this occasion? No

PERSON 3: I don't believe there was, no.

## ISSUE 2 – WERE THERE UNDELIVERED SERVICES?

6.8 From my meetings it is common ground between individuals that I have met (Person 3, Mr. Kelly / Mr. Tubridy / Mr. O'Malley) that the services described at paragraphs 2.3 and 2.5 of Schedule 1 to the Tubridy 2015 Agreement were not called upon and not delivered i.e. in that sense there were undelivered services.

6.9 Ms. O'Keeffe has described the way in which undelivered services were used for negotiation purposes and states that:

"The documents show an initial overall strategy was developed in December 2019 by RTE, whereby for 2020 – 2025 contract, RTE offered Ryan Tubridy an annual fee of €420,000, and RTE would facilitate a third party sponsorship to the value of €75,000 p.a. This negotiation strategy also included an assertion by RTE, that not all the contracted services were fully delivered as per the agreement with a view to persuade Ryan Tubridy to offset the value of his 2020 exit payment due under the 2015 – 2020 contract .... This proposal was made to the agent Noel Kelly....".

6.10 For clarity, as I set out below, I am informed that from that RTE had no legal entitlement to a refund (for undelivered services) owing by Mr. Tubridy in relation to his/Tuttle's contractual commitments with RTE.

## ISSUE 3 – WHAT VALUE(S) WAS PLACED ON THE UNDELIVERED SERVICES?

6.11 There are two sub-issues to Issue 3:

- (a) what was the **total value** placed on the undelivered services (see paragraphs 6.12 to 6.14), and
- (b) what value was placed for **specific years** (i.e. 2017, 2018, 2019) (see paragraphs 6.15 to 6.24).

### Total value placed on undelivered services

6.12 By way of providing initial observations:

- (a) It appears from the use of the phrases "off set" or "set off" that the value attributed to the undelivered services, equaled (or was close thereto) the amount of the exit fee of €120,000 provided in the Tubridy 2015 Agreement.
- (b) I have conducted an extensive review of the RTE IT network. Given that my methodology involves, amongst other things, searches based on key words, I cannot be conclusive, however, I have found no spreadsheet or workings which provide a specific calculation that supports each of the adjustments of €20,000 (2017), €50,000 (2018) and €50,000 (2019) that were made.



6.13 In light of paragraph 6.12(b) I sought to understand from individuals who I met the values placed on the undelivered services. Person 2, within the parameters of their knowledge and role at the time, has advised me that:

- (a) following their involvement in an internal project there was a learning for RTÉ when renegotiating new contracts, and there was a requirement to revisit all contracts in place with contractors, to determine whether services under these contracts had been delivered and/or were not delivered. I am informed by Person 2 that with these learnings in mind, they performed a paper review of the Tubridy 2015 Agreement, to determine whether all the services that were contracted for were in fact provided.
- (b) The total figure of €120,000 was probably calculated as follows:

**Table 6.2 – Calculation of estimated value for undelivered services**

Paragraph reference of Schedule 1 of 2015 Agreement	Number of events (A)	Estimate of number of hours (B)	Cost per hour € (C)	Number of relevant years (D)	Undelivered services - estimated value € (A x B x C x D)
Paragraph 2.3	3	2	3,056	5	91,680
Paragraph 2.5	8	1	3,056		24,448
					<b>116,128</b>

6.14 The calculation assumes the maximum number of events over five years. I have identified where the cost per hour is derived, noting that the “hour” reflects the hour(s) broadcast and not the hours spent in totality for that programme by the presenter. There would obviously be additional time spent for research, preparation, scripting, briefing, rehearsal etc., and there may be additional ways of undertaking such a calculation by adjusting the cost per hour and the number of hours.

#### **Value placed for specific years**

- 6.15 Person 2 acknowledged in relation to their calculation of the €116,128 that the calculation performed by them covered the five years of the 2015 Agreement. In their consideration of the €120,000, Person 2 acknowledged that they were doing this through the lens of reviewing the Tubridy 2015 Agreement. Person 2 was not applying a legal or contractual lens to their consideration. They also noted that they were not part of the negotiation team so was working on the basis of information provided to her.
- 6.16 For the purposes of my Report I assume that the value of undelivered services used for the purposes of the set off, which I assume to be €120,000, had a methodology or basis of calculation similar to that set out in Table 6.2 above. I do not have any further evidence available to me.
- 6.17 I asked Person 2 whether they knew how the amounts of €20,000, €50,000 and €50,000 were calculated. Person 2 noted that although they were comfortable with the total amount of €120,000 for under delivery of services, they were not comfortable with the spreading of this amount in the three years, 2017 to 2019 as the methodology of the proposed spread was not explained to her. In that regard Person 2 identified an email between herself and Ms. O’Keeffe on 29 January 2020 where Person 2 stated:

"In theory I have no issues, the only point I would make is how we support the methodology behind spreading the offset. I think that as we have fully audited and disclosed to 2016 it is reasonable to begin in 2017 but we may need to think about how we support the split of the 20k and 50k, you may already have an idea, however the way it is written in the letter offers no explanation as to why it should vary."

6.18 Person 2 noted that Ms. O'Keeffe replied on the 30 January 2020 to their email of the 29 January 2020, with the words "thanks [REDACTED]". Person 2 also noted that there was no explanation to the methodology of the spread provided in this reply from Ms. O'Keeffe.

6.19 Ms. O'Keeffe explains:

"I cannot recall the precise methodology by which the value of the undelivered services was allocated across the three years. However, a reasonable treatment could have been an equalisation of his earnings in the three-year period on the legitimate basis that Mr. Tubridy provided the same level of service in each of the applicable years."

6.20 Having reviewed a significant amount of electronic documentation (emails, spreadsheets etc.) and met with individuals, I have found no spreadsheet or workings which provide a specific calculation that supports each of the adjustments of €20,000 (2017), €50,000 (2018) and €50,000 (2019) that were made. Against this backdrop, and also noting Panel 2 in Figure 3.1 (an extract from a RTÉ spreadsheet that was used by RTÉ as part of its preparation for negotiations with Mr. Tubridy), I undertook an exercise and performed hypothetical calculations of my own as follows:

(a) I refer to Figure 6.1 which is referenced "Adjustment needed in 2017, 2018, 2019 Fees";

**Figure 6.1 - (extract from Figure 3.1) RTÉ spreadsheet**

B	Adjustment needed in 2017, 2018, 2019 Fees	Not yet published			Total
		2017	2018	2019	
	Earnings (on current basis)	511,667	545,000	545,000	
	Reduction in fees	(20,000)	(50,000)	(50,000)	(120,000)
	Revised Earnings	491,667	495,000	495,000	
	Exit fee of €120,000 use to cover the retrospective adjustment on fees				

(b) The key assumption I have adopted is reflected in the questions below:

- given the earnings "on current basis" ((for all years 2017 to 2019 these earnings exceeded €500,000) see Figure 3.1);
- if one had an objective<sup>18</sup> to achieve a position where the "revised earnings" (i.e. published earnings) for each year 2017, 2018 and 2019 were all below €500,000;
- and assuming a total value of €120,000 available to be allocated/apportioned to these earlier years;
- what is the range of the "reduction in fees" amounts that would be required to achieve that objective?

<sup>18</sup> This hypothetical objective, is supported by comments in one of my meetings.

