

**Report to the Director General of RTÉ
in respect of Voluntary Exit Programmes operated in 2017 and 2021**

Dated 30 January 2024

McCann FitzGerald LLP

Riverside One

Sir John Rogerson's Quay

Dublin 2

CONTENTS

1.	Executive Summary	3
2.	Overview and background	8
3.	Scope	10
4.	Methodology	11
5.	Limitations	15
6.	Context for the 2017 and 2021 VEPs	17
7.	Review of the ‘end to end’ processes	32
8.	The former Chief Financial Officer 2012-2020	44
9.	Public statements made by RTÉ in relation to the VEPs	54
10.	Findings in relation to an additional matter	59

APPENDIX 1 - Terms of Reference

APPENDIX 2 - Extract from Oireachtas PAC meeting on 13 July 2023

1. Executive Summary

- 1.1 In accordance with its Terms of Reference (**Appendix 1**), McCann FitzGerald LLP (“**McCann FitzGerald**”) carried out a review voluntary exit programmes (“**VEPs**”) operated by Raidió Teilifís Éireann (“**RTÉ**”) in 2017 and 2021 (the “**2017 and 2021 VEPs**”). During the course of its review, McCann FitzGerald engaged with 17 current and former RTÉ staff members (or their representatives), either through in-person interviews or in writing, and reviewed over 6,700 hard and soft copy documents.
- 1.2 The background for both the 2017 and 2021 VEPs was the restructuring of RTÉ in pursuit of the “One RTÉ” initiative and the well-publicised poor financial position in which RTÉ found itself, which necessitated a reduction in costs through, amongst other initiatives, a reduction in headcount. The terms of both the 2017 and 2021 VEP were approved by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (the “**Department**”) before the schemes were launched.

2017 VEP

- 1.3 The objective of the 2017 VEP was headcount reduction and cost savings. Over 250 applications were submitted under the 2017 VEP and 177 were successful – an approximately 70% application success rate. Cost savings of 80% or more were identified in the vast majority of successful applications.
- 1.4 In a small number of exits, cost savings of less than 80% were identified and regard was had to specific business cases in deciding whether to accept or reject their applications. We identified one case where an employee (Employee Z) whose role was redundant and who was in dispute with RTÉ received a payment equivalent to four months remuneration, over and above the terms of the 2017 VEP.
- 1.5 The former Chief Financial Officer, Ms Breda O’Keeffe (the “**former Chief Financial Officer 2012-2020**”), departed RTÉ under the 2017 VEP. We considered her exit arrangements in light of the comments made before various Oireachtas Committees. While neither the former Chief Financial Officer 2012-2020 nor the former Director General, Ms Dee Forbes (the “**former Director General**”), were available for interview, the former Chief Financial Officer 2012-2020, through her solicitors, provided information for consideration during the review and responded to any queries put to her. Our findings are as follows:

- (a) Business case for her departure

The former Chief Financial Officer 2012-2020 has provided details of the business case for her departure that was discussed between her and her line manager, the former Director General. This business case was based on a named individual being appointed as the former Chief Financial Officer 2012-2020's successor as CFO, leading to a cost saving to RTÉ of c. €200,000 per annum. It is clear from correspondence issued by the former Chief Financial Officer 2012-2020 to the former Director General that the former Director General agreed, in September 2017, that the former Chief Financial Officer 2012-2020 would depart RTÉ under the 2017 VEP. The former Chief Financial Officer 2012-2020 subsequently submitted an application to the 2017 VEP directly to the former Director General. The former Chief Financial Officer 2012-2020's solicitors have questioned whether this agreement of September 2017 was legally binding. Our view is that it was unlikely to have been legally binding on RTÉ. Nonetheless, it documents the understanding between the former Chief Financial Officer 2012-2020 and the former Director General which came to fruition.

The former Chief Financial Officer 2012-2020's departure was postponed on a number of occasions at RTÉ's request, but in May 2019, a legally binding offer letter was issued to the former Chief Financial Officer 2012-2020, which she accepted. A second offer letter was issued to her in September 2019 extending her termination date at RTÉ's request. While the viability of the business case proposed by the former Chief Financial Officer 2012-2020, and accepted by the former Director General, lacked certainty in circumstances where it envisaged a promotion/appointment of a specified RTÉ staff member (who was, we note, highly regarded and spoken of informally as a potential successor) to the role of Chief Financial Officer without any internal or external promotion/recruitment competition, it was clear from no later than July 2019 that the CFO role would be filled using an externally advertised recruitment process open to external applicants and that there was at least a high risk that the business case underlying the former Chief Financial Officer 2012-2020's departure would not materialise. By November 2019, the outcome of the CFO recruitment process was known, and it was clear that the cost savings envisaged in the former Chief Financial Officer 2012-2020's business case would not be made. No alternative business case appears to have been proposed or considered when clearly further consideration was required.

The former Chief Financial Officer 2012-2020 has stated, through her solicitors, that the issue of cost savings was entirely the responsibility of the former Director General and not her. She further asserts that individual applicants were not responsible for ensuring that cost savings were achieved by their departure, noting in particular that the former Director

General informed the Human Resources Director that cost savings would be made as a result of the former Chief Financial Officer 2012-2020's exit. It remains however that the former Chief Financial Officer 2012-2020 was the Chief Financial Officer at the relevant time, and it was she who, on her account, proposed the business case for her departure to the former Director General in the first place. The former Director General has not had an opportunity to comment on the former Chief Financial Officer 2012-2020's business case as she was unable to participate in the review for medical reasons. We acknowledge that by the time it was known with certainty that the cost savings associated with the former Chief Financial Officer 2012-2020's departure would not materialise, the former Chief Financial Officer 2012-2020 had already accepted her formal VEP offer, which was a legally binding contract between her and RTÉ, and that neither the offer letter nor the 2017 VEP rules expressly provided for a withdrawal of a formal VEP offer once one was made.

(b) Compliance with the terms of the 2017 VEP

The former Chief Financial Officer 2012-2020's application was not considered and approved by the Executive Board as was required under the rules of the 2017 VEP. The former Chief Financial Officer 2012-2020 asserts that responsibility for failing to comply with the terms of the 2017 VEP rests solely with RTÉ and not with the former Chief Financial Officer 2012-2020. In this regard, we accept that individual applicants were not responsible for bringing their own applications to the Executive Board for approval. The former Chief Financial Officer 2012-2020 also asserts, and we accept that assertion, that it would not have been appropriate for her to be involved in Executive Board meetings where her own application was discussed. In this context, the former Chief Financial Officer 2012-2020 makes the point that she was entitled to rely on the formal offer letters that were issued to her in May and September 2019. These formal offer letters, which were the same form of letter issued to all successful applicants under the 2017 VEP, stated that the Executive Board had approved her application, and the former Chief Financial Officer 2012-2020, through her solicitors, says that she assumed this to be accurate. She also asserts that her voluntary exit offer was in accordance with the scheme *'and not pursuant to any alleged agreement reached prior to the introduction of the Scheme'*. We have however noted, during the course of our review:

- (i) that the letter was issued by the Director of Human Resources on instruction from the former Director General;
- (ii) that prior correspondence from the former Chief Financial Officer 2012-2020 to the former Director General records that it had been *'agreed'* that she would

exit RTÉ under the 2017 VEP (and in this regard, we are also satisfied that the former Director General had authority under broad powers given to her under section 89 of the Broadcasting Act 2009 to enter into such an agreement); and

- (iii) that the Executive Board had not in fact approved the exit regardless of what was said in the formal offer letter.

In these circumstances, we are satisfied that the approval process for the 2017 VEP was not complied with by RTÉ. The absence of an opportunity to meet with the former Director General, for medical reasons, has inhibited our ability to understand why her application was not put before the Executive Board for approval.

1.6 In ten cases, applications for exit under the 2017 VEP were approved and termination payments, including statutory redundancy payments, paid, but the relevant departures did not in our view satisfy the requirements of a redundancy within the meaning of the Redundancy Payments Acts. While the reasons for this varied and included roles that needed to be backfilled within a short period of time, the Revenue Commissioners may take the view that RTÉ should not have applied the tax exemption applicable to statutory redundancy payments to the payments received by some or all of these individuals. This will however be a matter for the Revenue Commissioners to determine. The total amount of statutory redundancy sums paid to these ten individuals was €223,010. It is important to recognise that this finding relates only to the application of the income tax exemption that applies to statutory redundancy payments and that other income tax reliefs may have been applicable. It is important also to recognise that it remained within RTÉ's power, under the rules the 2017 VEP, to accept voluntary severance applications where the criteria for the 2017 VEP were satisfied, even where a statutory redundancy did not arise.

1.7 Contemporaneous with the 2017 VEP, there were a number of exits which took place that did not involve applications for exit under the 2017 VEP. While these departures are outside the scope of our Terms of Reference, RTÉ agreed that we should review these departures as part of our review, and they are commented on in our report. Overall, we have noted that these exits, which involved termination payments being made to the departing staff members, were for a variety of reasons including but not limited to at the instigation of RTÉ and the settlements of legal claims. In circumstances where these departures concern legal settlements, the Director General, Mr Kevin Bakhurst (the "**Director General**"), has been separately briefed on these departures.

- 1.8 The focus of the 2021 VEP was also on headcount reduction but in contrast to the 2017 VEP, applications under the 2021 VEP would only be approved where the role could be fully suppressed and where there would be no adverse impact on content and services. The threshold under the 2021 VEP was more difficult to reach than the 2017 VEP, as evidenced by the low number of successful applicants – 26 out of 177 applications – a less than 15% application success rate.
- 1.9 While the 2021 VEP was the source of some discontent amongst RTÉ employees who were disappointed that their applications had not been accepted, having reviewed all formal applications that were submitted under the 2021 VEP, we are satisfied that they were considered consistently and that all departures were in compliance with the terms of the VEP.

Findings in relation to an additional matter

- 1.10 At the request of the Director General, and following the Director General's receipt of an unsolicited communication from a member of staff in RTÉ, we considered the exit arrangements of a former employee who departed RTÉ before the 2017 VEP and whose exit would therefore have been outside of the scope of our review. This individual availed of an early retirement scheme but was also engaged in a legal dispute which resulted in settlement. In circumstances where this matter concerns a legal settlement, the Director General has been separately briefed in relation to this departure.

2. Overview and background

Overview

- 2.1 The purpose of this report is to set out the key findings from a review carried out by McCann FitzGerald into the 2017 and 2021 VEPs.
- 2.2 This review was carried out under Terms of Reference and is subject to the limitation of scope identified in section 5 below.

Background

- 2.3 On Wednesday, 5 July 2023, the Oireachtas Joint Committee on Tourism, Culture, Arts, Sport and Media met to resume a discussion on “*Transparency of RTÉ Expenditure of Public Funds and Governance Issues*”¹. This meeting was attended by current and former representatives of RTÉ, one of whom was the former Chief Financial Officer 2012-2020.
- 2.4 During the course of that meeting, Senator Martin Conway asked the former Chief Financial Officer 2012-2020, why she left RTÉ. The former Chief Financial Officer 2012-2020 informed Senator Conway that she ‘*was in the organisation for 18 years*’ and that ‘*at the time I felt had not planned to spend that long in RTÉ and I decided it was time to go*. Later in the discussion, the former Chief Financial Officer 2012-2020 returned to this question, stating as follows: ‘*The Senator asked me why I left RTÉ. I had been there for 18 years. I also left under a voluntary restructuring programme at the time. I just want to make that clear. At the time, there was an offer in place, a restructuring programme, with terms and conditions for staff. I applied under that scheme.*’
- 2.5 Following a week of media commentary in which questions were asked about the exit scheme under which the former Chief Financial Officer 2012-2020 left RTÉ, the matter was raised during a meeting of the Oireachtas Public Accounts Committee which took place on Thursday, 13 July 2023². The purpose of this meeting was to resume a discussion in relation to the “*Appropriation and Expenditure of Public Monies by RTÉ*”, and it was attended by a number of representatives from RTÉ, including Mr Adrian Lynch (the “**Director of Audiences and Channels**”), and the Director General.
- 2.6 During this meeting, Deputy Alan Kelly questioned the Director of Audiences and Channels in relation to the former Chief Financial Officer 2012-2020’s exit package. The Director of Audiences and Channels said that ‘*the first time that I found out that* [the former Chief Financial

¹ https://data.oireachtas.ie/ie/oireachtas/debateRecord/committee_of_public_accounts/2023-07-06/debate/mul@/main.pdf

² https://data.oireachtas.ie/ie/oireachtas/debateRecord/committee_of_public_accounts/2023-07-13/debate/mul@/main.pdf

Officer 2012-2020] *had exited through the voluntary exit package was when she stated it last week'*, and that this package '*never came to us [being the executive board of RTÉ] for sign-off*'.

- 2.7 Deputy Kelly put it to the Director General that this needed to be investigated and said that he also wanted RTE to '*go back and see if anyone else who finished up in RTÉ got a similar package where the post was not suppressed*'. Further questions were asked by Deputy Catherine Murphy and in response, the Director of Audiences and Channels commented that a number of staff members has applied for voluntary exit, but they were refused because the scheme was oversubscribed. Deputy Colm Burke asked who signed off on the former Chief Financial Officer 2012-2020's package and in response, the Director General, stated '*I have seen some emails on this because I made inquiries after the last committee meeting. It was agreed between the then director general and the then CFO. ... It was agreed between [the former Director General] and [the former Chief Financial Officer 2012-2020]*'.
- 2.8 Later that evening, in an email to staff, the Director General announced the commissioning of an external review of RTÉ's 2017 and 2021 VEPs. This announcement led to the appointment of McCann FitzGerald to conduct this review.

3. **Scope**

The scope of the review, as set out in the Terms of Reference, is as follows:

- (a) To complete an analysis of the context in which the 2017 and 2021 VEPs commenced and operated;
- (b) Whether the terms and conditions of the 2017 and 2021 VEPs were complied with in each individual case where a voluntary exit offer was made to an employee;
- (c) Whether the release of individuals from their employment through the 2017 and 2021 VEPs generated cost savings or otherwise for RTÉ;
- (d) Whether an approach that was consistent with the terms of the scheme was taken towards individuals who had applied for voluntary exit through the 2017 and 2021 VEPs, but where no voluntary exit offers were made;
- (e) The 'end to end' process which was followed by RTÉ in administering the 2017 and 2021 VEPs;
- (f) Whether tax exempt statutory redundancy payments were appropriately paid to those individuals who accepted voluntary exit offers under the 2017 and 2021 VEPs; and
- (g) Any public statements made by RTÉ in relation to the VEPs.

4. **Methodology**

Review team

- 4.1 The McCann FitzGerald review team was led by Donal Hamilton, Partner, and was comprised of McCann FitzGerald personnel who practice in the area of employment law.