- (c) My analysis from the exercise I have conducted is set out in Table 6.3 below (and for clarity also assumes (for moment) that there was a refund due (or was agreed) between Tuttle / Mr. Tubridy and RTÉ for undelivered services):

Table 6.3 – My hypothetical exercise on derivation of €20,000, €50,000 and €50,000

	2017 €	2018 €	2019 €	
Earnings on current basis (per Figure 3.1)	511,667	545,000	545,000	
<b>Jacobs Scenario 1:</b> minimum amount required to adjust 2017 to bring published earnings below €500,000 and then split the remaining balance of the €120,000 equally between 2018 and 2019	(11,668)	(54,166)	(54,166)	(120,000)
	<b>499,999</b>	<b>490,834</b>	<b>490,834</b>	
Earnings on current basis (per Figure 3.1)	511,667	545,000	545,000	
<b>Jacobs Scenario 2:</b> minimum amount required to adjust 2018 and 2019 to bring published earnings below €500,000 and then allocate the remaining balance of the €120,000 into 2017	(29,998)	(45,001)	(45,001)	(120,000)
	<b>481,669</b>	<b>499,999</b>	<b>499,999</b>	
<b>Average of the scenario 1 and 2 adjustments</b>	<b>(20,833)</b>	<b>(49,584)</b>	<b>(49,584)</b>	
Actual adjustments made by RTÉ	(20,000)	(50,000)	(50,000)	

- 6.21 My analysis shows two things:
- (a) given the hypothetical objective stated above, the value of the adjustments required in this hypothetical calculation for 2017, 2018 and 2019 falls within a narrow range; and
  - (b) the average of the adjustments under Scenario 1 and Scenario 2, is very close to the values actually made by RTÉ of €20,000, €50,000 and €50,000.
- 6.22 As stated above, Person 2 noted that although they were comfortable with the total amount of €120,000 for under delivery of services, they were not comfortable with the spreading of this amount in the three years, 2017 to 2019 as they did not understand the methodology of the proposed spread.
- 6.23 Having conducted my exercise, on the balance of probabilities, I find that in the absence of any other further explanations, my hypothetical exercise provides a very plausible explanation as to how the values of the adjustments of €20,000, €50,000 and €50,000 were calculated or allocated by RTÉ for 2017, 2018 and 2019 respectively.
- 6.24 In relation to Ms. O’Keeffe’s comment that: “... a reasonable treatment could have been an equalisation of his earnings in the three-year period on the legitimate basis that Mr. Tubridy provided the same level of service in each of the applicable years...”. I note the phrase “equalisation of his earnings”, but I further observe from the calculation of €116,128 that it is based on five years, and on this basis it appears to me to be unlikely that the €116,128 or €120,000 relates to three years (being years 3, 4 and 5 of the Tubridy 2015 Agreement).

#### **ISSUE 4 - WHAT WAS AGREED IN JULY 2020 IN RESPECT OF UNDELIVERED SERVICES, AND IN THAT CONTEXT WAS AN OFFSET AGREED?**

- 6.25 I refer to the NK Management comments on the draft Agreement / draft Side Letter sent to Person 3 on 20 March 2020 i.e. the Marked up Version. When I met Mr. Kelly, Mr. Tubridy, and Mr. O'Malley, I asked about the Marked up Version sent by NK Management. Mr. O'Malley stated:<sup>19</sup>

"So the version then that goes back in [REDACTED] email of the 20th of March is at page 16. So what we're doing then is we're striking out the reference to set off in paragraph 3 and also in paragraph 4. Because at that stage it just didn't make sense to us that where Ryan is waiving an entitlement to 120,000 fee, it would seem absurd that that would then be set off against actual earnings he received in previous years. So we rejected it. And then importantly, page 17 is the final version that was actually signed where our amendments, I think, are fully accepted."

- 6.26 Table 6.4 below contrasts the relevant extracts of the draft Agreement / draft Side Letter (sent from RTÉ to NK Management), against the Marked up Version (sent from NK Management to RTÉ), and the final signed Agreement / Side Letter. I confirm that the signed Agreement / Side Letter has the same wording as the Marked up Version provided by NK Management on 20 March 2020.

- 6.27 At my meeting with Person 3 I asked them about paragraphs 2.3 and 2.5 of Schedule 1 of the Tubridy 2015 Agreement. They stated:

"So we would buy hours. So essentially the hours were there but not used. Now, strictly speaking it's use or lose. So we contract for them; if we don't use them, we don't have any right to recoup them but a conversation had been had with the agent saying look it, for three years in a row we didn't use the hours we had, we need to get something back here, we're haemorrhaging money and it was on that basis that this was, that was the reference."

- 6.28 In the context of Person 3's reference to "use or lose" it, I asked them about whether there was an amount due from Mr. Tubridy back to RTÉ. They stated that there was not an amount due from Mr. Tubridy back to RTÉ, and RTÉ were trying to end his contract early.

- 6.29 Person 3 separately stated that there would have been no legal entitlement for RTÉ to obtain a refund from Mr. Tubridy.

- 6.30 On the balance of probabilities, I find that no set off (or offset) had been agreed between RTÉ and NK Management / Mr. Tubridy.

<sup>19</sup> The reference to pages 16 and 17, are to the bundle of documents submitted by Mr. Kelly and Mr. Tubridy to the Oireachtas.

Undelivered services - €120,000 (€20k / €50k / €50k)

6

Table 6.4 - Identification of amendments and changes made and agreed

Draft – RTÉ to Mr. Kelly on 13 February 2020 and 10 March 2020	Marked up – NK Management to RTÉ on 20 March 2020	Final – signed Letter of Agreement, dated 24 July 2020
<p style="text-align: center;">[RTÉ headed paper] <b>LETTER OF AGREEMENT</b></p> <ol style="list-style-type: none"> <li>We refer to the contract for services between the Turtle Productions Limited and RTÉ dated 1 September 2015 to 31 August 2020 (the "Agreement") in relation to the services provided by the Contractor to RTÉ.</li> <li>The parties hereby agree to the early termination of the Agreement on 28 February 2020.</li> <li>It is hereby agreed that the fee of €120,000 due on the expiry date of 31 August 2020 will not be paid either pro rata or in full but will be set off against the additional contracted services set out in the Schedule but not sought by RTÉ or provided by the Presenter during the Contract Term.</li> <li>The termination payment will be offset against the Contractor's earnings on the following terms: €20,000 for Year 3, €50,000 for Year 4 and; €50,000 for Year 5.</li> </ol> <p style="text-align: right;">RADIOÍ TEILIFIS ÉIREANN Date:</p> <p style="text-align: right;">Agreed and Accepted</p> <p style="text-align: right;">for and on behalf of <b>TUTTLE PRODUCTIONS LIMITED</b> Date:</p>	<p style="text-align: center;">[RTÉ headed paper] <b>LETTER OF AGREEMENT</b></p> <ol style="list-style-type: none"> <li>We refer to the contract for services between the Turtle Productions Limited and RTÉ dated 1 September 2015 to 31 August 2020 (the "Agreement") in relation to the services provided by the Contractor to RTÉ.</li> <li>The parties hereby agree to the early termination of the Agreement on 28 February 2020.</li> <li>In consideration of the parties entering into the Agreement and RTÉ providing related side letters, it is hereby agreed that all pre-existing agreements, are terminated and neither party shall have any continuing obligations or entitlements thereunder, the fee of €120,000 due on the expiry date of 31 August 2020 will not be paid either pro rata or in full but will be set off against the additional contracted services set out in the Schedule but not sought by RTÉ or provided by the Presenter during the Contract Term.</li> <li>The termination payment will be offset against the Contractor's earnings on the following terms: €20,000 for Year 3, €50,000 for Year 4 and; €50,000 for Year 5.</li> </ol> <p style="text-align: right;">RADIOÍ TEILIFIS ÉIREANN Date:</p> <p style="text-align: right;">Agreed and Accepted</p> <p style="text-align: right;">for and on behalf of <b>TUTTLE PRODUCTIONS LIMITED</b> Date:</p>	<p style="text-align: center;">RTÉ Solicitors' Office</p> <p style="text-align: center;"><b>LETTER OF AGREEMENT</b></p> <ol style="list-style-type: none"> <li>We refer to the contract for services between the Turtle Productions Limited and RTÉ dated 1 September 2015 to 31 August 2020 (the "Agreement") in relation to the services provided by the Contractor to RTÉ.</li> <li>The parties hereby agree to the early termination of the Agreement on 28 February 2020.</li> <li>In consideration of the parties entering into the Agreement and RTÉ providing related side letters, it is hereby agreed that all pre-existing agreements are terminated and neither party shall have any continuing obligations or entitlements thereunder.</li> </ol> <p style="text-align: right;">Agreed and Accepted for and on behalf of RADIOÍ TEILIFIS ÉIREANN</p> <p style="text-align: right;">Date: 24<sup>th</sup> July 2020</p> <p style="text-align: right;">Agreed and Accepted for and on behalf of TUTTLE PRODUCTIONS LIMITED</p> <p style="text-align: right;">Date: 24<sup>th</sup> July 2020</p>



**ISSUE 5 - ARE THERE ANY OTHER RELATED MATTERS TO CONSIDER?****Negotiation – the back and forth**

- 6.31 In Section 3, I set out a copy of an email which provides a composite set of email exchanges between RTÉ and NK Management (see Figure 3.4). On 20 February 2020 Ms. O’Keeffe sent an email to Mr. Kelly with red text, and on 25 February 2020 Mr. Kelly responded with blue text (RTE119). In relation to the exit fee it shows:

**Figure 6.2 – Extract from Figure 3.4**

- The exit fee of €120,000 due under the current contract will be written off and offset against 2017, 2018 and 2019 fees as outlined in the attached letter and in email of 13th February 2020. This is only agreed based on the fee level of €450,000 PA for services to RTÉ as outlined below as it is owed by RTE. But not paid by RTE.

- 6.32 When I met with Mr. Kelly, Mr. O’Malley and Mr. Tubridy, the comment in blue (from Mr. Kelly) was explained to me as meaning that he (Mr. Kelly on behalf of Mr. Tubridy) was prepared to waive the €120,000 exit fee i.e. there was not an agreement to the offset. Mr. O’Malley stated that the Marked up Version sent by NK Management to RTÉ on 20 March 2020 made it clear that they were not agreeing to the offset.

**MY FINDINGS**

- 6.33 My findings from analysis in relation to undelivered services are:
- The references to “undelivered services” etc. pertain to paragraphs 2.3 and 2.5 of Schedule 1.
  - The services pertaining to paragraphs 2.3 and 2.5 of Schedule 1 were not called upon by RTÉ.
  - When considering the Tubridy 2015 Agreement there is alignment between the explanations provided to me from Person 3 and from Mr. O’Malley. Person 3 explained the position as follows: “So essentially the hours were there but not used. Now, strictly speaking it’s use or lose. So we contract for them; if we don’t use them, we don’t have any right to recoup them but a conversation had been had with the agent saying look it ...”.
  - The implication of (c) above is that under the Tubridy 2015 Agreement, RTÉ was not due a refund from Tuttle / Mr. Tubridy.
  - On the balance of probabilities, RTÉ not being due a refund is consistent with the information I have been provided in my meetings that RTÉ did not request a credit note from Tuttle, nor did Tuttle provide a credit note to RTÉ.
  - My own review of paragraphs 2.3 and 2.5 of Schedule 1, which is aligned with explanations provided by individuals who I have met, is firstly, in respect of paragraph 2.3 that the use of the word “up to” could mean one, two, three or even no events, and secondly, that in respect of paragraph 2.5 the wording appears to be conditional.



- (g) In relation to the question which I have asked myself: notwithstanding the legal position of the Tubridy 2015 Agreement, did RTÉ and Mr. Tubridy etc. separately agree during the negotiation process that there would be an amount due (e.g. a refund) from Mr. Tubridy to RTÉ for undelivered services, on balance of probabilities the answer is “no”. My reasoning is based on firstly, the fact that the relevant wording in the draft Agreement / draft Side Letter was struck out by Mr. Kelly / Mr. O'Malley / Mr. Tubridy on 20 March 2020 and that amended text represents the wording of the final signed Agreement / Side Letter signed on 24 July 2020, and secondly, meetings that I have had with individuals.
- (h) On the balance of probabilities the undelivered services were a negotiation tactic, and/or part of a negotiation strategy.
- (i) For the purposes of my Report I assume that the value of undelivered services used for the purposes of the set off, which I assume to be €120,000, had a methodology or basis of calculation similar to that set out in the Person 2 Table 6.2 above. I do not have any further evidence available to me. I find that notwithstanding this assumption, no refund was due to RTÉ, and no refund was agreed between RTÉ and NK Management for Tuttle/Mr. Tubridy.
- (j) On the balance of probabilities, no set off (or offset) had been agreed between RTÉ and NK Management / Mr. Tubridy.
- (k) As a matter of fact, the 2020 Adjustments caused the earnings figures for Mr. Tubridy in each year 2017, 2018 and 2019 to change to an amount below €500,000 from an amount above €500,000, and it was these lower amounts which were then published by RTÉ in 2021 for these years. Having conducted an exercise, on the balance of probabilities, I find that in the absence of any further explanations, my hypothetical exercise (which assumed the adjustments were made with an RTÉ objective to achieve a position where the “revised earnings” for each year 2017, 2018 and 2019 were all below €500,000)<sup>20</sup>, provides a very plausible explanation as to how the values of the adjustments of €20,000, €50,000 and €50,000 were calculated or allocated by RTÉ for 2017, 2018 and 2019 respectively (see paragraphs 6.20 to 6.23 above). Whilst my exercise provides a very plausible explanation, is not possible to be conclusive without having met all individuals to date.

<sup>20</sup> The hypothetical exercise also assumed that a refund was due by Tuttle / Mr. Tubridy to RTÉ, and as readers of this report will know I considered that assumption separately and found that no refund was due.

## 7. Accounting for the €120,000 by RTÉ

### BACKGROUND

- 7.1 In this Section of my Report, I consider the accounting for €120,000, and in that context I mean:
- (a) accounting for the exit fee of €120,000; **and**
  - (b) accounting for the undelivered services.
- 7.2 It is necessary for me to consider the General Ledger which is ultimately the basis from which Financial Statements are prepared, and to also consider the published earnings for Top Talent.
- 7.3 In my interactions with Ms. O’Keeffe she has noted that, up to March 2020, the Top Talent Earnings release process was subject to a well-defined procedure. Ms. O’Keeffe intimated that in their view if this detailed and rigorous process had been followed, as included in a RTÉ memorandum entitled “Top Talent audit 2012, 2013, 2014” that misstatements would not have been made. I observe that from my review of the information and documentation, together meetings with key individuals, it is not evident to me that the two step process was not followed by RTÉ.

### GENERAL LEDGER – FINANCIAL STATEMENTS

#### Financial Statements and Accruals

Accrual in 2019 for the exit fee in 2020

- 7.4 Paragraph 8.1 of the 2015 Agreement provided that RTÉ shall pay Tuttle a fee of €120,000 on the conclusion of the contract (being 31 August 2020):
- “In addition to the fees set out herein, RTÉ shall pay the Company a fee of €120,000 (plus VAT) on the conclusion of the contract (31<sup>st</sup> August 2020) PROVIDED THAT this Agreement continues in force and the Services are provided to RTÉ hereunder and that this Agreement is not subject to any earlier termination or expiry by agreement between the parties or otherwise.”
- 7.5 By reviewing various ledger accounts I have identified that the Financial Statements for RTÉ for the year ended 31 December 2019, included an accrual (i.e. a liability) as at 31 December 2019 for €120,000 payable to Tuttle. During the performance of my review I identified that RTÉ had accrued for an amount of €136,284 (being the exit fee for Mr. Tubridy as under the 2015 Agreement, of €120,000 plus an amount of €16,284 being the Non Recoverable VAT, in relation to this exit fee) as at 31 December 2019. The accounting entry for this accrual was:

- Debit P&L fees - presenters account (3710) (in the Profit & Loss Account<sup>21</sup>); and
- Credit Accruals account (B640) (in the Balance Sheet).