Documentation

- 4.2 On 31 July 2023, McCann FitzGerald requested information from RTÉ which it considered to be relevant to the review. Following conclusion of a Data Processing Agreement between RTÉ and McCann FitzGerald, electronic documentation was collated by RTÉ and provide to McCann FitzGerald for review on a ‘rolling’ basis.
- 4.3 In total, over 1,000 electronic documents were provided to McCann FitzGerald.
- 4.4 In addition to soft-copy documentation provided to McCann FitzGerald, McCann FitzGerald also attended RTÉ’s offices to review and take copies of hard copy documentation for the purposes of the review. An additional c.2,500 hard copy documents were provided to McCann FitzGerald through this process. Files concerning certain legal settlements were also reviewed on site at RTÉ.
- 4.5 McCann FitzGerald also reviewed 3,242 email communications provided to it by RTÉ following the conduct of targeted IT searches. These targeted IT searches were based on search terms provided to RTÉ by McCann FitzGerald.

Meetings

- 4.6 During the course of the review, McCann FitzGerald met with the following individuals:
- (a) Adrian Lynch, Director of Audiences and Channels and Deputy Director General;
 - (b) Eimear Cusack, Director of Human Resources;
 - (c) Richard Waghorn, (“**Director of Operations and Technology**”);
 - (d) Paula Mullooly, (the “**former Director of Legal**”);
 - (e) Mike Fives, Group Financial Controller;
 - (f) Human Resources Manager;

- (g) Head of Human Resources, Operations and Production Services;
- (h) Head of Human Resources, ACM, Commercial and Technical;
- (i) Head of Human Resources, Content;
- (j) Head of Human Resources, News & Current Affairs;
- (k) HR Manager, 2RN; and
- (l) Senior HR Manager.

4.7 McCann FitzGerald wrote to representatives of the former Director General to ask if she would be in a position to meet during the course of the review. The former Director General's representatives advised that Ms Forbes was unable to participate in the review for medical reasons. The draft report was sent to Ms Forbes's 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 the 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 reserved the right to comment further on all matters when she is medically fit to do so.

4.8 McCann FitzGerald wrote to representatives of the former Chief Financial Officer 2012-2020 to ask if she would be in a position to meet during the course of the review. The former Chief Financial Officer 2012-2020's representatives advised that she would not be in a position to meet with McCann FitzGerald for personal reasons, but she provided copies of a Statement submitted to the joint Oireachtas Committee on 5 July 2023, together with written statements addressing (i) her exit from RTÉ, and (ii) the 2017 VEP, for the purposes of assisting the review. McCann FitzGerald had a number of follow up questions for the former Chief Financial Officer 2012-2020 following its review of these documents, and the former Chief Financial Officer 2012-2020 provided written responses to all of the questions posed to her through her representatives. A draft copy of this report was provided to the former Chief Financial Officer 2012-2020's representatives before the report was finalised.

4.9 The former Chief Financial Officer 2020-2023 provided written information to McCann FitzGerald prior to his departure from RTÉ in October 2023.

4.10 McCann FitzGerald provided written questions to the former Chair of RTÉ, Ms Moya Doherty, and former RTÉ Board member and Acting Chair of RTÉ, Mr Shane Naughton. Both Ms

Doherty and Mr Naughton responded to our questions and answered follow-up questions as required.

- 4.11 McCann FitzGerald is grateful to all participants for their assistance in the review.

Unsolicited communication

- 4.12 After it was announced to RTÉ staff that McCann FitzGerald would be conducting a review of the 2017 and 2021 VEPs, McCann FitzGerald received seven unsolicited communications from former RTÉ staff members.
- 4.13 In the first unsolicited communication, information was provided by a former staff member who had retired from RTÉ in the 1990s. On review, it was noted by McCann FitzGerald that this information long pre-dated the subject matter of this review and was not relevant.
- 4.14 The second unsolicited communication was sent to the Director General by an employee of RTÉ. This communication suggested that a named former employee should be included in the review. RTÉ confirmed that, notwithstanding that this departure pre-dated the 2017 or 2021 VEPs, this individual's arrangements should be reviewed, and we proceeded to do so. This individual's departure is considered in section 10.
- 4.15 In the third unsolicited communication, a former employee stated that he wanted to '*make a submission / talk to an FOI request I have made to RTE in relation to the RTE Voluntary Exit Scheme, related to the way my own application was handled when I left RTE*'. McCann FitzGerald found no reference to this former employee in the documentation provided to it by RTÉ, and RTÉ confirmed that this individual did not apply for exit under either the 2017 or 2021 VEPs.
- 4.16 The fourth unsolicited employee communication was received by the Director General and passed on to McCann FitzGerald at the employee's request. This individual is commented on in paragraph 7.39.
- 4.17 A fifth unsolicited communication was received by McCann FitzGerald by post. This document, which was anonymous, suggested that McCann FitzGerald should examine '*the arrangements made*' with a named former member of staff. McCann FitzGerald consulted with RTÉ which confirmed that the individual's arrangements should be reviewed. This individual is one of the individual cases considered in section 7.

- 4.18 The sixth unsolicited communication was made to RTÉ's HR team and was a request by a current RTÉ employee to have their unsuccessful application for exit, and alleged assurances given to her by a line manager about the chances of success in a VEP application under the 2021 VEP, considered by McCann FitzGerald during the course of the review. While aspects of this communication would be for consideration under an internal grievance procedure rather than this review, this individual's application was considered by McCann FitzGerald during its assessment of the consistency of decision making, as commented on in section 7.
- 4.19 The seventh and final unsolicited communication was made directly to McCann FitzGerald and was a request by a current RTÉ employee to have their case considered. While this individual stated that they had applied unsuccessfully under the 2021 VEP, it was clear that the issues raised in the communication were of a nature that would be more appropriately considered through RTÉ's internal processes. McCann FitzGerald did however consider this individual's application as part of its assessment of the consistency of decision making, as commented on in section 7.

5. **Limitations**

- 5.1 This review and report are based on information made available to McCann FitzGerald by RTÉ, and on meetings with, and/or written statements provided by, the persons noted above. The purpose of McCann FitzGerald's meetings with the current and former RTÉ staff members identified above was to understand the context and practical operation of the VEPs, and to understand certain decisions. These conversations were conducted with a view to getting a full understanding of the relevant issues involved and a detailed understanding of individual cases of interest. This review, and our interviews with RTÉ staff, did not constitute a formal investigation into the roles and activities of any particular individual or group of individuals. Any such investigations would need to be conducted pursuant to applicable HR policies.
- 5.2 A significant limitation in this report is the fact that the former Director General was unable to participate. The former Director General provided a valid reason for this, as noted above, but it nonetheless remains a significant limitation of the Report, as it means that (i) certain hypotheses could not be tested with the former Director General during the course of the review, and (ii) accounts of private conversations with the former Director General could not be corroborated. McCann FitzGerald would welcome the opportunity to meet with the former Director General at a future point and may require the opportunity to revisit certain elements of the report following that engagement.
- 5.3 An advantage during the review, but one that creates a limitation in our report, is the extent of access that was given to McCann FitzGerald. As noted in paragraphs 4.2 to 4.5, McCann FitzGerald was provided with extensive access to soft and hard copy information, which contained personal data, special categories of personal data, information which is the subject of confidentiality restrictions and legal files containing information that is subject to legal advice and litigation privilege. The level of detail that can be included in certain parts of the report has therefore been limited having regard to RTÉ's legal obligations to former employees, and the privacy and data protection rights of those former employees which arise under the EU General Data Protection Regulation and the Data Protection Act 2018. Where, however, we consider that there is additional information or detail that RTÉ should be aware of, we have separately briefed the Director General, in relation to that information. For clarity however, no additional detail provided to the Director General, departs from or varies any finding contained in this Report.
- 5.4 It is also important to note that the views expressed by McCann FitzGerald represent its views and recommendations to RTÉ. They are not the same as a judgment of a court of law. The views

of McCann FitzGerald are not binding on any person. They do not determine civil or any other liability.

- 5.5 To the extent that McCann FitzGerald refer to any non-compliance with any applicable rules, this reflects its views but, importantly, whether there has in fact been a breach of any such rules is ultimately a matter for a relevant court, tribunal or other appropriate decision-making body. Whilst McCann FitzGerald has considered relevant facts and matters closely, and are subject-matter experts in employment law, it is of course always open to a relevant court, tribunal or other appropriate decision-making body to form a different view based on the relevant facts.
- 5.6 Where relevant, the standard of proof applied by McCann FitzGerald in reaching its conclusions was the balance of probabilities.

Assumptions

- 5.7 In conducting this review and preparing this report, we have made certain assumptions as set out below. Unless expressly stated otherwise, we have assumed:
- (a) That all documentation and information provided to us by RTÉ is true, accurate and not misleading, and accordingly, we have not independently verified the provenance or contents of any documents or information provided to us;
 - (b) That any agreements provided to us have been duly executed and remain in full force and effect, save where otherwise brought to our attention;
 - (c) Where we have requested information, that (i) the information provided to us in response comprises a full and complete response to that enquiry, and (ii) where no information has been provided, there is no information that relates to that query.
 - (d) That all documents in the form of copies are complete copies that conform to the originals; and
 - (e) That where extracts or summaries have been provided to us, that they are accurate and do not give a misleading view in relation to the underlying documents and issues.

6. Context for the 2017 and 2021 VEPs

RTÉ's Legislative Framework

- 6.1 The Broadcasting Authority Act 1960 (the “**1960 Act**”) established Radio Éireann as a statutory corporation, i.e. a body corporate with its own legal personality and existence, described in the early legislation as “*the Authority*”. As a body corporate, the Authority was (and remains) a separate legal entity to the State and to the Government and is separate also to the members of the RTÉ Authority (now the RTÉ Board) itself.
- 6.2 The Broadcasting Authority (Amendment) Act 1966 changed the then-Authority’s name to “*Raidio Teilifís Éireann*”. The 1960 Act was later repealed by the Broadcasting Act 2009 (the “**Broadcasting Act**”), which made it clear that, notwithstanding the repeal of the 1960 Act, the then-Authority endured, albeit that the Broadcasting Act recast the then-Authority as the RTÉ Board.
- 6.3 The Department funds RTÉ, in part, through a non-repayable “*grant-in-aid*” from the television licence fees that are collected. This equates to the amounts paid to it by the Department of Social Protection, together with the amounts collected by An Post net of collection costs and a 7% levy to the Broadcasting Fund as determined by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (the “**Minister**”).
- 6.4 A statutory corporation such as RTÉ will have statutory objects and both express and implicit powers in order to achieve them. The objects of RTÉ are set out in section 114(1) of the Broadcasting Act and the values that RTÉ should embody when seeking to achieve its objects are described in section 114(2) (such as being responsive to the interests and concerns of the whole community, being mindful of the need for understanding and peace within the whole island of Ireland, having special regard for the Irish language, upholding the democratic values enshrined in the Constitution, etc). Section 98 requires RTÉ to be independent in pursuing its objects.
- 6.5 RTÉ’s express powers include, at section 114(4)(d), the power ‘*to make contracts, agreements and arrangements incidental or conducive to the objects of RTÉ*’ and, at section 90, the power to recruit and employ staff. A member of staff of RTÉ ‘*shall hold his or her employment on such terms and conditions as the corporation from time to time determines*’ (section 90(3)).

6.6 Section 114(7) provides that 'RTÉ shall have all such powers as are necessary or incidental to the attainment of the objects specified in subsection (1), and which are not inconsistent with this Act.'

Governance

6.7 There is a 12-member statutory board of RTÉ which is referred to in this report as the RTÉ Board, each of the members of which must have experience of or have shown capacity in one or more areas of competence that the Broadcasting Act prescribes.

6.8 Of the 12 members of the RTÉ Board:

- 6 are appointed by the Government on the nomination of the Minister;
- 4 are appointed by the Government on the nomination of the Minister after liaising with the Joint Oireachtas Committee on Tourism, Culture, Arts, Sport and Media, which may advise the Minister in this regard;
- 1 is appointed by the Government from among the members of staff of RTÉ following an election by the wider body of staff for this purpose; and
- the Director General of RTÉ is a member, *ex officio*.

6.9 At least 5 members of the RTÉ Board must be women and at least 5 must be men.

6.10 The Minister appoints the Chair of the RTÉ Board from among its members.

6.11 Although the Broadcasting Act permits the appointment of a board member for up to two terms of 5 years each, section 4.5 of the (more recent) *Code of Practice for the Governance of State Bodies* (as amended in 2020) (the "**State Code**") provides that a person should not normally serve more than 8 years on the board of a State body.

6.12 Under section 87 of the Broadcasting Act, members of the RTÉ Board must:

- (a) represent the interests of viewers and listeners;
- (b) ensure that the activities of RTÉ in pursuance of its statutory objectives are performed efficiently and effectively;
- (c) ensure that the gathering and presentation by RTÉ of news and current affairs is accurate and impartial; and

- (d) safeguard the independence of the corporation, as regards, the conception, content and production of programmes, the editing and presentation of news and current affairs programmes and the definition of programme schedules from State, political and commercial influences.
- 6.13 Borrowing from company law, section 3.1 of the State Code states that the members of a state body must *'act in good faith in what the Board member considers to be the interests of the [statutory corporation]'* and *'in accordance with the [statutory corporation's] constitution'*. The State Code also requires a member of a state body *'to exercise the care, skill and diligence which would be reasonably expected of a person in the same position with similar knowledge and experience as a Board member'*.
- 6.14 In addition to the RTÉ Board, and importantly in the context of this review, there was until recently a group within the RTÉ organisation known as the *"Executive Board"*. In contrast to the RTÉ Board, which is comprised of mostly independent ministerial appointees, members of the Executive Board were all employees of RTÉ, each of whom reported directly to the Director General.
- 6.15 The Executive Board was not a *"board"* in a statutory or legal sense. Rather, it was used to describe RTÉ's senior leadership team and had its origins in a time when (as mentioned) the RTÉ Board was described in the legislation prior to the Broadcasting Act as the *"Authority"*. We were provided with a copy of the Terms of Reference for the Executive Board, dated June 2018. These Terms of Reference state that *'the purpose of the Executive Board is established by the Director General to assist her in the running of the business.'* Moreover, our understanding, from meeting with a number of its members during our review, is that the Executive Board and its members were at all times accountable to the Director General.
- 6.16 On 10 July 2023 the Director General stood down RTÉ's Executive Board and replaced it with an interim leadership team.

Director General of RTÉ

- 6.17 Under section 89 of the Broadcasting Act, the roles and responsibilities of the Director General include to:
- (a) carry on and manage, and control generally, the administration of RTÉ, and
 - (b) perform such other functions (if any) as may be determined by the RTÉ Board.

- 6.18 Section 92 of the Broadcasting Act provides that the Director General is accountable to committees of the Oireachtas upon their written request.

Revenues of RTÉ

- 6.19 Under section 105 of the Broadcasting Act, RTÉ must *'conduct its affairs as to secure that its revenue is at the earliest possible date, and thereafter continues to be, at least sufficient (a) to meet all sums properly chargeable to current account, and (b) to make suitable provision with respect to capital expenditure.'*

Remuneration of RTÉ staff

- 6.20 The Broadcasting Act permits RTÉ to appoint *'such and so many'* persons to be staff members of the organisation once they are appointed by public competition (with limited exceptions). It has been mentioned that *'A member of staff of [RTÉ] shall hold his or her employment on such terms and conditions as [RTÉ] from time to time determines'*. The Broadcasting Act also requires RTÉ to put *'superannuation benefits'* in place for staff, subject to ministerial approvals. The Broadcasting Act defines *'superannuation benefits'* as meaning *'pensions, gratuities or other allowances payable on resignation, retirement or death'*.
- 6.21 While the Broadcasting Act requires the consent of Government to be obtained in order for RTÉ to appoint or remove the Director General of RTÉ, or to vary his or her remuneration or terms and conditions of office, there is no equivalent statutory consent requirement for other employees in RTÉ. This is in notable contrast to staff members of the Broadcasting Authority of Ireland (an organisation also established by the Broadcasting Act but which has subsequently been subsumed into Coimisiún na Meán), the terms and conditions of employment of the staff of which are subject to the consent of both the Minister and the Minister for Public Expenditure and Reform.
- 6.22 One rationale for this difference is that the Broadcasting Act prioritises the protection of public service broadcasting from political interference. It is notable that a legislative amendment was proposed in 2009 to require that contracts between contractors and RTÉ in excess of €400,000 should be subject to Ministerial consent, and was withdrawn in the Oireachtas at the Report Stage of the legislative process³, with the Minister at the time stating that, while the rationale

³ <https://www.oireachtas.ie/en/debates/debate/dail/2009-06-17/26/>

behind such an amendment was understandable, it would nonetheless conflict with the idea at the core of the Broadcasting Act which was to ensure an independent broadcaster acting in the public interest. The then-Minister stated that it was not appropriate for ministerial approval to be required for the appointment of individuals working at RTÉ.

Legislative Reporting and the 'One RTÉ' strategy

- 6.23 RTÉ is subject to a number of legislative reporting requirements under the Broadcasting Act. Notable among these is the requirement in section 99 that RTÉ must prepare and present a Statement of Strategy to the Minister every five years. This statement of strategy sets out the strategy of the RTÉ Board for achieving its objects under the Act (in light of the values expressed in the Broadcasting Act), having regard to the resources that are available to RTÉ.
- 6.24 The most recent statement of strategy prior to the 2017 VEP was RTÉ's Statement of Strategy for 2013 – 2017⁴. This document contained the following statement as regards redundancies and early retirement:

"This wide-ranging restructuring plan implemented in 2012 will see RTÉ staffing levels reduce by 20% compared to 2008 levels through Early Retirement and Voluntary Redundancy Programmes. Maintaining these cost reductions resulting from a reorganised and reengineered RTÉ following restructuring, is a key component of RTÉ's reduced operating cost base for the next five years."

- 6.25 In March 2017, and with the approval of the RTÉ Board, the former Director General launched a strategy known as "One RTÉ", which was described as a 'complete renewal of its structures' and included the creation of new divisions and the reallocation of resources amongst other existing divisions. The strategy, which was the underlying basis for the 2017 VEP, is described in RTÉ's 2017 Annual Report as follows:

"RTÉ Director-General Dee Forbes announced the 'One RTÉ' organisational structure in March 2017. It is designed to improve coordination of content, focus on audience needs, create bigger impact with audiences and help drive greater efficiency. As part of the overall restructuring and to reduce the operating cost base, the target is to reduce overall staffing levels by between 200 and 300 people and deliver ongoing annual sustainable savings to RTÉ."

⁴ <https://www.rte.ie/documents/news/rtestrategicplan-longversion.pdf>

A key element of the restructuring programme was the launch of the VEP in September 2017, which included both retirement and redundancy options. Further elements of the restructuring activities included organisational design, conversion of financial systems to the new organisation structure and other advisory services.”⁵

Designing the 2017 VEP

- 6.26 Implementation of a VEP was a key part of the One RTÉ restructuring programme. RTÉ’s Finance and Human Resources functions were tasked with designing the terms of a voluntary severance scheme with the objective of reducing staffing level having regard to the ‘*financial imperative to reduce costs*’. RTÉ provided briefing documentation which was made available to the RTÉ Board and the Executive Board and which provided context and clarity in relation to what was considered in designing the VEP.
- 6.27 The briefing documentation provided a detailed description of objectives of the 2017 VEP as follows:

“One of the main objectives of the VEP 2017 is to support the overall objectives of “One RTÉ”. Earlier in 2017, the Director General announced an overall restructuring plan for RTÉ which will see the replacement of the current IBD structure with a more content centric focused and tri media organization structure, a project known as “One RTÉ”. The high level overall design of the organization has been agreed and once complete, will be communicated during the summer and take effect from October. The new structure incorporates divisions for Content, Channels Audiences and Marketing, Operations, News and Current Affairs, Commercial and other support functions. The VEP will be launched following the communication of the organisation structure. The new structure will help facilitate the achievement of voluntary exits in those areas that can best accommodate them whilst retaining those critical competencies required for the future.

There is a financial imperative to reduce RTÉ’s operating costs to help to return to greater financial stability and with Personnel Related Operating Costs (PROC’s) representing over 50% of the cost base, a reduction in workforce is required if a reduction in costs is to be delivered. The objective is to reduce the overall RTÉ workforce by up to 250 people over 2017/2018.

In designing the Voluntary Exit Programme, the following are key objectives:

⁵ https://about.rte.ie/wp-content/uploads/2019/07/RTE_annual_report_2017.pdf

- *To facilitate the voluntary departure of up to 250 employees as part of the restructuring of RTÉ.*
- *To be cognisant of the overall cost of packages and make as efficient as possible while also providing benefits that are attractive to employees.*
- *To enable RTÉ to ensure all departures meet business objectives and that savings can be maintained in the new organisation structure.*
- *To provide packages that are consistent with current market practice for comparable organisations.”*

6.28 This context is important in the context of the review, as it explains the underlying rationale for the voluntary redundancy process that followed and goes to the appropriateness of paying statutory redundancy payments as part of that voluntary redundancy process. In this regard, the legal position is that under the Redundancy Payments Acts 1967 to 2022, an employee with requisite service, whose employment is terminated ‘*by reason of redundancy*’, will be entitled to a statutory redundancy payment calculated in accordance with a statutory formula. Statutory redundancy payments are exempt from income tax.

6.29 The Redundancy Payments Acts 1967 to 2022 provide that an employee is dismissed ‘*by reason of redundancy*’ if, ‘*for one or more reasons not related to the employee concerned, the dismissal is attributable wholly or mainly to:*

- (a) *The fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased or intends to cease, to carry on that business in the place where the employee was so employed, or*
- (b) *The fact that the requirements of that business for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish, or*
- (c) *The fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employees or otherwise, or*
- (d) *The fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforth be done in a different manner for which the employee is not sufficiently qualified or trained; or*

(e) *The fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforth be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained.'*

6.30 We have noted that *'the objective [of the 2017 VEP] is to reduce the overall RTE workforce by up to 250 people over 2017/2018'*. Similarly, the objective of the 2021 VEP was also to reduce RTÉ's headcount (targeting 60 exits). These overall objectives would fall under (c) above.

6.31 From information provided to the RTÉ Board and the Executive Board, it is clear that in designing the terms of the 2017 VEP, regard was had to previous severance schemes operated by RTÉ, notably a voluntary severance scheme operated by RTÉ from 2009 to 2012. This is confirmed in a statement provided to McCann FitzGerald, in which it was stated that *'the 2017 VEP Scheme design was essentially a replica of the 2009-2012 VEP Scheme with some minor changes directed at saving money for RTE.'*

6.32 Under the previous 2009-2012 Scheme, 270 employees exited the organisation, receiving an average severance payment of €99,000, equivalent to 140% of average pay. In designing the 2017 VEP, regard was also had to severance arrangements offered by a number of semi-state organisations, obtained *'on a confidential basis'*, and of public sector offerings. The briefing documentation noted the following trends:

(a) That a 104 week/2 years pay maximum is consistent throughout (in this regard, it was noted that the previous VEP operated by RTÉ in 2012 had a cap of 2.5 years' service for applicants under 55, and no explicit cap for those over 55).

(b) This maximum reduces as individuals approach normal retirement age.

(c) With benefit formulas similar to those used by RTÉ previously, statutory redundancy was not paid in addition to formula benefits.

(d) Minimum cash or income amounts are not generally provided for in other organisations.

6.33 The briefing information noted that *"while approval from DCCAE or DPER [being the Department of Public Expenditure and Reform, which we will refer to as "DPER" in this report] is not required per se for severance arrangements, DPER in particular require oversight of the arrangements prior to launch of any arrangements and will reference Public Sector offerings made in recent years, specifically terms offered in the HSE in 2014. A letter outlining the draft terms of the Voluntary Exit Programme 2017 was sent to DCCAE earlier this month who will liaise with DPER on the matter."* McCann FitzGerald was informed in a written statement that there was

engagement by RTE with both the Department and DPER during the summer of 2017, resulting in changes to the scheme, and that to the best of recollection, the changes made were to the lump sums payable under the early retirement options. We were provided with correspondence from the Department dated 30 August 2017 confirming its agreement to the 2017 VEP.

Proposals for the 2017 VEP were presented to the Executive Board on 30 May 2017, and presented to and approved by the RTE Board on 1 June 2017. Launch of the 2017 VEP was announced to staff, following receipt of Department approval, on 31 August 2017. The former Chief Financial Officer 2012-2020 informed us that once the 2017 VEP was established, its implementation was driven by and managed by RTÉ's Human Resources function. RTÉ's Human Resources team provided further context, confirming that it administered the 2017 VEP and looked after it operationally, with budget and cost considerations being managed by RTE's Finance function. This was the case both at divisional level, when reviewing potential cost savings, and at a corporate level, when reporting on the scheme to the Executive Board, RTÉ Board, and elsewhere as required, and in relation to budget adjustments and headcount following exits.

Operation of the 2017 VEP

- 6.34 The terms of the 2017 VEP were set out in a detailed booklet that was made available to staff in September 2017, and applications were sought by 10 October 2017.
- 6.35 The 2017 VEP comprised of a Voluntary Severance Scheme (VS), which applied to applicants under the age of 55, and a Voluntary Early Retirement Scheme (VER). The criteria for eligibility to apply under either scheme was that the applicant would have completed two years' continuous service on the date their employment would cease, and the application would need to be approved by the Executive Board. RTÉ reserved the right to accept or reject applications entirely at its discretion, notably in instances where approval would not be in the organisation's commercial or business interests, or where the optimal number of exits had already been achieved for a specific area.
- 6.36 Successful applicants for the VS programme received a 'VS Redundancy Lump Sum' of 4 weeks' pay per year of service where they had a service history of 2 to 5 years. For employees with a service history of 5-10 years this figure rose to 5 weeks' pay and for employees with an excess of 10 years' service, this figure rose to 6 weeks' pay. Pay was calculated on the basis of the "Exit Salary", a sum which included the employee's base salary, their pensionable

allowances at the date of exit and the annual average of pensionable shift payments over the 12 months ending on 31 December 2016. All payments under the VS scheme were inclusive of statutory redundancy entitlements and were subject to a cap of twice their annual exit salary.

- 6.37 A number of options were available to successful applicants under the VER scheme, depending on their age and length of service. Successful applicants aged 55 and over at date of exit received a “VER Redundancy Lump Sum”, subject to a cap of twice their annual exit salary. For successful applicants over the age of 61, the cap on the VER Redundancy Lump Sum reduced to 50% of exit salary, multiplied by the years remaining to age 65. The VER Lump sum was broken down into an Age-Related Payment (ARP) and an Income Replacement Payment (IRP). Different criteria applied for the ARP and the IRP depending on the individual employee’s membership of the defined contribution or the defined benefit pension scheme, and the calculation methodology are described in the information booklet for the 2017 VEP.
- 6.38 Consistent with the objective of the 2017 VEP to reduce RTÉ’s overall staff levels, all staff eligible for VER (i.e. over age 55 at time of exit) were automatically issued with personalised illustrations of their entitlements should they successfully apply for exit under the scheme. Other staff were provided with personalised illustrations on request.
- 6.39 It was made clear in the information booklet for the 2017 VEP that successful applicants who exited RTÉ would not be eligible to be re-employed or re-engaged by RTÉ in any capacity (including as an employee, independent contractor or through a company or agency) save in exceptional circumstances and with the prior written approval of the Director-General.
- 6.40 235 employees submitted applications for exit in 2017 and 128 of the applications submitted in that year were accepted by RTÉ resulting in voluntary severance offers to those individuals. 21 individuals did not accept severance offers after they were approved for exit. Applications for the 2017 VEP remained open in 2018, 2019 and 2020, and in total over this four-year period, 177 employees exiting RTÉ under the scheme, considerably below the 250-300 that had been sought.
- 6.41 The findings of our review of the ‘end to end’ process followed by RTÉ in administering the 2017 VEP is in section 7 below.

A second VEP

6.42 RTÉ's Statement of Strategy for the period from 2018-2022 strategy⁶, published in February 2018, set out a number of actions through which it would realise the 'One RTÉ' structure that we have discussed, including the following action:

"Overall workforce numbers are being reduced through a voluntary redundancy scheme and some new skills will be added to RTÉ's existing pool of experience and talent."

6.43 We have reviewed the minutes of RTÉ Board meetings from this period and in May 2018, the RTÉ Board noted that uptake of the 2017 VEP was lower than anticipated. It had been anticipated that 150 staff members would have departed by the end of May 2018, but the numbers leaving were noted as being 'about 50 short of target'. It was noted that a 'round 2 on the same terms was anticipated' though there would be no re-launch of the scheme.

6.44 The 2017 VEP was again discussed at a meeting of the RTÉ Board on 25 October 2018. In that meeting, Director of Human Resources Eimear Cusack (the "**Director of Human Resources**") explained that the 2017 VEP had led to 150 exits but noted that any re-opening would need to be strategic, with non-core activities to be reviewed and management layers again examined. She noted that 'some areas will no longer be required.' The possibilities of involuntary redundancies and a targeted VEP were raised during the course of this meeting. In a December meeting of the RTÉ Board, the former Director General noted that a number of possibilities were being looked at. Commenting at this meeting on a second phase of voluntary exits, the Director of Human Resources noted that 'there are areas from which people cannot be released. We will have to be quite strategic in terms of the decisions to release.'