- 7.6 It therefore follows that the total amount for Tuttle / Mr. Tubridy recognised in the Profit & Loss Account for RTÉ in 2019 was €665,000 (being €545,000 originally sourced through PeopleSoft<sup>22</sup> plus the debit entry from the €120,000 accrual). In Section 4, I addressed the fact that during negotiations in 2020 the exit fee was waived by Mr. Tubridy.
- 7.7 Person 2 explained that RTÉ has an extremely prudent approach to accruals.
- 7.8 Person 1 explained that when RTÉ was preparing the 2019 year end and financial statements, we would have considered accruals for all known liabilities at that point in time.
- 7.9 I identified as part of my review of correspondence that Person 4 posted this accrual. Person 4 advised me that they were likely the person that posted this journal and they were instructed to post it by Person 1, after they had a conversation with Ms. O’Keeffe.
- 7.10 Person 4 noted the below in relation to the reason for the release of this accrual in 2020:
- “I asked [RTE individual] about this when the auditors queried it and she explained that he had agreed to waive it and would not be paid this as part of his new contract negotiations which were ongoing at the time.”
- 7.11 The RTÉ Board signed the Financial Statements for 2019 on 16 July 2020 and the audit opinion issued thereon. Those Financial Statements had an accrual for RTÉ exit fee of €120,000 (plus non recoverable VAT). By 16 July 2020, in my view it was known within certain circles within RTÉ that the exit fee had been agreed to be waived by Tuttle / Mr. Tubridy. The amount of €120,000, I expect, would not have been material to the Financial Statements of RTÉ. Further, a Grant Thornton audit partner has advised me that he would expect it have to be flagged as an “unadjusted audit difference” within the Audit Findings Report in order to for the auditors to discharge their ‘communication with those charged with governance’ obligations, however, given materiality no adjustment would have been required to the Financial Statements.
- 7.12 I further noted from my review of accruals that this amount was not included in the 31 December 2020 accruals listing for RTÉ, which is appropriate. I have reviewed the journal entries for the accrual and the reversal from the accruals listing.
- 7.13 The effect of the accrual in 2019, and the ultimate reversal in 2020 is that RTÉ recorded a cost (fees – presenters) in its Profit & Loss Account in 2019 of €120,000 for the exit fee, and in 2020 it had a negative cost of €120,000 in the Profit & Loss Account.

<sup>21</sup> Within the Annual Report RTÉ identify an Income Statement, for the purposes of this report, Profit and Loss Account, P&L and Income Statement all have the same meaning.

<sup>22</sup> See Appendix 1.

Not posting of €20,000, €50,000, and €50,000 to the books and records of RTÉ

- 7.14 I identified that there were adjustments made in the published earnings of Mr. Tubridy of €20,000, €50,000 and €50,000 to the years ended 31 December 2017, 31 December 2018 and 31 December 2019 respectively. I can confirm that these adjustments were not processed or recorded through Agresso (i.e. the General Ledger) of RTÉ.
- 7.15 In light of my finding in this Report that the restatements that RTÉ made in 2023 to published earnings of Mr. Tubridy are appropriate, it follows that it was also appropriate that the original adjustments were not recorded in Agresso.

## **PUBLISHED EARNINGS**

### **Accruals basis used for published earnings**

- 7.16 As mentioned at paragraph 4.42(e) in Section 4 above the Schedules against which Deloitte performed the assurance engagements were prepared on an accruals basis.
- 7.17 As stated in Section 1, the following note to RTÉ's publication of earnings for 2017 to 2019 also explains the basis of preparation.<sup>23</sup>

#### **"Basis of preparation:**

The Directors of RTÉ are responsible for the proper preparation and fair presentation of the Earnings Statement for the relevant periods.

The RTÉ Top On-Air Talent Earnings for the year ended 31 December 2017, 2018 and 2019 are prepared on an accruals basis for employees or independent contractors who have a direct relationship with RTÉ. Employee earnings include salaries and employer pension contribution. Earnings for contractors represent fees payable excluding VAT. Contractors do not earn salaries and RTÉ does not make any pension contribution on their behalf."

### **Draft Agreement / draft Side Letter**

- 7.18 As set out in Section 4 (paragraph 4.25), on 6 April 2020 at 5:34pm Mr. Collins emailed Deloitte to set up a call. Shortly afterwards at 7:01pm Mr. Collins provided Deloitte with the Marked up Version of the Agreement / Side Letter that RTÉ received from NK Management on 20 March 2020. Mr. Collins informed me that when he spoke with Deloitte on the call: "... well the conversation was that – was this sufficient if you relied on the previous draft, was this amended draft sufficient now still to rely on." (see Section 4, paragraph 4.28).
- 7.19 On 24 July 2020, NK Management sent to Person 3 an email with attached Mr. Tubridy's signed contract (i.e. the Tubridy 2020 Agreement) with the signed Agreement / Side Letter.

<sup>23</sup> <https://www.rte.ie/news/2021/0120/1190981-rte-on-air-earners/>

- 7.20 On 24 July 2020, Person 3 sent by email attaching the signed 2020 Tubridy Agreement, together with the signed Agreement / Side Letter<sup>24</sup> (copied at Figure 3.7 in Section 3 of this Report), to Mr. Collins, and [REDACTED] for their files. This email was forwarded by Mr. Collins to Person 2 also on 24 July 2020 with “FYI” attaching these two documents.
- 7.21 On 27 July 2020, Person 2 replied and asked Mr. Collins by email: “Do we have any signed agreement relating to the adjustments to fees that we are making in prior years?”
- 7.22 In response on 27 July 2020, Mr. Collins noted the following:
- “The Letter of Agreement attached to the email below is the document that covers this. It isn't specific on which years RTE are allocating the €120k to. [Deloitte] was happy with this back in March.”<sup>25</sup>
- 7.23 Mr. Collins noted that: “... it isn't specific on which years RTE are allocating the €120k to ...”. I observe that the final signed Agreement / Side Letter does not mention €120,000.
- 7.24 As stated at paragraph 3.28 above, on 29 January 2020, Ms. O’Keeffe sent the draft Agreement / draft Side Letter to Person 2 requesting that they “cast your eye over this please...”. It appears that the next time that Person 2 received the Agreement / Side Letter it was the final signed Agreement / Side Letter dated 24 July 2020: Person 2 has advised me that they consider their email to Mr. Collins on 27 July 2020 to be “flagging” that the final signed Agreement / Side Letter did not appear to support the adjustments that were made to the Top Talent schedules, hence requesting the most appropriate supporting documentation.

### Meetings with individuals – accounting for the €120,000

- 7.25 Person 1 explained in relation to the €120,000:
- “So my recollection is that there was a meeting with the CFO and the audit partner to discuss the offsetting of the 120,000. My recollection is that Deloitte were fully briefed in advance in respect of the offset proposal for 2017 to 2019 ... So I understood that the side letter allocating the 120,000 to each year, 20,000 in '17, 50,000 in '18 and 50,000 in '19 was signed and provided to the auditors.”
- “So it should have been reported as earnings in 2020.”
- 7.26 Person 2 informed me in relation to the €120,000:
- (a) Person 2 noted that on the basis of the spread of the €120,000 over the three years (being 2017 to 2019) against Mr. Tubridy’s earnings, that they would have expected an additional €120,000 to be included in the reported earnings for the year ended 31 December 2020 (e.g. Mr. Tubridy was due an exit fee of €120,000 in August 2020, and as such would be earned in 2020, this was then to be recouped against the under delivered services in 2017 to 2019 that Mr. Tubridy had already been paid for but had not delivered.)

<sup>24</sup> RTE 31467.

<sup>25</sup> In my meeting with Mr. Collins, he confirmed that this reference to “March” was referring to his call with Deloitte on 6 April 2020.

- (b) In other words on the one hand up to 2019 there would be reductions against payments made to the Talent, and in 2020 there €120,000 would be recorded as earnings in that year. This, would in total offset to NIL (minus €120,000 plus €120,000 = €0).
- (c) Person 2 was not comfortable with the allocation of the €120,000 across the years albeit s they were comfortable with the total amount.

7.27 Ms. O’Keeffe informed me that in relation to undelivered services:

"I do recall considering the treatment of waiver of the exit fee if it was agreed and as I said at our meeting on July 11, it was a zero treatment i.e. Ryan Tubridy would issue a Credit Note to RTÉ for undelivered services in the year, and this Credit Note would either be repaid to RTÉ by Ryan Tubridy in cash, or offset against a future invoice from Ryan Tubridy (such as the exit fee invoice). It was my job to look at these issues. However, it was not agreed when I left RTÉ, no agreement had been reached with Mr. Tubridy by then. Irrespective of any views offered by me at any time, decisions on how to treat the exit fee were taken by other[s] after I left RTÉ."

### Summary of explanations provided to me

7.28 Based on the facts known at the relevant time to Person 1 and Person 2, and to Ms. O’Keeffe (based on her knowledge prior to her leaving RTÉ at the end of March 2020), they confirmed to us in our meetings an expectation that Mr. Tubridy’s published earnings should have been adjusted for the following amounts:

2017:	(€20,000)
2018:	(€50,000)
2019:	(€50,000)
2020:	<u>120,000</u>
Total Net	<u>NIL</u>

7.29 Had the expectation been carried out in full, the published earnings would have been as follows:

**Table 7.1 – Illustrative scenario IF ALL adjustments been made by RTÉ to published earnings**

	2017 €	2018 €	2019 €	2020 €
Earnings – Mr. Tubridy before adjustments	511,667	545,000	545,000	466,250
Adjustments	(20,000)	(50,000)	(50,000)	120,000
	(Undelivered services)	(Undelivered services)	(Undelivered services)	(Exit fee)
Earnings – Mr. Tubridy after adjustments	<b>491,667</b>	<b>495,000</b>	<b>495,000</b>	<b>586,250</b>

7.30 I make several observations in relation to the above:

- (a) Person 1 and Person 2 were not part of the negotiating team.
- (b) Ms. O’Keeffe left RTÉ at the end of March 2020.



- (c) Ms. O’Keeffe, prior to her departure, and Mr. Collins, received the Marked up Version of the Agreement / Side Letter between 20 March 2020 and 23 March 2020 (see paragraphs 3.40 and 3.41).
- (d) All relevant individuals<sup>26</sup> who I have met, agree that the single adjustment in the amount of €120,000 did not occur in 2020. Although, in my opinion, the logic of the adjustments was not sound, instead of the aggregate of the adjustments being neutral, they actually totaled negative €120,000 for the period 2017 to 2020 because the adjustment for 2020 did not occur in 2020.

Ms. O’Keeffe maintains: “that there was a valid accounting treatment of the overall earnings from 2017, 2018, 2019 and 2020 on the basis that the Side Letter in its original format was agreed”. However, as will be seen from the below, in short, Ms. O’Keeffe has confirmed that she concurs with my opinion that the scenario at Table 7.1 was not appropriate on the basis of the final signed side letter and therefore the deductions should not have been made (with my emphasis in bold):

“... As outlined in the table [Jacobs Table 7.1], on the basis of any credit / reduction adjustments being made in 2017, 2018 and 2019, a debit / increased adjustment should have been reported in 2020 earnings. This did not occur when these figures were released in February 2023, three years after I left RTE ... This treatment aligns with your own Scenario [at Table 7.1] and the treatment is also supported by the accrual of €120,000 made in the RTE accounts ...”.

“... My assertion is that Scenario [at Table 7.1] would have been appropriate if the originally drafted Side Letter was signed. I **concur with your opinion that Scenario [at Table 7.1] was not appropriate on the basis of the final signed side letter and therefore the deductions should not have been made.**”

### My analysis

- 7.31 In my opinion the logic of the adjustments made by RTE to published earnings of €20,000 (2017), €50,000 (2018) and €20,000 (2019) was not sound given my findings, amongst other things:
- (a) the Marked up Version provided by NK Management to RTE on 20 March 2020 made significant and fundamental changes;
  - (b) no refund was actually due to RTE;
  - (c) separately NK Management / Mr. Tubridy did not agree to provide a refund; and
  - (d) over the contract period (5 years) RTE did not request nor did Tuttle provide any credit notes for undelivered services.
- 7.32 In my opinion, based on the information and documentation provided to me to date, Table 7.2 below sets out the appropriate accounting treatment that RTE should have adopted.

<sup>26</sup> Ms. O’Keeffe is not included as a “relevant individual” for the purposes of this paragraph of my Report because she left RTE at the end of March 2020.

Table 7.2 – My opinion

	2017 €	2018 €	2019 €	2020 €
Negotiation occurs	511,667	545,000	545,000	466,250
Recognition of exit fee				120,000
Waiver of exit fee (reversal of recognition of exit fee)				(120,000)
No recoupment for undelivered services				
	<b>511,667</b>	<b>545,000</b>	<b>545,000</b>	<b>466,250</b>

7.33 In 2020, I would firstly recognise the exit fee and then recognise the waiver of it.

7.34 Mr. Collins has confirmed to me his agreement to Table 7.2, noting that the bottom line agrees to the position after the 2023 Restatement by RTÉ.

### Other matter

7.35 On 16 January 2020, NK Management sent an email to RTÉ, which stated amongst other things: "... any PR set to be released by RTÉ needs to be discussed in advance of any publication, this includes both salaries and pay cuts" (see paragraph 3.26 above). NK Management state that RTÉ failed to properly engage with them / Mr. Tubridy in advance of RTÉ publishing the Top Talent earnings for 2017 to 2019 in January 2021 and that had RTÉ done so that the publication issues could have been avoided. I am informed that the RTÉ Finance team was not involved in any liaison process with the "Talent" or the Agent prior to publication of Top Talent Earnings. It should be noted that person(s) from RTÉ who may be in a position to comment on NK Management's assertion are not available at the moment to meet with me as part of my review.

### MY FINDINGS

7.36 I find as follows:

- (a) In order for RTÉ to correct the position, the adjustments in June 2023 to restate the published earnings of Mr. Tubridy for 2017 to 2019 were appropriate.
- (b) It was not agreed between the parties that there would be a recoupment of fees, nor a refund due from Tuttle to RTÉ of €120,000. On the balance of probabilities, I find that the reality became clear on 20 March 2020 and 23 March 2020 when the Marked up Version of the Agreement / Side Letter was sent by NK Management to RTÉ.
- (c) On the balance of probabilities, there were several failures which significantly contributed to RTÉ publishing incorrect earnings in respect of Mr. Tubridy for 2017 to 2019. Those were:
  - (i) The significance arising from the changes made in the Marked up Version of the Agreement / Side Letter provided by NK Management to RTÉ was not properly detected, assessed nor understood by certain key individuals in the RTÉ Finance team.
  - (ii) On 23 March 2020, those involved in Finance in RTÉ had the opportunity to identify and raise a flag that the Marked up Version of the Agreement / Side Letter did not accord with the draft Agreement / draft Side Letter, and importantly that the earlier proposed accounting treatment of adjusting 2017, 2018 and 2019 was no longer

appropriate. The individuals in the Finance team who received the email on 23 March 2020 were Ms. O'Keeffe and Mr. Collins (copied to [REDACTED]). Ms. O'Keeffe and [REDACTED] had been part of the RTE negotiation team with NK Management, whilst Mr. Collins had not.

- (iii) On 6 April 2020, Mr. Collins had a telephone discussion with Deloitte. Mr. Collins has provided an overview of that call, albeit in my view that description lacks detail. However, it appears that Mr. Collins took comfort that RTE could proceed. In my meeting with Mr. Collins (see paragraph 4.28 above) we discussed:

MR. JACOBS: Did either of you two ask the question as to whether the marked up version i.e. with all the strikeouts, yeah –

-- whether that still encapsulated the -- the earlier draft?

MR. COLLINS: Well the conversation was that -- was this sufficient if you relied on the previous draft, was this amended draft sufficient now still to rely on.