6.45 In November 2019, RTÉ published a revised Statement of Strategy 2020 – 2024⁷ which focused on facing challenges facing the broadcaster including the need to bring it to financial stability. This strategy document contained a number of financial and staffing objectives:

- *"We need to reduce projected costs by €60million over three years (2020 – 2023), in addition to the reduction of 23% delivered between 2008 and 2018.*
- *We need to reduce the fees paid to our top contracted on-air presenters by 15% in addition to the 30+% cuts as agreed in previous years.*
- *We need to reduce staff costs – we will consult with staff and unions on a number of initiatives, to include pay freeze, tiered pay reductions, review of benefits, and work practice reforms.*

⁶ <https://www.rte.ie/strategy/pdf/RTE-Strategy-2018-2022.pdf>

⁷ <https://about.rte.ie/wp-content/uploads/2019/11/RT%C3%89-2024-Web.pdf>

- *The Executive Board will take a 10% reduction in pay; the Board of RTÉ will waive its fees.*
- *We need to achieve a staff headcount reduction of c.200 in 2020.”*

6.46 In a strategy update given to the RTÉ Board on 5 December 2019, it was noted that *‘there was a discussion about the proposed voluntary exit package and [the former Chief Financial Officer 2012-2020] pointed out that the package would essentially be the same as previous packages. The DG indicated that the challenge is that the take up of the VEP is in the right areas and we will need to change how we work so that we can release people without having to backfill the roles.’*

The 2021 VEP

6.47 It had been expected that a second round of VEP would launch in October 2021, but this was postponed due to a level 5 lockdown during the Covid19 pandemic. The revised launch date was in January 2021, though queries were raised by the Department of Public Expenditure in relation to the proposed terms of the scheme, which delayed its launch.

6.48 On 3 February, a Stability Agreement, which included pay reductions and other cost saving measures for RTÉ staff, was announced between RTÉ and the Trade Union Group, following engagement through Mr Kevin Duffy as Independent Chair⁸. It was recognised in that agreement that *‘RTÉ is experiencing ongoing financial difficulties that require immediate measures to ensure our continued viability’* and under the heading *‘restructuring agenda’* it was noted that *‘Voluntary Exits will be facilitated where roles can be suppressed’*.

6.49 In a communication to staff on 9 February 2021 it was noted that a VEP would open in the coming weeks, and that it was currently being reviewed by the Department. An update issued on 19 February 2021 noted that RTÉ would *‘soon’* announce a VEP with a target of 60 exits that year. Following a period of engagement between RTÉ and the Department in relation to the proposed VEP, on 16 March 2021, RTÉ received approval to proceed with the 2021 VEP.

6.50 On 29 March 2021, the 2021 VEP was launched, with applications being sought by 5pm on Friday, 23 April 2021. The 2021 VEP was comprised of a Voluntary Severance Scheme (VS), which applied to applicants under the age of 55, and a Voluntary Early Retirement Scheme (VER). The criteria for eligibility to apply under either scheme was that the applicant would have completed two years’ continuous service on the date their employment would cease, but in contrast to the 2017 VEP, where the emphasis was on achieving payroll cost savings,

⁸ <https://about.rte.ie/wp-content/uploads/2021/02/RTE-TUG-Stability-Agreement-03022021.pdf>

applications under the 2021 VEP would only to be approved where it was (i) confirmed that the role could be 'suppressed' (i.e. eliminated) and (ii) there would be no adverse impact on content and services.

- 6.51 Successful applicants for the VS programme received 4 weeks' pay per year of service where they had a service history of 2 to 5 years. For employees with a service history of 5-10 years this figure rose to 5 weeks' pay and for employees with an excess of 10 years' service, this figure rose to 6 weeks' pay. Pay was calculated on the basis of the "Exit Salary", a sum which included the employee's base salary, their pensionable allowances at the date of exit and the annual average of pensionable shift payments over the 12 months ending on 31 December 2020. All payments under the VS Programme were inclusive of statutory redundancy entitlements and were subject to a cap of twice their annual exit salary.
- 6.52 A number of options were available to successful applicants under the VER scheme, depending on their age and length of service. Successful applicants aged 55 and over at date of exit received a "VER Redundancy Lump Sum", subject to a cap of twice their annual exit salary. For successful applicants over the age of 61, the cap on the VER Redundancy Lump Sum reduced to 50% of exit salary, multiplied by the years remaining to age 65. The VER Lump sum for was broken down into an Age-Related Payment (ARP) and an Income Replacement Payment (IRP). Different criteria applied for the ARP and the IRP depending on the individual employee's membership of the defined contribution or the defined benefit pension scheme, and the calculation methodology was described in the information booklet for the 2021 VEP.
- 6.53 If an application could be approved by RTÉ and the position suppressed, successful applicants were provided with a personalised illustration of their severance package, and the opportunity to meet with a tax consultant and pension advisor. It was made clear in the information booklet that successful applicants who exited RTÉ would not be eligible to be re-employed or re-engaged by RTÉ in any capacity (including as an employee, independent contractor or through a company or agency) save in exceptional circumstances and with the prior written approval of the Director-General.
- 6.54 In communications issued to staff launching the 2021 VEP, staff were informed that:
- *"All applications will go through a review process.*
 - *Personal VEP illustrations and related tax advice will only be issued to employees who receive confirmation that their application has been approved.*

- *If your application is approved, you will have a period of one week to decide whether to accept the offer of VES or VER from the date on which you receive your statement.*
- *Applications will be approved only where it is confirmed that the role can be suppressed and there is no adverse impact on content and services.*
- *Successful applicants will be facilitated to leave RTÉ as soon as is practicably possible within Q2 2021 or early Q3 2021.*
- *RTÉ reserves the right to accept or reject applicants entirely at its discretion.*
- *RTÉ also reserves the right to refuse individual applications in instances where approval would not be in the organisation's commercial or business interests.*
- *Final decisions on all applications will be made by the Executive Board."*

6.55 On 7 April 2021, it was announced that pay reductions set out in the Stability Agreement referred to in paragraph 6.48 had been rejected by members of the RTÉ Trade Union Group following a ballot.⁹ The outcome of this ballot was noted by the former Director General in a communication to staff on 18 May 2021, where she stated that *'Notwithstanding the result of the ballot, the need for long-term sustainable cost savings has not diminished. While Covid-19 is temporarily masking our financial challenges, that will change as the artificial impacts of the pandemic on suppressing our operating costs recede. I want to be clear with you: we must deliver on our plans to reduce our operating costs by €60m between 2020-2023. This reduction in costs, alongside growing our commercial revenue and reform of the TV Licence system, is essential if we are to return RTÉ to a stable financial position.'* While the Stability Agreement was not implemented following rejection at ballot, the fact of its negotiation nonetheless highlights RTÉ's poor financial position at the time.

6.56 This communication of 18 May 2021 set out steps that RTÉ would take to achieve these cost savings in light of the rejection of pay reductions, and contained two further updates of relevance to the 2021 VEP:

"1. Voluntary Exit Programme (VEP) 2021

The Voluntary Exit Programme is oversubscribed. Given the ballot result, we will now be seeking in excess of 60 exits. We have and continue to review applications and will communicate with those who have been successful during w/c 24th May. These applicants will then have one week to decide whether to accept the offer. We will, as necessary, phase departures to allow time

⁹ <https://www.rte.ie/news/2021/0407/1208365-rte/>

for restricting where necessary. If you have any queries, please contact the HR VEP team on HRVEP@rte.ie.

2. Suppression of Vacancies

In addition to the VEP scheme we are now actively suppressing a range of vacancies and where possible seeking not to replace those who are retiring. In some cases, as with VEP departures, we will have to re-evaluate local functions and teams to minimise replacement hires. We will also be reviewing all fixed term contract roles to assess the necessity to renew. This process will be managed at local level with the support of HR."

- 6.57 Take up of the 2021 VEP was significantly lower than the 2017 VEP as the proximity of the two schemes meant that there were fewer interested staff members, and the requirement for full role suppression was a higher threshold for acceptance. 177 employees submitted applications for exit under the 2021 VEP, and only 26 of those applications were accepted.
- 6.58 Minutes of meetings of the RTÉ Board dated 8 July 2021 and 16 September 2021 note that '*RTÉ is being prescriptive in respect of applications and they are being refused where roles cannot be suppressed*' and that the 2021 VEP '*is slower in order to ensure that roles are suppressed.*' In October 2021, it was again noted in RTÉ Board minutes that where applications under the 2021 VEP were refused it was '*because the roles could not be suppressed.*' The RTÉ Board was also informed that if staff enquired about the scheme, they were told that it remained open, and in total, there were 26 exits under the 2021 VEP. RTÉ indicated that it stopped considering applications under the 2021 VEP in August 2023.
- 6.59 The findings of our review of the 'end to end' process followed by RTÉ in administering the 2021 VEP is in section 7 below.

7. **Review of the 'end to end' processes**

Overview

7.1 We reviewed the VEP application files for all 203 employees who exited RTE under the 2017 and 2021 VEPs. In each case a VEP file was comprised of the following (or most of the following) documents:

- An application form;
- VEP agreement between RTE and employee signed by both parties;
- A letter from RTE confirming termination date and arrangements;
- A pension letter detailing pension fund arrangements on termination;
- An employee tax declaration signed by the employee;
- A tax illustration detailing taxation of VEP payment;
- A personalised illustration detailing VEP payment;
- A preliminary personalised illustration (upon request or for those who qualified for voluntary early retirement);
- Superannuation notice of cessation (where relevant);
- HR instruction to payroll; and
- Various internal documents detailing the VEP lump sum calculations.

7.2 Overall, we considered c.2,500 documents on VEP applications during this phase of the review.

7.3 We reviewed contemporaneous and subsequently updated spreadsheets detailing cost saving (2017 VEP) and role suppression (2021 VEP) analysis for individual successful and unsuccessful applications under both VEPs. We then met with divisional HR managers to discuss individual applications, including all unsuccessful applications under the 2021 VEP.

7.4 Over 250 applications were submitted under the 2017 VEP and 177 were successful – an approximately 70% application success rate.

7.5 177 applications were submitted under the 2021 VEP and 26 were successful – a less than 15% application success rate.

2017 VEP

7.6 The 2017 VEP scheme was publicly announced by the former Director General on 22 March 2017. This came alongside a broader announcement of an organisational restructuring, “OneRTÉ”, the chief initiative of which was to transform RTÉ into a platform-agnostic entity, in which content could be consumed through a variety of media and devices, with the hoped-for benefit that resources could be allocated throughout RTÉ more efficiently.

7.7 Prior to the launch of the 2017 VEP scheme, a number of Q&A sessions were held with key personnel in RTÉ. The eventual output of these sessions was incorporated into the Information Booklet for the 2017 VEP published in September 2017. The information booklet was also informed by learnings from the 2009-2012 VEP, as detailed above.

7.8 The overall design of the 2017 VEP was led by RTE’s Finance department and was implemented by RTE’s HR function, with Finance input in relation to cost savings.

7.9 The criteria for eligibility under the 2017 VEP were broad and simply required (i) the employee to have two years’ service (necessary for eligibility for a statutory redundancy payment), and (ii) the application to be approved by the Executive Board. The approval process involved a consideration of the cost savings that would be generated by a particular departure. All successful applicants under the 2017 VEP had at least two years’ service, many considerably more, and all successful applicants received statutory redundancy payments as part of their VS Redundancy Lump Sum payments.

7.10 The priority of the scheme was not on role suppression, i.e. on determining whether the organisation could do without the role. Instead, the priority was whether elimination of the role generated cost savings. As one interviewee put it: “[the aim was] *to save the organisation a significant amount of money*”. Interviewees explained that there was considerable flexibility to achieve cost savings under the 2017 VEP, in circumstances where the 2017 VEP operated before RTÉ’s structures were reorganised in 2018.

7.11 On the commencement of the 2017 VEP in September 2017, RTÉ issued an information booklet containing the rules of the scheme and other specific information (e.g. taxation) along with an application form. Applicants were informed that *‘If you are eligible and wish to apply, you must do so by 5pm on Tuesday, 10 October 2017. Successful applicants will be facilitated to leave in December*

2017, unless there are business requirements which determine an alternative date. Final decisions on all applications will be made by the Executive Board.’ There were a number of initiatives designed to encourage applications, for instance, the proactive provision of calculations and tax advice for employees who were considering applying for early retirement under the VEP.

- 7.12 There was a large degree of interest in and uptake of the 2017 VEP between September and December 2017. Applications were first assessed by line managers within RTE’s divisions (e.g. TV, Radio, News & Current Affairs). These line managers were supported in this task by divisional HR personnel, and the finance function provided support in relation to assessment of cost-savings in individual applications. Following an initial assessment by a line manager of the applicants in their reporting line, divisional heads (who themselves were members of the Executive Board) would then assess applications from the division as a whole and prepare recommendations for approval under the VEPs for the Executive Board.
- 7.13 While the specifics of the reviews amongst the divisions varied to some extent, with some divisions engaging in an iterative process whereby there would be repeated interactions between employees, line managers, HR personnel and the divisional head, the overall process was described as a ‘*traffic light system*’, where lists of applicants were sent from the divisions to the Executive Board for consideration and approval.
- 7.14 Those coloured green were applicants from whom a release could be authorised and savings equal or greater to 80% of their cost of employment could be generated; those coloured amber were applicants for whom there were potential risks arising from their release; and those coloured red were applications for whom the division recommended rejection. Interviewees explained that applications were considered not only having regard to the divisions in which they were located, but also having regard to intended departures and cost savings in other divisions. One Executive Board member described their strong wish to avoid an over-release of staff under the VEPs, particularly in their division, and their consideration of (and wish to avoid) the ‘*domino effect*’ that a potential release could have on the organisation when deciding to accept/reject an application.
- 7.15 In an update to the Executive Board on 19 December 2017, the following snapshot was given as of that date:

“235 employees applied for VS or VER

182(77%) applications were approved

41 (18%) applications were refused by RTE

10 (4%) applications continue to be under review as solutions being sought

2 (1%) withdrew applications before Executive Review...

Of the 182 approved:

128 accepted the offer (55% of total and 71% of approved)

1 withdrew before offer made

20 declined the offer (8.5% of total and 11% of approved)

33 are in progress - offer not yet issued (19), or issued pending a decision (14) (includes 14 musicians)"

- 7.16 Overall, during the lifetime of the 2017 VEP, 45 applications were rejected on the basis that their approval for exit would generate no cost savings.
- 7.17 It is clear both from the documents provided by RTÉ and interviews with personnel during the course of our review that the Executive Board convened on multiple occasions for the purpose of approving these lists of employees for exit under the 2017 Scheme. Interviewees described the Executive Board querying the applications of certain employees or below target numbers of 'green' applications in certain divisions of RTÉ. Following these queries, the head of the appropriate division, with the support of HR and Finance personnel, would re-interrogate the application of the VEP Schemes to their division. Interviewees informed McCann FitzGerald that Executive Board discussions about VEP applications were robust as efforts were made to find ways of achieving the target number of departures. Arising from our review therefore, we find that the Executive Board provided an effective level of oversight over the 2017 VEP in relation to applications that were considered by it.

Certain Individual Cases

- 7.18 During the course of our review, a number of individual terminations were brought to our attention either by RTÉ staff or through the unsolicited communications referred to above. While only two of these individual cases concerned employees who departed under a VEP scheme, RTÉ agreed that we should review the other departures as part of our review.
- 7.19 Of the two individual cases who departed under a VEP scheme:
- (a) One is the employees referred to in paragraph 7.39(a) below.

(b) The second is an individual who departed under the 2017 VEP, and who, for reasons provided to us by RTÉ, received an additional ex gratia payment of equivalent to four month's salary, over and above their entitlement under the terms of the VEP. This is the only case that we identified during the review where an employee received an *ex-gratia* payment over and the severance payment to which they were entitled under a VEP.

7.20 Of the remaining individual cases, we noted that there was a variety of reasons for termination including departures at the instigation of RTÉ but ultimately on agreed terms, and terminations that were agreed as part of the settlement of legal claims. The payments received by these departing employees varied but in two instances, we noted that exiting employees received payments that were calculated by reference to what they would have received under the 2017 and 2021 VEPs, had they applied.

7.21 Full information in relation to these individual cases necessarily contains confidential personal information and data, the confidential details of legal settlements, and potentially legally privileged material. Accordingly, for the reasons noted in paragraph 5.3 above, the Director General has been separately briefed in relation to these matters.

Cost savings

7.22 While the target cost saving under the 2017 VEP was 100%, roles would be approved for exit where an 80% cost saving was identified. McCann FitzGerald met with the divisional HR managers who were involved in considering applications under the 2017 VEP, alongside divisional line managers. They explained that savings for each role were identified by assessing:

(a) whether there was an ongoing need for the role that would require it to be 'backfilled' if the application was accepted; and

(b) if an applicant's role could not be eliminated (or 'suppressed'), or could only be partially suppressed, could a cost saving be identified by reducing headcount elsewhere in RTÉ, in pursuit of the overall objective that RTÉ will be operating with fewer employees (i.e. an indirect cost savings).

7.23 Divisional HR managers explained that in contrast to the 2021 VEP discussed below, many of the early applications under the 2017 VEP were straightforward with cost savings easily identified from the fact that there would be no future requirement for the role. We were provided with a spreadsheet which was prepared in May 2019, and further spreadsheets from

RTÉ HR and contains the details of all departures under the 2017 VEP up to that date. Included in these spreadsheets were details of the cost savings apportioned to each individual departure.

- 7.24 There was a cohort of three individuals where the eventual cost savings were not recorded. We queried the reason for approving each of these applications with RTÉ's HR team. They confirmed that the first was an error and was in fact a 100% cost saving; the second was a partial indirect cost saving of an unspecified amount; and the third was a cost saving of more than the stated 30% as it involved a role that was eliminated with the employee's duties merged into another role. In circumstances where the provision of further detail in relation to these departures would necessarily involve the disclosure of personal data and special categories of personal data from which individuals could be identifiable, and for the reasons specified in paragraph 5.3, this information has been provided separately to the Director General.

Savings Findings

- 7.25 From our complete review, we have noted that c.50% (89) of total 2017 VEP departures resulted in a 100% cost saving, and a further c.29% (51) of total 2017 VEP departures resulted in a cost saving of 80% or more.
- 7.26 Having regard to the 80% threshold for acceptance of applications under the 2017 VEP, we queried the remaining applications where a lower cost saving was identified, but the applications were nonetheless approved.
- 7.27 In a small group of applications (c.5% (9) of total 2017 VEP departures), cost savings of between 50% and 80% were identified. These applicants were viewed as being sufficiently close to the 80% threshold that there was a business case for them to be approved for exit. A number of applications in this cohort were for VER rather than VS, meaning that they were receiving a lower level of payment under the rules of the 2017 VEP.
- 7.28 0.5%, 1 employee, was released with a saving of less than 50%, with a further c.2% (3) of employees released with savings of 0%. This cohort of individuals involved applications which were accepted having regard to individual practical reasons/business cases which ranged from a business need to fill a role which was occupied by an individual who had been absent from work for a long period of time, to a decision to accept an individual's application where it was determined that their role would benefit from restructuring and a new person in the restructured organisation.
- 7.29 Finally, in 9% of cases (16) savings were achieved at a level which is unclear as savings were reduced due to the fact that backfilling (discussed in the section below) occurred.

7.30 A further c.4.5% (8) of total 2017 VEP departures were orchestra members and were listed as having 0% cost savings. When the 2017 VEP opened, the future of RTÉ's orchestras was uncertain and there was a question over RTÉ's ability sustain both the RTÉ Concert Orchestra and the National Symphony Orchestra. In anticipation of a reduction in the number of orchestral musicians in RTÉ, and a reduction of orchestras from two to one, a number of these applications were approved and exits effected. In April 2018 however, the Boaden report on the sustainability of RTÉ's Orchestras was published which led to a government decision to transfer the National Symphony Orchestra from RTÉ to the National Concert Hall. Following the Boaden report, no further applications were accepted from orchestra members, and members of the National Symphony Orchestra duly transferred to the National Concert Hall in January 2022.

Backfilling

7.31 A difficulty, acknowledged in a number of interviews with RTÉ personnel, was the fact that the initial target numbers for exit (250-300 employees) were assessed having regard to a future organisation that not yet bedded in (i.e. employees were approved for exit from their service without a clear understanding of whether their roles would be required in the future). This led to a number of instances of backfilling of roles when it became clear that employees who had been approved for exit performed roles still needed by RTÉ.

7.32 This difficulty was noted by the former Director General during a meeting of the RTÉ Board on 5 December 2019, where she stated that *'the challenge [for a second VEP] is that the take up of the VEP is in the right areas and we will need to change how we work so that we can release people without having to backfill the roles'*.

7.33 This was a particular area of focus to McCann FitzGerald, as instances of backfilling effectively negated the cost savings identified for the underlying role that was approved for exit. We asked RTÉ to identify all cases where a role was approved for exit but was subsequently 'backfilled' by the recruitment of a replacement.

7.34 Our findings are as follows:

(a) Internal backfilling

Six individuals (Employees A-F) were approved for exit in circumstances where another individual from within RTÉ subsequently filled their role. This internal backfilling generated savings and, in five of the six cases, did not result in further costs since the roles which were left vacant by the redeployment were themselves suppressed, leading to an

overall headcount reduction. In one of the six cases of internal backfilling, Employee F, there was a restructuring and reassignment of duties to remaining employees to carry on the role with a small additional allowance.

As the roles/duties within this cohort were carried on by remaining employees, we are satisfied these cases constituted redundancies within the meaning of the Redundancy Payments Act 1967.

(b) Indirectly suppressed roles

In the case of four departures (Employees G-J: three under the 2017 VEP, and one under the 2021 VEP as referred to at 7.39(a) below), roles were backfilled by internal candidates, with cost savings identified elsewhere in organisation structure (such as through retirements and non-replacement of specified roles). This backfilling took place in circumstances where the relevant roles had been indirectly suppressed in the context of restructuring of their teams. In two instances under the 2017 VEP (including the former Chief Financial Officer 2012-2020, considered in section 8 below), the roles were directly backfilled by an external candidate.

While it was within RTÉ's power to accept an application for voluntary severance, the departures do not fall squarely within the statutory definition of redundancy which, in the context of limb (c) quoted at paragraph 6.29 above¹⁰ refers specifically to the role of the redundant employee: *'the work for which the employee had been employed (or had been doing before his dismissal)...'* Accordingly, our view is that Revenue Commissioners may take the view that RTÉ was not entitled to apply the tax exemption applicable to statutory redundancy payments to the VS Redundancy Lump Sums received by employees whose roles were indirectly suppressed, and subsequently backfilled. This will however be a matter for the Revenue Commissioners to determine. The total amount of tax-exempt payments made to this group of former employees was €103,587.

(c) Group 1

Nine personnel in similar roles (Employees K-S - Group 1) were considered to be redundant in 2017 and were exited under the 2017 VEP scheme. However, within a year, it had become clear that these Group 1 personnel were an important part of RTE's production

¹⁰ For ease of reference: An employee is dismissed 'by reason of redundancy' if 'for one or more reasons not related to the employee concerned, the dismissal is attributable wholly or mainly to ... (c) The fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employee or otherwise.'

and that their exit had left a resource gap in RTÉ that was being filled through the use of occasional panel staff and contractors. A subsequent report on use of contractors in RTÉ also led to changes and limitations on the use of contractors in RTÉ, and ultimately a decision to fill the resource gap by employing new personnel in Group 1 roles. Interviewees informed McCann FitzGerald that the importance of these staff had not been fully appreciated when the approval decisions were being made, but that it became clear over time that the role had been very useful.

It is clear to us that RTÉ considers that, with the benefit of hindsight, these Group 1 personnel should not have been approved for exit. This was not realised until circa. one year after the exit took place, when evidence of backfilling (through the use of occasional panel staff and contractors) became clear. In these circumstances we are satisfied that the exit of the nine employees did not generate the cost savings that had been identified. Nonetheless there was an expectation that RTÉ's requirement for Group 1 personnel diminish in the reorganised RTÉ. We are therefore satisfied that these departures constituted redundancies within the meaning of the Redundancy Payments Act 1967.

(d) Group 2

Five further personnel in similar roles (Employees T-X - Group 2) were also approved for exit under the 2017 scheme but headcount in this team actually increased the following year. These individuals performed physically laborious roles. It was thought that on foot of the restructuring, the need for such roles would diminish. Within a short time, it became clear that such roles were still needed in RTÉ, and it was necessary to convert a number of casual workers to full-time staff in order to meet demand.

Given the short period of time between the departures and the backfilling of these roles, we are satisfied that the exit of the five Group 2 personnel did not generate clear cost savings, though there were practical reasons/business cases which led RTÉ to accept their applications. While it was within RTÉ's power to accept an application for voluntary severance, the departures do not fall squarely within the statutory definition of redundancy. However, for three of these employees, statutory redundancy payments were not made, and other tax exemptions were relied on. Statutory redundancy payments were made to the remaining two employees in this group. Accordingly, the Revenue Commissioners may take the view that RTÉ, in respect of the remaining two employees, was not entitled to apply the tax exemption applicable to statutory redundancy payments on their VS Redundancy Lump Sums. This will however be a matter for the Revenue

Commissioners to determine. The total amount of tax-exempt payments made to this group of former employees was €45,949.

(e) Group 3

Two further personnel in similar roles (Employees U and V – Group 3) employed in relation to tasks relating to RTÉ grounds were approved for exit on the basis that, after the land sale at RTÉ’s premises in Donnybrook, the reduced size of the site would mean these roles would no longer be needed. These two staff departed RTÉ in February 2018, but the roles were backfilled in January 2019 as it had become clear, by that time, that the same effort was required, and these roles were still needed.

Similar to the Group 1 personnel, RTÉ considers that, with the benefit of hindsight, these Group 3 personnel should not have been approved for exit, though this was not realised for some time after their departure. In these circumstances we are satisfied that the exit of the two staff did not generate the cost savings that had been identified. Nonetheless there was an expectation that RTÉ’s requirement for such personnel diminish in the reorganised RTÉ. We are therefore satisfied that these departures constituted redundancies within the meaning of the Redundancy Payments Act 1967.

(f) Other miscellaneous roles

We queried RTÉ’s rationale for approving the 2017 VEP application of three additional employees (Employees W, X, Y), whose roles were subsequently backfilled either partially, or in full. We discussed these individuals with RTÉ and were informed that there were identified business reasons. It is understandable that RTÉ would accept applications for voluntary severance from these individuals having regard to the business reasons noted above, though the departures do not fall squarely within the statutory definition of redundancy. Accordingly, our view is that while it was within RTÉ’s power to accept applications for voluntary severance from these individuals, the departures do not fall squarely within the statutory definition of redundancy. Accordingly, the Revenue Commissioners may take the view that RTÉ was not entitled to apply the tax exemption applicable to statutory redundancy payments on their VS Redundancy Lump Sums. This will however be a matter for the Revenue Commissioners to determine. The total amount of tax-exempt payments made to this group of former employees was €51,571.

7.35 RTÉ's experience of the 2017 VEP informed the roll-out of the 2021 VEP Scheme. While the overall process for the 2021 VEP scheme was similar to the previous scheme. There were three key differences:

- (a) A new organisational structure was put in place in 2018, and there was no future restructuring planned at the time of the Scheme's announcement.
- (b) The 2021 Scheme only permitted candidates to exit under its terms if their role was capable of being fully suppressed, in contrast to the 2017 VEP which focused on cost savings. Accordingly, individuals were not encouraged to apply if it was obvious that their role could not be fully suppressed (as they had been under the 2017 scheme).
- (c) The 2017 Scheme had likely already removed the individuals who had wanted to leave and who could be let go without great difficulty.

7.36 As a result, applications for exit under the 2021 VEP Scheme needed to reach a higher threshold, that of role suppression, in order to be accepted. In all 26 individuals departed under this scheme, with a much greater number, over 150, rejected. RTÉ indicated that it stopped considering applications under the 2021 VEP in August 2023. We noted that the 2021 VEP was a source of some discontent amongst RTÉ staff who were disappointed that their applications had not been accepted, but having reviewed all formal applications that were submitted under the 2021 VEP, we are satisfied that they were considered consistently and that applications were only accepted where there was role suppression.

7.37 During the course of our review, we met with the divisional HR Managers who were involved in consideration of all applications under the 2021 VEP. We discussed each individual application, accepted and rejected, with the relevant divisional HR manager with a view to understanding the individual considerations for each applicant and to identify whether there was consistency of approach as required under our Terms of Reference.

7.38 Both the divisional HR managers and a number of Executive Board members who we interviewed gave a number of reasons for the low number of successful applications under the 2021 VEP, as follows:

- (i) The acceptance criteria under the 2021 VEP were more stringent than the 2017 VEP, as the 2021 VEP required full role suppression rather than the focus on cost saving and headcount reduction that drove the 2017 VEP.