Deloitte has informed me that (see paragraph 4.30(a) above) (my emphasis in bold):

"In relation to the evidence provided by RTE, we had noted, both through enquiry of the client and review of the draft side agreement provided by the CFO in February 2020, that there were undelivered elements in the 2015 contract which were required to be accounted for in accordance with paragraph 27 of IAS 1 ... On 12 February 2020, on a telephone call, RTE's chief financial officer, verbally outlined that based on RTE's review of the services provided by Tuttle Productions, a credit was due to RTE for the under provision of services during 2017 2018 and 2019. As outlined previously, the undelivered elements were set out by the client CFO as relating to clause 2.3 and clause 2.5 of schedule 1 of the 2015 contract. **No additional evidence was provided subsequently on 6 April to counter this position.**"

Deloitte has also informed me (see paragraph 4.30(b)):

"In relation to the final signed agreement, it states "In consideration of the parties entering into the agreement and RTE providing related side letters, it is hereby agreed that all pre-existing agreements are terminated and neither party shall have any continuing obligations or entitlements thereunder." We concluded that the substance of the final signed agreement was not inconsistent with the previous draft received such that there were undelivered services in the 2015 contracts, and it was negotiated between the parties that this undelivered service was not now being sought by RTE in return for the final loyalty bonus being waived. The circumstances which were contemplated during the drafting of the initial side agreement subsequently transpired i.e. the corresponding obligations of both parties regarding undelivered services and exit fees were offset and extinguished. In effect, the intent and purpose of the initial side agreement was retained in the final signed agreement."

Deloitte has also informed me (see paragraph 4.30(c)):

We note from documents reported in the public domain by Mr. Noel Kelly that the undelivered elements of the 2015 contract were addressed in e-mail correspondence between Mr. O'Keeffe or [REDACTED] and Mr. Kelly between 19 December 2019 and 28 February 2020, ahead of the final letter of agreement being signed. Based on those documents, the undelivered elements of the contract were acknowledged by both parties which is consistent with the evidence provided by RTE at the time.

As stated above Deloitte was not engaged to perform an audit of the Top Talent earnings, but the schedules prepared by management were subject to an Independent Reasonable Assurance Report. During my review I have had the benefit of meeting Person 3 [REDACTED] Mr. Noel Kelly and Mr. O'Malley, amongst others, which has enabled me to conclude that the final signed Agreement / Side Letter did not encapsulate the draft Agreement / draft Side Letter. Access to this information has enabled me to establish that:

- the additional services in the Tubridy 2015 Agreement were use it or lose it see paragraph 3.10 above);
- consequently, no refund was due to RTÉ (see paragraphs 3.10 and 6.28 above);
- Mr. O'Malley has stated to me that the set off that wording in paragraphs 3 and 4 of the draft Agreement / draft Side Letter was rejected (see paragraphs 4.32(c) and 6.25 above); and
- the final signed Agreement / Side Letter excludes any reference to “set off” (Figures 3.6 and 3.7, and paragraph 4.32(d)).

There are no notes available of the call on 6 April 2020, and therefore the information that has been provided to me is based on recollection.

- (d) On the balance of probabilities I find that the dates of 20 March 2020 or 23 March 2020, and 6 April 2020 were dates on which RTÉ's direction could have been changed.
- (e) On 20 August 2020, Deloitte issued three signed Independent Reasonable Assurance Reports in respect of RTÉ Top On-Air Talent Earnings for the years ending 31 December 2017, 31 December 2018 and 31 December 2019. Deloitte sent them by email to Person 1 who forwarded them onto Mr. Collins and Person 2 (see paragraph 4.11). In addition, the three Deloitte reports were not provided by RTÉ Finance to the Audit and Risk Committee, or to the RTÉ Board, notwithstanding the fact that Deloitte had addressed the reports to the Board Members of RTÉ. The schedules upon which Deloitte reported explicitly included a column for adjustments and the amounts of €20,000, €50,000 and €50,000, and therefore there was a missed opportunity for the Audit and Risk Committee and the RTÉ Board to raise questions due to non-provision of the three Deloitte reports.
- (f) In combination factors (c) to (e) above caused the RTÉ Finance function to remain on the course set in February 2020 believing that it was appropriate offset the exit fee against a supposed refund of fees due from Tuttle to RTÉ for undelivered services. NK Management sent the Marked up Version of the Side Agreement / Letter on 23 March 2020 to RTÉ. I note that Ms. O'Keeffe left RTÉ at the end of March 2020 following the change in CFO.
- (g) Ms. O'Keeffe describes the relevance of undelivered services to RTÉ's negotiation strategy:

“The documents show an initial overall strategy was developed in December 2019 by RTE, whereby for 2020 – 2025 contract, RTE offered Ryan Tubridy an annual fee of €420,000, and RTE would facilitate a third party sponsorship to the value of €75,000 p.a. This negotiation strategy also included an assertion by RTE, that not all the contracted services were fully delivered as per the agreement with a view to

persuade Ryan Tubridy to offset the value of his 2020 exit payment due under the 2015 – 2020 contract ... This proposal was made to the agent Noel Kelly....”.

In the context of the Tubridy 2015 Agreement and in particular to Schedule 1 of that Agreement, Person 3 referred to the phrase “use or lose” and I am informed that RTÉ had no legal entitlement to a refund from Tuttle / Mr. Tubridy.

- (h) Whilst there is some support for a total valuation of €116,128 (say €120,000) for undelivered services used in negotiation, I have found no spreadsheet or workings which provide a specific calculation that supports each of the adjustments of €20,000 (2017), €50,000 (2018) and €50,000 (2019) that were made, noting that these amounts represented the actual adjustments made by RTÉ to Mr. Tubridy’s earnings for 2017, 2018 and 2019 respectively. Person 2 raised queries on two different occasions (see paragraphs 6.17 to 6.18 (January 2020), and 7.20 to 7.23 (July 2020)). Although I mention that there is some support for a total valuation of €116,128, ultimately the relevance of this depends on there being an entitlement for a refund, the existence of a set off etc. neither of these apply in this instance.

The email between Person 2 and Ms. O’Keeffe dated 29 January 2020 refers that RTÉ had fully audited and disclosed to 2016 (see paragraph 6.17). I understand this to mean that the Top Talent earnings up to and including 2016 had already been published (12 December 2018). It follows, it is likely that the €120,000 was allocated to only three years (2017 to 2019) was because 2016 Top Talent earnings had already been published.

Ms. O’Keeffe has described: (i) that she cannot recall the precise methodology by which the value of the undelivered services was allocated across the three years, and (ii) however, a reasonable treatment could have been an equalisation of Mr. Tubridy’s earnings in the three year period on the legitimate basis that Mr. Tubridy provided the same level of service in each of the applicable years. That reference to the same level of service in each of the applicable years is puzzling given that it appears that the total value probably placed on undelivered services as €116,128 which is based assuming five years (not three) and the maximum number of events per year per paragraphs 2.3 and 2.5 of Schedule 1 to the Tubridy 2015 Agreement.

In Section 6 (paragraph 6.23) of this Report, I stated that having conducted my exercise, on the balance of probabilities, I find that in the absence of any other further explanations, my hypothetical exercise (which assumed the adjustments were made with an RTÉ objective to achieve a position where the “revised earnings” for each year 2017, 2018 and 2019 were all below €500,000)<sup>27</sup>, provides a very plausible explanation as to how the values of the adjustments of €20,000, €50,000 and €50,000 were calculated or allocated by RTÉ for 2017, 2018 and 2019 respectively. To re-iterate:

- whilst my exercise provides a very plausible explanation, it is not possible to be conclusive without having met all individuals to date; and
- my exercise, is consistent with my findings that no refund was due to RTÉ, and together with the totality of information that I have received, **all of which supports my findings that RTÉ’s restatement in 2023 was appropriate.**

<sup>27</sup> The hypothetical exercise also assumed that a refund was due by Tuttle / Mr. Tubridy to RTÉ, and as readers of this report will know I considered that assumption separately and found no refund was due.

## 8. 2017 to 2022 earnings for Mr. Tubridy

### BACKGROUND

- 8.1 On 12 July 2023, I issued an Interim Report in relation to the Top 10 Earners in RTÉ for the period 2010 to 2022.
- 8.2 In my 12 July 2023 Report, I confirmed that in respect of 2008 to 2016, I had found no errors in the published earnings figures by RTÉ for Mr. Tubridy. I further noted that the period 2017 to 2022 remained under review at the date of this Interim Report.
- 8.3 In this section of my Report I consider my Findings on Mr. Tubridy's Earnings for the period 2017 to 2022.