- (ii) A relatively large number of employees had departed RTÉ under the 2017 VEP, meaning that most of the 'more obvious' cases had already been approved for exit.
- (iii) There was no restructuring of RTÉ's operations or reduction in RTÉ's output/production that could lead to a reduction in the need for certain roles.
- (iv) In one interview with an Executive Board member, the interviewee explained that they did not want the 2021 VEP to take place at all, in circumstances where they wanted to see monies gained from RTÉ's land sale used properly rather than to let people go.

7.39 Four specific cases were brought to our attention under the 2021 VEP:

- (a) The first is a case that was brought to our attention as it appeared to have been backfilled (Employee J). We found that the relevant former employee's application was approved as it was possible to indirectly suppress the role. While RTÉ was entitled to accept this application under the 2021 VEP, our comments in paragraph 7.34 in relation to the application of the exemption that applies to statutory redundancy payments apply.
- (b) The second, third and fourth cases are individual cases that was referred to us by the Director General and RTÉ's Human Resources Department (see paragraphs 4.16, 4.18 and 4.19 above). Two of these cases involved a formal application for exit under the VEPs, and we are satisfied that these applications were considered consistently with the terms of the scheme, with both applications being rejected because the roles could not be suppressed. Both cases raise issues of a personal grievances nature which would be more appropriately considered under RTÉ's internal policies.

For the reasons specified in paragraph 5.3 above, additional detail on a number of these cases, from which this individual could be identifiable, has been provided separately to the Director General.

7.40 Overall, we were satisfied that applications under the 2021 VEP were considered consistently, and that roles were only approved for exit where they could be suppressed.

8. **The former Chief Financial Officer 2012-2020**

8.1 We have examined the former Chief Financial Officer 2012-2020's exit arrangements. The context for this review was a number of statements made to Oireachtas committees in July 2023.

8.2 The first was made by the former Chief Financial Officer 2012-2020 to the Oireachtas Joint Committee on Tourism, Culture, Arts, Sport and Media on 5 July 2023;

"The Senator asked me why I left RTÉ. I had been there for 18 years. I also left under a voluntary restructuring programme at the time. I just want to make that clear. At the time, there was an offer in place, a restructuring programme, with terms and conditions for staff. I applied under that scheme."

8.3 The second was made by the Director of Audiences and Channels to the Oireachtas Public Accounts Committee on 13 July 2023, who stated that: *'the first time that I found out that [the former Chief Financial Officer 2012-2020] had exited through the voluntary exit package was when she stated it last week'*, and that this package *'never came to us [being the executive board of RTÉ] for sign-off'*.

8.4 The third was made by the Director General to the Oireachtas Public Accounts Committee on 13 July 2023:

"I have seen some emails on this because I made inquiries after the last committee meeting. It was agreed between the then director general and the then CFO. ... It was agreed between [the former Director General] and [the former Chief Financial Officer 2012-2020]."

8.5 During the course of our review, we requested all documentation relating to the former Chief Financial Officer 2012-2020's exit from RTÉ, to include relevant document and emails concerning her departure, and minutes of the Executive Board and RTÉ Board during the relevant period. We also had the opportunity to interview the Director of Audiences and Channels, the Director of Operations and Technology, the Director of Human Resources, and the former Director of Legal. Ms Moya Doherty, former Chair, and Mr Shane Naughton, former board member (and Acting Chair for the period from October 2018 and April 2019, at a time when Ms Doherty was unavailable for personal reasons), also engaged with us by responding written queries and follow-up questions.

8.6 The former Chief Financial Officer 2012-2020 was unavailable to meet but her representatives provided two written statements in response to a bundle of documentation provided by McCann FitzGerald. The former Chief Financial Officer 2012-2020 also responded to all follow-

up questions that were put to her and had an opportunity to review and provide comments on the draft report before it was finalised.

8.7 As noted above, the former Director General was not available to participate in the review for medical reasons.

8.8 The former Chief Financial Officer 2012-2020's statement confirmed as follows:

"In Summer 2017, I advised the DG, to whom I reported, that I wished to retire from RTE for personal reasons and apply for acceptance into the 2017 VEP.

I had several meetings with the RTE DG about the restructuring of the RTE Finance Function and its long-term objectives within the One RTE initiative. As part of this restructuring, I proposed that [specified individual AA] would take over the CFO role on my departure. At a meeting on 6th September 2017, the DG confirmed her support for my application to the VEP 2017 with a proposed exit date of June 2018. As the DG was my direct manager, I subsequently wrote to her confirming her support for my application, and completed and submitted the required application to the VEP on 5th October 2017 with the planned exit in June 2018."

8.9 The letter addressed to the former Director General, to which the former Chief Financial Officer 2012-2020 refers, reads as follows:

"Dear Dee,

Following on from our meeting on September 6th, please find attached my formal application for the Voluntary Exit Programme 2017 as discussed.

As agreed, I will work with you on all transitioning arrangements to ensure the smooth handover and ongoing stability of the RTÉ Finance function with an intended departure date of June 2018.

Kind regards

Yours sincerely

[the former Chief Financial Officer 2012-2020]"

8.10 The fact that neither the former Chief Financial Officer 2012-2020 nor the former Director General were available for interview has inhibited our ability to fully understand the discussions that led to the agreement reached on 6 September 2017. The former Chief Financial Officer 2012-2020 is nonetheless clear that there had been 'several discussions' between her and

the former Director General about the restructuring of RTE's Finance function, and that there was a 'business case' supporting her application for the 2017 VEP:

"The basis of the business case discussed with the DG to support my application to the VEP was that [specified individual AA] would take on the role of CFO, and that the [specified individual AA's] role would be backfilled internally by restructuring the existing finance resources with an overall headcount reduction. The restructuring of the Group Finance function was part of the overall One RTE organisation restructuring which was a key objective of the VEP 2017 scheme. This restructuring would have led to annual cost savings of c. €200,000 to RTE."

- 8.11 In the absence of an interview with the former Director General, we have been unable to confirm whether the former Director General agreed with this business case, but the former Chief Financial Officer 2012-2020's account is that it was supported by the former Director General. The former Chief Financial Officer 2012-2020 points to the discussion between the Director of Human Resources and the former Director General in October 2017, referred to in paragraph 8.15 below, in support of her point that the former Director General agreed with the proposed business case.
- 8.12 The planned exit in June 2018 was deferred on two occasions in 2018 and 2019. The former Chief Financial Officer 2012-2020 states that in May 2019, the former Director General requested her to defer her exit a third time, until December 2019 (and subsequently deferred twice before the former Chief Financial Officer 2012-2020's departure on 1 April 2020). The former Chief Financial Officer 2012-2020 agreed to this and recorded her agreement with the following note to the former Director General on 12 May 2019:

"Dear Dee,

This note is by way of follow up from our meeting on the 6th of May 2019 and with regards to our meeting on 4th [sic] September 2017, where we agreed that I would exit RTE under the voluntary severance programme (my letter of 5th of October 2017 which is also attached).

Having deferred my original intended departure date under the voluntary exit programme by mutual agreement, as discussed and agreed in our meeting last week, I now confirm my plan to pursue with my formal exit from RTE under the voluntary exit programme 2017.

As discussed my priority is to support you and RTE in any way I can and as agreed I will continue to work with you on any and all transitioning arrangements to ensure the smooth handover and ongoing stability of the RTE Finance function and team with an intended departure date of on or around December 2019.

I would also like to say I appreciate your understanding and consideration of the matter to what has not been an easy decision for me.

You might let me know how you wish to proceed with regards to transitioning arrangements and liaising with Eimear and HR.

Yours sincerely

[The former Chief Financial Officer 2012-2020]"

- 8.13 The first sentence in this letter states that the former Chief Financial Officer 2012-2020 and the former Director General agreed, on 6 September 2017, that the former Chief Financial Officer 2012-2020 would exit under the 2017 VEP: *'This note is by way of follow up from our meeting on the 6th of May 2019 and with regards to our meeting on 4th [sic] September 2017, where we agreed that I would exit RTE under the voluntary severance programme...'* There is no reference to the agreement being subject to Executive Board approval, as required by the terms of the 2017 VEP. Instead, they note an agreement between the former Chief Financial Officer 2012-2020 and her line manager the former Director General, that the former Chief Financial Officer 2012-2020 would exit under the 2017 VEP. The former Chief Financial Officer 2012-2020 subsequently submitted an application under the 2017 VEP directly to the former Director General. The former Chief Financial Officer 2012-2020 has commented that this engagement was consistent with the practice for applicants to discuss the application with their line manager, and that the former Director General was her (the former Chief Financial Officer 2012-2020's) line manager.
- 8.14 On 13 June 2019, the Director of Human Resources issued an offer letter to the former Chief Financial Officer 2012-2020, which was in the standard form of letter issued to all successful applicants under the 2017 VEP. The former Chief Financial Officer 2012-2020 signed and returned this letter, which was a legally binding agreement between her and RTÉ.
- 8.15 We asked the Director of Human Resources when she first became aware that the former Chief Financial Officer 2012-2020 would be leaving RTÉ and that she would be leaving under the 2017 VEP. The Director of Human Resources informed us that the former Director General informed her, in October 2017, that the former Chief Financial Officer 2012-2020 would be leaving under the 2017 VEP. The Director of Human Resources informed us that she asked the former Director General whether it was *'a good idea'* for the Chief Financial Officer to be leaving under the 2017 VEP, and asked how this would generate cost savings. The Director of Human Resources informed us that the former Director General said cost savings would be made and the matter was not discussed further. The former Director General did not raise the former Chief Financial Officer 2012-2020's exit again with the Director of Human Resources, other than

to note that the exit date had been postponed at the request of RTÉ, until she instructed the Director of Human Resources, in or around May 2019, to issue an offer letter under the 2017 VEP. This is the letter that was issued to the former Chief Financial Officer 2012-2020 on 13 June 2019 and accepted by her, which she points to as being a legally binding agreement between her and RTÉ. We asked the Director of Human Resources why she did not bring the former Chief Financial Officer 2012-2020's application to the Executive Board. The Director of Human Resources informed us that she had joined the organisation approximately six months earlier in April 2017, and that when the former Director General informed her of the agreement in October 2017 (after it was made), the Director of Human Resources queried it, and was told that the cost savings would be achieved. She informed us that at that time, and at all relevant times, she understood that it was for the former Director General to take the next steps to raise the matter with the Executive Board or the RTÉ Board as she thought appropriate.

- 8.16 The original offer letter issued to the former Chief Financial Officer 2012-2020 in June 2019 referred to a termination date of 2 February 2020, but an updated version was provided to, and executed by, the former Chief Financial Officer 2012-2020 on 20 September 2019. This updated offer letter amended the former Chief Financial Officer 2012-2020's termination date to 1 April 2020. This letter was again accepted by the former Chief Financial Officer 2012-2020. The former Chief Financial Officer 2012-2020 exit had been postponed on three occasions, from June 2018 to 1 April 2020, all at the request of RTÉ.
- 8.17 The arrangements for the former Chief Financial Officer 2012-2020's departure were that her employment was scheduled to cease on 1 April 2020, with her final day of work in RTÉ being the previous day, 31 March 2020. It was confirmed that the former Chief Financial Officer 2012-2020 would receive a VS Redundancy Lump Sum which was calculated under the rules of the 2017 VEP. The former Chief Financial Officer 2012-2020, through her representatives, has requested that her privacy and GDPR rights be respected and to this end, we have limited our commentary to the decision-making process in relation to her departure (which was put in issue before various Oireachtas committees in July 2023). Having regard to paragraph 5.3, additional detail including the specific terms of the former Chief Financial Officer 2012-2020's severance terms, have been communicated separately to the Director General.
- 8.18 The former Chief Financial Officer 2012-2020's departure was announced by the former Director General to the Executive Board on 18 June 2019 and work began on recruiting a successor. On 22 September 2019, the Irish Independent reported publicly that the former Chief Financial Officer 2012-2020 was due to leave the station and an RTÉ spokesperson confirmed that the former Chief Financial Officer 2012-2020 *'informed the director-general of RTÉ a number of months ago of her intention to leave RTÉ in March 2020 after more than 17 years with the*

*organisation... This has allowed time to ensure a smooth transition for [the former Chief Financial Officer 2012-2020] successor once appointed. Details will be announced in due course.'*¹¹

- 8.19 Minutes of a meeting of the Executive Board on 17 December 2019 noted that the former Chief Financial Officer 2012-2020's successor for the role of Chief Financial Officer would be announced the following day. The former Chief Financial Officer 2020-2023 commenced employment in January 2020 and attended his first Executive Board meeting on 21 January 2020.
- 8.20 It was clear from at least July 2019 that the Chief Financial Officer role would be filled using an externally advertised recruitment process open to external applicants. There was at least a high risk, therefore, that the business case underlying the former Chief Financial Officer 2012-2020's departure would not materialise. By November 2019, the outcome of the Chief Financial Officer recruitment process was known, and it was clear that the cost savings envisaged in the former Chief Financial Officer 2012-2020's business case would not be made. No alternative business case appears to have been proposed or considered when clearly further consideration of the business case was required.
- 8.21 The former Chief Financial Officer 2012-2020 has stated, through her solicitors, that the issue of cost savings was entirely the responsibility of the former Director General and not her. She further asserts that individual applicants were not responsible for ensuring that cost savings were achieved by their departure. The former Chief Financial Officer 2012-2020 was however the Chief Financial Officer at the relevant time, and it was she who, on her own account, proposed the business case for her departure to the former Director General. The former Director General has not had an opportunity to comment on the former Chief Financial Officer 2012-2020's business case as she was unable to participate in the review for medical reasons. We would acknowledge however, that by the time it was known with certainty that the cost savings associated with the former Chief Financial Officer 2012-2020's departure would not materialise, the former Chief Financial Officer 2012-2020 had already accepted her formal VEP offer, which was a legally binding contract between her and RTÉ, and that neither the offer letter nor the 2017 VEP rules expressly provided for a withdrawal of a formal VEP offer once one was made.
- 8.22 We asked the Director of Human Resources about the proposal put forward by the former Chief Financial Officer 2012-2020 concerning the appointment of the specified individual as her successor. The Director of Human Resources expressed surprise at this suggestion as the Chief

¹¹ <https://www.independent.ie/business/media/rtes-top-financial-officer-set-to-leave-broadcaster/38520350.html>

Financial Officer role was one that had been publicly advertised and was filled following an open competition. The Director of Human Resources informed McCann FitzGerald that no proposal in relation to any specified individual was mooted with her, or the interview panel, nor could any such commitment be made. We also asked the former Director of Legal and the Director of Operations and Technology about this proposal, and neither were aware of it. The former Chief Financial Officer 2012-2020 has asserted that she discussed specified individual AA as a potential successor more than once with the Director of Human Resources. We asked the Director of Human Resources to respond to this and she confirmed that specified person AA was highly regarded and was discussed more than once as a 'potential successor'. The Director of Human Resources informed us that such discussions were in general terms and that it would be normal for her as director of human resources to discuss succession planning with function heads. The Director of Human Resources points out that the Chief Financial Officer recruitment competition was a public competition open to applicants internally and externally, and that no discussions about potential successors could have an impact on that process. The Director of Human Resources also confirmed that there was no discussion between her and the former Chief Financial Officer 2012-2020 about specified individual being part of the 'business case' supporting the former Chief Financial Officer 2012-2020's application under the 2017 VEP, and that the first she became aware of this was during this review.