### MY ANALYSIS

- 8.4 I noted that the Invoices raised in PeopleSoft the years ended 31 December 2017 to 31 December 2019 matched the published Earnings, but that in the years ending 31 December 2020 to 31 December 2022 there were accruals. I performed a reconciliation between PeopleSoft and the Original Published Earnings. No issues were identified.

**Table 8.1 – Reconciliation between Agreement, PeopleSoft and original published earnings**

Calculation of 2020 Published Earnings for Mr. Tubridy	Per annum €	Pro-rated €	New Contract from 1 April 2020
Year 5 of 2015 Agreement	545,000	136,250	3 months
Annual fee as per 2020 Agreement	440,000	330,000	9 months
Total expected for 2020		466,250	
As included in PeopleSoft		459,964	
Accrued		6,286	
		466,250	Table 1.1 before adjustments in 2023 Restatement

Calculation of 2021 Published Earnings for Mr. Tubridy	Per annum €	Reference
Annual fee as per 2020 Agreement	440,000	
As included in PeopleSoft	431,619	
Accrued	14,667	
Reversal of 2020 accrual	(6,286)	
	440,000	Table 1.1 before adjustments in 2023 Restatement



Calculation of 2022 unpublished Earnings for Mr. Tubridy	Per annum €	New Contract from 1 April 2020
Annual fee as per 2020 Agreement	440,000	3 months
Total expected for 2020		
As included in PeopleSoft	398,444	
Accrued	14,667	
Reversal of 2021 accrual	(14,667)	
December 2022 invoice raised in January 2023	41,556	
	<u>440,000</u>	

8.5 In my opinion, having regard to (a) the Terms of Reference, and (b) the fact that the 2022 earnings figures have not been published:

- for the period 2017 to 2021 inclusive, all earnings figures have been correctly restated publicly; and
- for the period 2022 unpublished earnings are correctly stated.

Table 8.2 – Restated Earnings for Mr. Tubridy

Ryan Tubridy/Tuttle Productions	Publicly available information					Not published
	2017 €	2018 €	2019 €	2020 €	2021 €	2022 €
Published earnings - original	491,667	495,000	495,000	466,250	440,000	515,000
Add						
Adjustment 1	20,000	50,000	50,000			
Adjustment 2				56,250	75,000	
Restated Earnings	<u>511,667</u>	<u>545,000</u>	<u>545,000</u>	<u>522,500</u>	<u>515,000</u>	<u>515,000</u>
	Note 1	Note 1	Note 1	Note 1	Note 1	Note 1

*Adjustment 1* On 22 June 2023 RTE restated the figures for Mr. Tubridy's earnings is the subject of this Report

*Adjustment 2* Amounts of €75,000 are described in my First Report dated 16 June 2023. For 2020, €56,250 represents 9/12 of €75,000 being the period 1 April 2020 to 31 December 2020.

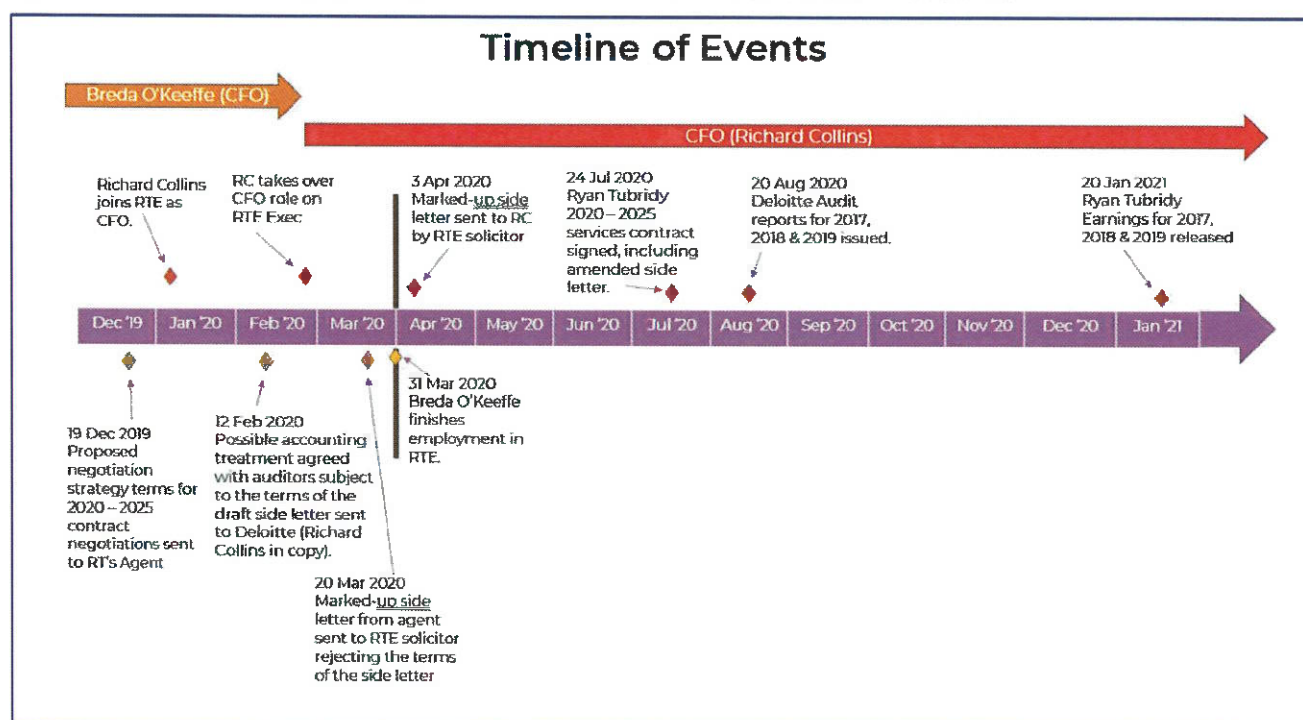
# 9. Supplemental Information

## BACKGROUND

- 9.1 In this Section of my Report, I present information that has been provided to me by individuals where I have identified it is important that this be considered by readers of the Report.

### MS. O'KEEFFE

Figure 9.1 - Timeline of events prepared by Ms. O'Keeffe and submitted to Paul Jacobs, Grant Thornton



- 9.2 Mr. Jacobs notes, as set out in Section 3, that discussions between RTÉ and Mr. Kelly appear to have commenced in or around October 2019.
- 9.3 Mr. Jacobs notes that Ms. O'Keeffe was also a recipient of the email dated 20 March 2020, with the marked-up Agreement / Side letter.

## OTHER

- 9.4 I understand that the role of the RTÉ Solicitor's Office is to provide professional legal advice to RTÉ on issues such as rights, obligations and risks within the contractual negotiation process and to prepare and finalise the contractual agreement, and that other parts of the business look after the commercial and financial aspects of that process.

# Appendix 1: My analysis of RTÉ proposal re new Tubridy contract

A1.1 In Section 3 of my Report, I described the “outline offer” sent by Ms. O’Keeffe to Mr. Kelly on 19 December 2019. I identified one spreadsheet with two versions Figure 3.2A (19 December 2019 sent to Mr. Kelly) and Figure 3.2B (sent internally within RTÉ on 18 December 2019).