RTÉ Board Knowledge

- 8.23 The RTÉ Board met on 26 March 2020 and minutes note that this was the former Chief Financial Officer 2012-2020's last board meeting after 18 years. The Chair thanked her for her assistance to the Board over the years. The former Chief Financial Officer 2012-2020's employment with RTÉ ended on 1 April 2020.
- 8.24 We asked the former Chair of RTÉ, Ms Moya Doherty to confirm when she was informed that the former Chief Financial Officer 2012-2020 intended to depart RTÉ. Ms Doherty informed us that she was first informed of the former Chief Financial Officer 2012-2020's decision to leave RTÉ when she (Ms Doherty) returned from a period of personal leave in May 2019. Ms Doherty informed us that she was not told that the former Chief Financial Officer 2012-2020 intended to depart under the 2017 VEP. Ms Doherty informed us that the RTÉ Board was advised of the former Chief Financial Officer 2012-2020's upcoming departure shortly after her return from leave in May/June 2019. Mr Naughton confirmed that during his time as acting Chair, he was not made aware of the former Chief Financial Officer 2012-2020's departure, nor of any terms (financial or otherwise) relating to the former Chief Financial Officer 2012-2020's departure

from RTÉ. Mr Naughton confirmed that he first learned that the former Chief Financial Officer 2012-2020 was leaving RTÉ from the former Director General's closing remarks to the Board meeting in the summer of 2019, when he was no longer acting Chair. Overall, we were satisfied that neither Ms Doherty nor Mr Naughton were informed of the former Chief Financial Officer 2012-2020's intended departure until May 2019 (or perhaps slightly later that summer in Mr Naughton's case) and that neither were aware that she was leaving/had left RTÉ under the 2017 VEP until the matter became public knowledge in July 2023. The former Chief Financial Officer 2012-2020 states that it was not for her to advise either party or the Board of her departure, and that this was a matter for the former Director General.

- 8.25 The former Director of Legal, who sat on the RTÉ Board as its then-company secretary as part of her role as Director of Legal, also confirmed that she was never made aware that the former Chief Financial Officer 2012-2020 was leaving under the 2017 VEP, and that she had understood that the former Chief Financial Officer 2012-2020 was moving on to new opportunities.

Executive Board Approval

- 8.26 As noted above in paragraph 7.9, the criteria for eligibility under the 2017 VEP were broad and simply required (i) the employee to have two years' service (necessary for eligibility for a statutory redundancy payment), and (ii) the application to be approved by the Executive Board.
- 8.27 The introductory sentence of the offer letter that was issued to the former Chief Financial Officer 2012-2020 on 13 June 2019, which is the same form of letter issued to all successful applicants under the 2017 VEP, states that her application under the 2017 VEP had been accepted and approved by the Executive Board. This letter (and its replacement dated 20 September 2019), has been the source of some confusion and uncertainty about whether or not her application was approved by the Executive Board. We are satisfied that notwithstanding the introductory sentence in the letter, the former Chief Financial Officer 2012-2020's application was not considered or approved by the Executive Board. In this regard, we note there is no reference to Executive Board approval in either the October 2017 or May 2019 letters sent by the former Chief Financial Officer 2012-2020 to the former Director General. We also note that both letters refer to a conversation and agreement reached between the former Chief Financial Officer 2012-2020 and the former Director General on 4/6 September 2017, a number of days after the 2017 VEP was launched, and a number of weeks before the application deadline of 10 October 2017, leading to the submission of a VEP application by her. While line

management discussions took place during this period, the Executive Board did not start its application approval process until after 10 October 2017. The statement provided to McCann FitzGerald by the former Chief Financial Officer 2012-2020 does not refer to any consideration of her application by the Executive Board and focuses on what was agreed between her and the former Director General. We reviewed the minutes of Executive Board meetings from September 2017 and April 2020. There is no note of the former Chief Financial Officer 2012-2020's departure being considered during those meetings.

- 8.28 We have noted that the Director of Audiences and Channels (who became a member of the Executive Board in 2017) informed the Oireachtas Public Accounts Committee in July 2023 that he was not aware that the former Chief Financial Officer 2012-2020 had exited RTE '*through the voluntary exit package*' until the previous week, and that the former Chief Financial Officer 2012-2020's exit package had '*never come to us [being the Executive Board of RTE] for sign-off*'. The Director of Audiences and Channels confirmed this again to McCann FitzGerald at interview.
- 8.29 We asked the Director of Audiences and Channels, the Director of Operations and Technology, and the Director of Human Resources, if the former Chief Financial Officer 2012-2020's exit was discussed during other meetings of the Executive Board, including informally. All confirmed that the former Chief Financial Officer 2012-2020's application was not considered or approved by the Executive Board. The former Chief Financial Officer 2012-2020 correctly makes the point that it would have been inappropriate for her to have attended any Executive Board meetings where her departure under the 2017 VEP was under discussion.
- 8.30 The former Chief Financial Officer 2020-2023, who commenced employment as RTÉ's Chief Financial Officer and joined the Executive Board in January 2020, also confirmed that he was never notified that the former Chief Financial Officer 2012-2020 was leaving under the VEP programme and that he had no knowledge of this payment nor was [he] involved in any way in approving or processing it. The former Chief Financial Officer 2020-2023 explained that he first became aware of the payment to the former Chief Financial Officer 2012-2020 in March/April 2020 during the course of his duties. He provided some further helpful commentary in relation to the financial reporting which, due to its nature and our comments in paragraph 5.3 above, has been provided separately to the Director General.
- 8.31 The former Chief Financial Officer 2012-2020 asserts that responsibility for failing to comply with the terms of the 2017 VEP rests solely with RTÉ and not with her (the former Chief Financial Officer 2012-2020). In this regard, we accept that individual applicants were not responsible for bringing their own applications to the Executive Board for approval. The former Chief Financial Officer 2012-2020 also asserts, and we accept that assertion, that it would not

have been appropriate for her to be involved in Executive Board meetings where her own application was discussed. In this context, the former Chief Financial Officer 2012-2020 states that she had '*no awareness*' of the assertion that her application had not been approved by the Executive Board, and comments that she made her statement to the Oireachtas '*in the belief that her VEP application had been approved by the Executive Board*' and that she was '*shocked by statements made to the Oireachtas Committees to this effect by RTE Executives in July 2023*'. The former Chief Financial Officer 2012-2020's representative consider that she was entitled to rely on the formal offer letters that were issued to her in May and September 2019, which stated that the Executive Board had approved her application, and comment that the former Chief Financial Officer 2012-2020 assumed this to be accurate. The former Chief Financial Officer 2012-2020 also asserts that her voluntary exit offer was in accordance with the scheme '*and not pursuant to any alleged agreement reached prior to the introduction of the Scheme*'. We have however noted, during the course of our review, that (i) the letter was issued by the Director of Human Resources on instruction from the former Director General, (ii) prior correspondence from the former Chief Financial Officer 2012-2020 to the former Director General records that it had been '*agreed*' that she would exit RTÉ under the 2017 VEP, and (iii) that the Executive Board had not in fact approved the exit regardless of what was said in the formal offer letter. As such, we are satisfied that the terms of the 2017 VEP were not complied with but note that responsibility for submitting the former Chief Financial Officer 2012-2020 VEP application to the Executive Board for approval was a responsibility of RTE and the former Director General, rather than of the former Chief Financial Officer 2012-2020. The absence of an opportunity to meet with the former Director General, for medical reasons, has inhibited our ability to understand why her application was not put before the Executive Board for approval.

8.32 As the former Chief Financial Officer 2012-2020's role was immediately and directly backfilled by a new Chief Financial Officer following an open competition, our view is that the role of Chief Financial Officer was not redundant, within the meaning of the Redundancy Payments Acts, and that the Revenue Commissioners may take the view that RTÉ was not entitled to apply the tax exemption applicable to statutory redundancy payments on her VS Redundancy Lump Sum. This will however be a matter for the Revenue Commissioners to decide.

8.33 Our views in section 8 are however qualified by the fact that we have had to rely on a number of accounts of private conversations with the former Director General which could not be verified as the former Director General who has been unable to participate in the review. We would welcome the opportunity to speak to her in due course and reserve the right to amend this report following any such future discussions.

9. Public statements made by RTÉ in relation to the VEPs

- 9.1 McCann FitzGerald considered public statements made by RTÉ and its representatives in connection with the 2017 and 2021 VEPs. In consultation with RTÉ we limited this review to statements made before the Houses of the Oireachtas during the period from 2017 to November 2023.
- 9.2 From our review, the public statements by RTÉ personnel in connection with the 2017 and 2021 VEPs are capable of being split into two categories:
- (a) Updates regarding the status of the 2017 and 2021 VEPs; and
 - (b) Statements which arose in light of the 2023 controversy at RTÉ.
- 9.3 This section will first set out an overview of both categories of both categories of public statements and then provide a brief analysis of how consistent each statement was with the findings our review.

Updates regarding the status of the 2017 and 2021 VEPs

- 9.4 On 3 May 2018, the former Director-General of RTÉ appeared for the first time before the Dáil Public Accounts Committee, along with RTÉ's former Director of Content, the former Chief Financial Officer 2012-2020, and the Director of Human Resources.
- 9.5 The former Chief Financial Officer 2012-2020 laid out the financial difficulties for the organisation at the time, noting that RTÉ had had a debt of €50 million at the end of 2016 and had repaid €10 million of that in the intervening years. The former Chief Financial Officer 2012-2020 stated that '*organisational restructuring [was] ongoing*' and, as a component of this, noted the voluntary exit programme with its two routes of voluntary severance and voluntary retirement. She confirmed that the land sale at RTÉ site in Donnybrook had enabled funding for the 2017 VEP.
- 9.6 On 17 October 2018, the former Director General, the former Chief Financial Officer 2012-2020 and the Director of Human Resources appeared before the Oireachtas Joint Committee on Communications, Climate Action and Environment. The former Chief Financial Officer 2012-2020 again set out the financial position of RTÉ, the continued need for cost reductions, and the progress of the 2017 VEP:

“[W]e had to reduce our cost base significantly by about 30% or over €100 million between 2008 and 2012 or 2013. We did this through very significant pay cuts for our staff, averaging between 2.5% and 12.5%, the suspension of bonuses which have still not been restored and other things such as voluntary exit programmes and a reduction in staffing levels by over 400. Significant and extensive cuts were made at the time. The Senator asked if they were sustainable...It is very difficult to do so. In any organisation there are cuts to be made. However, it is clear from what NewERA stated in its very extensive report on efficiency levels at RTÉ in 2014 and 2015 which found that we were above the norm in the levels of cuts made that there were very few further cuts that could have been made. In its recent report the Broadcasting Authority of Ireland has confirmed that was the case. The answer to the question as to whether the cuts were sustainable is no...On restructuring, Deputy Eamon Ryan rightly points out that there is a charge of €29.6 million in the 2017 accounts. As part of the overall restructuring process, we provided that we were projecting that we would reduce overall staffing levels by between 200 and 300. The money was included in the €29.6 million. Our severance and early retirement schemes are entirely voluntary; therefore, when we launch them, we do not know at that point in time who will accept them, whether we can allow them to go or not, with the pressures on resources in the organisation. Therefore, the provision we made was based on a projected number of between 200 and 300 staff leaving. That is our overall provision and what we estimate the total cost of restructuring to be. Approximately 150 people have voluntarily left the organisation under the early retirement and voluntary restructuring scheme.”

- 9.7 On 10 December 2019, the former Director General, the former Chief Financial Officer 2012-2020, and the Director of Human Resources appeared again before the Oireachtas Joint Committee on Communications, Climate Action and Environment alongside RTÉ’s former Director of Strategy.
- 9.8 The former Director General explained that she expected 200 staff to leave RTÉ in part due to the 2017 VEP and also due to the transfer of staff attached to the National Symphony Orchestra to the National Concert Hall. The former Chief Financial Officer 2012-2020 stated that the aim was to achieve €60 million in savings over the next three years, with €9 million to €10 million in savings to be achieved through reduced personnel-costs by the third year, with the expectation that the voluntary redundancies achieved under the VEP would contribute to these savings.
- 9.9 On 11 November 2020 the Director of Audiences and Channels appeared before the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht for a discussion on the Future of Public Service Broadcasting and Impact of Covid-19 on the Media Sector. The Director of Audiences and Channels was asked by one deputy, for an update on the cost

savings and redundancies flagged by the former Director General in her appearance before the Committee the previous year. He stated that the number of exits was anticipated to be lower under the next VEP due to the need to keep the same level of service for RTÉ's viewers:

"On the 200 redundancies, as members are aware and as the Minister has discussed, several of the redundancies will come from the National Symphony Orchestra, NSO. I think 73 of its members are leaving RTÉ. On top of that, in January we will open a voluntary exit package and will seek 60 to 70 exits at that point. Why are we looking for a slightly reduced number of exits? Part of it is because we have been delivering such significant output and we have significantly changed the way we are working. With so much remote working, we really see that we need to keep these essential services on air. We need to make sure we are able to bolster that and deliver it...As I said earlier, we came out and looked for 200 redundancies in 2019. The migration of the NSO will have an impact. We are now looking at an additional 60 or 70 redundancies through a voluntary programme. Why is that a lower number? Part of that is because in order to deliver all the services we currently have on air, particularly during the pandemic, we cannot afford to lose that many people or we will lose content."

- 9.10 The former Director General appeared before the Committee of Public Accounts on 27 April 2021 noting that reform and cost-cutting had been a necessary theme in RTÉ throughout this period with the organisation reducing its annual operating costs by over 20%, approximately €100 million, in line with a total fall in income of the same level¹². She stated that staff numbers had reduced by 22% from 2,351 in 2008 to 1,831 by the end of 2019 (a reduction of 520 people). In a further briefing note for the Public Accounts Committee dated 17 January 2022, the former Director General confirmed that the 2017 VEP had been directly funded through the land sale in Donnybrook effected in the same year.