Figure 3.2A – Attachment in email from Ms. O’Keeffe to Mr. Kelly on  
19 December 2019  
(File name: RT Dec 2019 offer.xlsx)

Figure 3.2B – Attachment in email internally within RTÉ  
sent on 18 December 2019  
(File name: RT Dec 2019 offer.xlsx)

STRICTLY PRIVATE AND CONFIDENTIAL		Desired outcomes for new contract	
<b>Proposed Offer Based on :</b> - 15 % cut to fees - Write off portion of 2017, 2018 and 2019 fees - New contract to apply from 1/1/2020 or soonest		15 % cut to fees Write off portion of 2017, 2018 and 2019 fees New contract to apply from 1/1/2020 or soonest	
<b>1 Current Contract</b>	€'000	<b>1 Current Contract</b>	€'000
Year 1 2015/2016	495	Year 1 2015/2016	495
Year 2 2016/2017	495	Year 2 2016/2017	495
Year 3 2017/2018	545	Year 3 2017/2018	545
Year 4 2018/2019	545	Year 4 2018/2019	545
Year 5 2019/2020	545	Year 5 2019/2020	545
Exit Fee of	120	Exit Fee of	120
Total Fees over the 5 year contract	2,745	Total Fees over the 5 year contract	2,745
Average fee (incl exit per annum)	549	Average fee (incl exit per annum)	549
Target fee level Less 15% Cut	467	Target fee level Less 15% Cut	467
<b>2 Exit fee offset</b>		<b>2 Exit fee offset</b>	
By agreement, the exit fee of €120k to be written off on the basis that the additional services contracted for in 2017, 2018 and 2019 were not required and were not delivered.		Exit fee of €120k to be written off on the basis that the additional services contracted for in 2017, 2018 and 2019 were not required and were not delivered.	
	€'000		€'000
Value for services not required/delivered in 2017	20	Value for services not required/delivered in 2017	20
Value for services not required / delivered in 2018	50	Value for services not required / delivered in 2018	50
Value for services not required / delivered in 2019	50	Value for services not required / delivered in 2019	50
	120		120
<b>3 Proposed value of new Contract</b>		<b>3 Proposed value of new Contract</b>	
Target annual fee level Less 15% Cut	467	Fee level	467
Fee for 5 years	2,333	For 5 years	2,333
Cross Platform loyalty fee	120	Exit fee foregone	120
Total Value required over 5 years	2,453	Total Value required over 5 years	2,453
Per annum Earnings	495	Per annum fee	495
<b>4 Proposed Offer</b>		<b>4 Proposed Offer</b>	
RTE Fee per annum	420	RTE Fee per annum	420
Commercial sponsorship with 3rd party facilitated by RTE	75	Commercial deal with 3rd party facilitated by RTE	75

A1.2 In my analysis of Figure 3.2B:

- (a) My analysis shows that the proposed €495,000 for the next 5 years actually comprised (~~€446,250~~ plus ~~€20,400~~ plus ~~€24,000~~ plus what appears to be ~~€4,350~~ for rounding):

Average fee for last 5 years (excl. exit fee) = €525,000 less 15% = ~~€446,250~~ p.a.

Plus

85% (i.e. 100% less 15%) of the exit fee pro-rated across the 5 years ( $€120,000 / 5 * 0.85$ ) = ~~€20,400~~ p.a.

Plus

~~€24,000~~ p.a. for “exit fee foregone” ( $€120,000 / 5$ )

Plus

~~€4,350~~ p.a. rounded up to €495,000.

- (b) I.e. the €495,000 recognises the exit fee twice: firstly, it includes €20,400 (being the annual equivalent @ 85% per above) and secondly, the €24,000 (being the annual equivalent per above).
- (c) It appears that the RTÉ component of the €495,000 being €420,000 actually became €440,000 (per the Tubridy 2020 Agreement described above). I note that €440,000 plus €75,000 equals €515,000.

A1.3 Analysing the RTÉ calculation on per annum basis, the €495,000 includes €20,400 of “exit fee” (valued at 85%) and a further €24,000 for “exit fee foregone”, as shown below:

Table A1.1 – Analysis of the RTÉ calculation

	Before 15% reduction €000	Less 15% reduction €000	After 15% reduction €000	
Average fee per annum	525.00	(78.75)	446.25	
Exit fee pro-rated over 5 years p.a. ( $€120,000 / 5$ )	24.00	(3.60)	20.40	
	549.00	(82.35)	466.65	Target fee level after 15% cut
Exit fee foregone (total €120,000) / 5 years			24.00	
			490.65	
			4.35	Rounding?
			<u>495.00</u>	RTÉ figure for “per annum fee”

A1.4 If the above-mentioned analysis is performed using Figure 3.2A, the €495,000 includes €20,400 (exit fee – annual equivalent @ 85%) and €24,000 (Cross Platform loyalty fee annual equivalent).

# Exhibit 1 – Terms of Reference

## TERMS OF REFERENCE – CONFIDENTIAL

1. The Audit and Risk Committee of RTÉ (the “**Committee**”) has directed that a review be conducted in relation to:
  - 1.1 the contracts of RTÉ’s top 10 most highly paid on-air presenters to independently validate that all remuneration figures have been correctly stated publicly and properly accounted for by RTÉ in each year during the period from 2008 to 2022 inclusive, i.e. the top 10 reported by RTÉ in each year during that period; and
  - 1.2 the understatement by RTÉ of Mr. Tubridy’s published remuneration by €120,000 in the period 2017-2019.  
  
(the “**Review**”).
2. The Review shall be conducted by Grant Thornton Corporate Finance Limited (“**Grant Thornton**” or the “**Reviewer**”). Arthur Cox LLP (“**Arthur Cox**”) has been appointed by the Committee to act as point of contact for the Review in respect of the conduct of the Review. The Committee and Arthur Cox will receive the output of the Review at the same time.
3. The Review arises from and is supplemental to the Report of Grant Thornton dated 16 June 2023 (the “**First Report**”).
4. The Review will consider all relevant available documentation, including without limitation commercial contracts, books of account, details of any relevant ‘barter’ accounts, electronic documents and information and accounting systems, where relevant, and Grant Thornton will meet with relevant personnel, as necessary.
5. All relevant documentation (as described above) shall be sourced and provided by RTÉ at the request of Grant Thornton directly or through Arthur Cox.
6. Confidentiality will be maintained throughout the Review to the greatest extent possible having regard to the requirements of fair procedures and other legal obligations.
7. RTÉ shall provide Grant Thornton (and where relevant Arthur Cox) with all reasonable cooperation and assistance in order to carry out the Review within the time frame specified.
8. Following consultation with Grant Thornton, the Terms of Reference may be amended (to include extending the scope of the Review) by the Committee.
9. The Review will be conducted in accordance with the principles of natural justice.
10. During the course of the Review, Grant Thornton may meet any witness or relevant person(s) with a view to establishing the facts.
11. Subject to the timing considerations set forth in paragraph 15, on completion of the Review, Grant Thornton shall produce a report for RTÉ (the “**Second Report**”) in one or more parts as required for the purposes of paragraphs 1.1. and 1.2. In advance of completing the Second Report, where appropriate to respect the principles of fair procedures, a draft of the Second Report and/or relevant extracts will be provided to individuals to afford them an opportunity to comment on its content prior to its finalisation.

## Terms of Reference

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12. Having considered such comments (if any), Grant Thornton will finalise and submit the Second Report in one or more parts as required for the purposes of paragraphs 1.1. and 1.2.
13. The Second Report shall include details of the methodology adopted, relevant evidence gathered and Grant Thornton's findings of fact based on Grant Thornton's analysis of same.
14. Refusal or failure to co-operate with the Review by any party will not prevent the Reviewers proceeding and issuing a Second Report based on the information available .
15. It is requested that the review at 1.1, be conducted in so far as is possible as a desktop /paper review and findings reported to the Committee within 2 weeks of appointment. The findings of that element of the Review may be provided to the Committee before the conclusion of the review described in paragraph 1.2. Every effort will be made to conclude the second element of the Review, described in paragraph 1.2, within 4 weeks, however it is acknowledged that additional time may be required. Where Grant Thornton contemplates requiring additional time, it shall at the earliest available opportunity apprise the Committee of same, explain why additional time is needed, and how much additional time it believes it shall require.
16. For the avoidance of doubt the Review and Second Report shall be limited to findings of fact. Facts shall be determined on the balance of probabilities. 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 recommendations as regards the potential application of RTE's disciplinary proceedings or otherwise, such decisions shall be for RTE alone.
17. If required or requested, a stenographer may be present at any interviews with individuals held during the Review and/or a recording of any such interviews may be arranged. The Review shall provide any interviewees with a transcript or notes of their interview.





**Grant Thornton**

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