Statements which arose in light of the 2023 controversy at RTÉ

- 9.11 On 5 July 2020, following the controversy which emerged over payments made to Mr. Ryan Tubridy, the former Chief Financial Officer 2012-2020 appeared before the Joint Oireachtas Committee on Tourism, Culture, Arts, Sports and Media. She stated her employment history with the organisation:

"I am the former chief financial officer, CFO, of RTÉ. I held that role from September 2012 to February 2020. I left RTÉ's employment at the end of March 2020, more than three years

¹² As solicitors, we have not independently verified these figures but RTÉ has reviewed the relevant annual reports covering this period and confirmed that they reflect the reported figures.

ago...On a point of clarification, the current CFO joined RTÉ in January 2020 and formally took over from me the responsibilities of the CFO role in February 2020."

- 9.12 When it was queried by the Committee why the former Chief Financial Officer 2012-2020 had left RTÉ, she gave the following reply:

"The Senator asked me why I left RTÉ. I had been there for 18 years. I also left under a voluntary restructuring programme at the time. I just wanted to make that clear. At the time, there was an offer in place, a restructuring programme, with terms and conditions for staff. I applied under that scheme."

- 9.13 Following these comments, the Director of Audiences and Channels, the former Chief Financial Officer 2020-2023, and the Director General of RTÉ appeared before the Public Accounts Committee on 13 July 2023 alongside several other RTÉ personnel. The Public Accounts Committee expressed concerns on the genuineness of any redundancy of the CFO's role, noting that this may present a concern to the Revenue Commissioners. Its members also queried whether there were any genuine cost savings arising out of the former Chief Financial Officer 2012-2020's departure.

- 9.14 Extracts of the exchanges that took place between the Director General, the Director of Audiences and Channels, the former Chief Financial Officer 2020-2023, and members of the Committee during the 13 July 2023 meeting are contained in Appendix 2.

Conclusions in relation to public statements

- 9.15 Our view is that the public statements from RTÉ personnel have been consistent with the findings of this review.
- 9.16 Throughout the period 2017-2023, RTÉ was clear in relation to the aim of each VEP, the financial need for VEPs, and the targets for those VEPs. While those targets were not achieved, public statements on the issue were consistent with the internal documentation reviewed by McCann FitzGerald as well as the stated understanding of individuals interviewed during the course of the review.
- 9.17 There were a number of minor inaccuracies on precise figures referred to: The number of employees who exited under the 2017 VEP was not 182. Over 250 individuals applied for exit under the 2017 VEP, and there were 177 exits. A further 177 applied for exit under the 2021 VEP, and there were 26 exits. As noted earlier in this report, small number of employees were erroneously included in the figures, having left RTÉ prior to commencement of the 2017 VEP, and an additional small number of employees were included in figures who left RTÉ at RTÉ's

instigation rather than through an application for voluntary exit. The former Chief Financial Officer 2012-2020 was also not included on the relevant spreadsheets.

- 9.18 In relation to the circumstances surrounding the departure the former Chief Financial Officer 2012-2020, we find that the statements of RTÉ personnel to the Public Accounts Committee were consistent with the findings of this review.

10. **Findings in relation to an additional matter**

- 10.1 At the request of the Director General and following the Director General's receipt of an unsolicited communication from a member of staff in RTÉ, we considered the exit arrangements of a former employee (Specified Individual AB) who departed RTÉ before the 2017 VEP and whose exit would otherwise have been outside of the scope of our review.
- 10.2 Specified Individual AB availed of an early retirement scheme and was also engaged in a long running legal dispute with RTÉ which was settled on his departure. This dispute was escalated by the then Director General to board level and this departure, and all of the relevant details, were subject to their oversight and the oversight of the Remuneration Committee.
- 10.3 For the reasons noted in paragraph 5.3 above, in circumstances where this matter concerns a legal settlement, the Director General has been separately briefed in relation to this matter.

APPENDIX 1

Terms of Reference dated 31 July 2023

TERMS OF REFERENCE

VEPS Review

31 July 2023

1. Scope

1.1 Arising from questions put to representatives of Radió Teilifis Eireann ("RTÉ"), during an Oireachtas Public Accounts Committee hearing on 13 July 2023, concerning the departure of RTÉ's former Chief Financial Officer through a voluntary exit scheme, the Director General of RTÉ has requested that an external review be carried out of RTÉ's 2017 and 2021 exit programmes (the "2017 and 2021 VEPS") (the "Review").

1.2 The scope of the Review will be to examine:

- (a) complete an analysis of the context in which the 2017 and 2021 VEPS commenced and operated;
- (b) whether the terms and conditions of the 2017 and 2021 VEPS were complied with in each individual case where a voluntary exit offer was made to an employee;
- (c) whether the release of individuals from their employment through the 2017 and 2021 VEPS generated costs savings or otherwise for RTÉ;
- (d) whether an approach that was consistent with the terms of the scheme was taken towards individuals who had applied for voluntary exit through the 2017 and 2021 VEPS, but where no voluntary exit offers were made;
- (e) the 'end to end' process which was followed by RTÉ in administering the 2017 and 2021 VEPS;
- (f) whether tax exempt statutory redundancy payments were appropriately paid to those individuals who accepted voluntary exit offers under the 2017 and 2021 VEPS; and
- (g) any public statements made by RTÉ in relation to the VEPs.

(the "**Subject Matter**")

2. Review Team

2.1 The Review will be led by Donal Hamilton of McCann FitzGerald LLP, with appropriate support from McCann FitzGerald LLP personnel as may be required from time to time (the "Review Team"). The primary contact within RTÉ for the purposes of the Review shall be Caitriona Nic Góráin or such others as may be directed by RTÉ. McCann FitzGerald LLP may engage such additional external expertise as may be necessary to complete the Review, including accountancy expertise, and will liaise with RTÉ should this be required.

3. Privilege

- 3.1 While it is not intended that any documents created in the course of the Review will be subject of legal professional privilege, any such privileged material will be clearly marked as such.
- 3.2 The Review Team may be required to review certain legally privileged material in the course of the investigation, and this will be provided to the Review Team under a limited waiver of privilege agreement.

4. Timeframe

- 4.1 The Review will commence on 31 July 2023.
- 4.2 The Review Team will make every effort to complete the Review without undue delay, and will endeavour to conclude the Review by 30 September 2023. However, the Review Team will ultimately determine all relevant timescales and/ or deadlines that the Review will adhere to, and all timescales/ deadlines maybe varied by the Review Team.
- 4.3 The Review Team will inform RTÉ if, for whatever reason, there is a material change to the anticipated timeframe for conclusion of the Review and delivery of the report referred to in paragraph 6 below.

5. Process

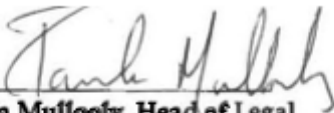
- 5.1 The procedures to be followed will be at the discretion of the Review Team.
- 5.2 The Review Team shall seek to obtain, and RTÉ shall provide, all relevant documents relating to the Subject Matter. A list of documents initially requested by the Review Team is appended to these Terms of Reference at Appendix 1. The Review Team may request and receive additional documents or information from RTÉ and any relevant persons during the course of the Review.
- 5.3 The Review Team will meet with representatives of RTÉ's Human Resources and Finance functions, who will provide an overview of the operation of the 2017 and 2021 VEPs.
- 5.4 The Review Team may, in its sole discretion, seek to interview relevant individuals in the course of the Review. Review Team may seek clarification or further information from any relevant person including former employees.
- 5.5 Refusal or failure to co-operate by any individual will not prevent the Review Team from producing a report based on the information available at that time; however, failure by any employee of RTÉ to engage in the Review, where requested to do so by the Review Team may be treated as a disciplinary matter by RTÉ.
- 5.6 Confidentiality will be maintained throughout the Review and only where it is necessary for purposes of the Review will information be disclosed. All participants in the Review are required to have the highest regard for confidentiality and should not discuss the Review or any details pertaining to it with other members of staff, or

individuals of the workplace. The Review Team will inform RTÉ of any breach of confidentiality of which they are made aware during the process.

6. Report

- 6.1 The Review Team will prepare a draft report setting out their preliminary findings, which will be shared with the Director General and the Director of Human Resources. The report will comprise an overview of the process which was undertaken together with the Review Team's preliminary findings in relation to the Subject Matter.
- 6.2 The Review Team will consider any comments or submissions in relation to the draft report and may in their discretion amend the report before finalising it, where they consider it appropriate to do so.
- 6.3 The Review Team may, in their discretion, opine on whether further examination may be required.
- 6.4 The Investigator will then conclude the Review and issue a final report to the Director General.

Signed:



Paula Mullooly, Head of Legal

For and on behalf of
Raidió Teilifís Éireann

Signed:



Donal Hamilton

For and on behalf of
McCann FitzGerald LLP

APPENDIX 2

Extract from Oireachtas PAC meeting on 13 July 2023

Excerpts from the transcript of the Dáil Public Accounts Committee on 13 July 2023

The following exchanges took place between the Director General, the Director of Audiences and Channels, the former Chief Financial Officer 2020-2023 and members of the Committee:

Deputy Colm Burke

No, I want to move on to one other issue. Mr. Lynch might deal with this issue as well. It is about Breda O'Keeffe and her retirement package. May I have clarification on that package? An impression has been given that it was under a redundancy package. It is important that we clarify this.

Mr. Adrian Lynch

I will clarify two points there. First, the RTÉ board is independent of the executive board. My job, as interim deputy director general, was to compile a statement of facts as I saw them. In terms of that and what we issued on 27 June, we were quite clear in our statement that the Grant Thornton review makes no finding of wrongdoing on the part of Ryan Tubridy in relation to any payments made by RTÉ and that Ryan Tubridy was not aware of the credit note provided by RTÉ to the commercial partner, nor, may I add, would Noel Kelly have been aware of the credit note. That was absolutely internal to RTÉ. Second, just to clarify, the first time I became aware that Ms O'Keeffe had exited as part of a voluntary exit package, VEP, was when she made the statement last week.

Deputy Colm Burke

May I get clarification on how the exit package was delivered?

Mr. Adrian Lynch

We are looking into that following her statement. There were two VEPs. One was 2017 and one was 2021. I am very happy to provide to the committee any information it wants there on the terms of those.

Deputy Colm Burke

That matter is still under review.

Mr. Adrian Lynch

Correct.

Deputy Alan Kelly

...Many of use have received correspondence on Breda O'Keeffe's exit package. Who of those who are in this room was on the executive board at the time when that package was done? Was Mr. Collins?

Mr. Richard Collins

When it was paid, I was on the executive.

Deputy Alan Kelly

When it was agreed-----

Mr. Richard Collins

No, not when it was agreed. Can I clarify? I knew nothing about that package. Breda O'Keeffe never explained anything about it.

Deputy Alan Kelly

That is fine. I accept Mr. Collins's evidence. No problem. Mr. Lynch was on it.

Mr. Adrian Lynch

I was.

Deputy Alan Kelly

So Mr. Lynch agreed it.

Mr. Adrian Lynch

Excuse me, sorry. As I said earlier, the first time I found out that Ms O'Keeffe had exited through the voluntary exit package was when she stated it last week.

Deputy Alan Kelly

Then there is an awful big problem because according to the actual scheme, which I have read, on page 6 it provides that all members of the executive team have to sign off on it and Mr. Lynch was on the executive team.

Mr. Adrian Lynch

Correct. That is absolutely factually correct.

Deputy Alan Kelly

So how did Mr. Lynch not sign off on it?

Mr. Adrian Lynch

It never came to us for sign-off.

Deputy Alan Kelly

I put it to Mr. Bakhurst that this needs to be investigated. I am running out of time.

Mr. Kevin Bakhurst

Can I just say this is an issue that I take very seriously? It is exactly about bringing significant decisions to the executive, which I believe we should do.

Deputy Alan Kelly

I know. Okay. Remember, I want one of my minutes back because I got a minute taken earlier.

Mr. Kevin Bakhurst

Sorry.

Deputy Alan Kelly

I want Mr. Bakhurst to investigate that. I also want him to go back and see if anyone else who finished up in RTÉ got a similar package where the post was not suppressed. Remember, it is part of the voluntary redundancy scheme as read that the post has to be suppressed. In the case of Ms O'Keeffe it was not suppressed. Therefore, other people left with significant packages. Were their posts suppressed? I just want that detail and no more information.

Mr. Kevin Bakhurst

Give me 20 seconds.

Deputy Alan Kelly

Okay. Five seconds.

Mr. Kevin Bakhurst

I am sorry, Deputy, I was going to say that we are already working on that because it was drawn to our attention. It was something we did not know about, and we are going back to look at this.

Deputy Alan Kelly

That is good. There is a list of questions on which the representatives might come back to us.

Deputy Catherine Murphy

Okay. I just want to get that on the record. The second thing relates to Mr. Lynch. Regarding the rules for RTÉ's scheme for redundancy etc., he would have been on the executive board. The executive board reviewed all of those-

Mr. Adrian Lynch

Correct.

Deputy Catherine Murphy

-----exit packages. He would have been involved with Breda O'Keeffe's exit package. My understanding of the word "redundancy" is that the job is redundant rather than the person being redundant. We know that Mr. Collins is in the position that Breda O'Keeffe had been in. We therefore know that the job was not made redundant. Was this an early retirement?

Mr. Adrian Lynch

I will not comment on the individual elements of Breda O'Keeffe's package. I will comment on the two voluntary exit programme, VEP, schemes, the one in 2017 versus the one in 2021. In 2021, it was a strict condition that the roles had to be suppressed. In 2017, the key objective was cost savings. One of the major tools in that was the suppression of roles. I want to be clear.

Deputy Catherine Murphy

I understand that quite a lot of staff were refused-----

Mr. Adrian Lynch

That is right, yes.

Deputy Catherine Murphy

-----that they had applied and they were refused because it was oversubscribed.

Mr. Adrian Lynch

Yes.

Mr. Adrian Lynch

I think there is a high level of concern among the staff because there was a very large exit package for one person when multiples of people were refused. That is something that RTÉ most definitely has to address with its staff.

Mr. Adrian Lynch

Deputy-----

Deputy Catherine Murphy

I must say that I am not satisfied. We are talking about a job being made redundant here-----

Mr. Adrian Lynch

Can I clarify some of the numbers with the Deputy?

Deputy Catherine Murphy

Very quickly.

Mr. Adrian Lynch

Yes, very quickly, I will just say that in terms of the annualised saving out of the 2017 VEP, the figure was €12.7 million and there were 182 exits.

Deputy Catherine Murphy

Right. Okay. I will stop Mr. Lynch there, because there are lots of things I want to ask about.

Deputy Colm Burke

I want to move on to the issue of Breda O'Keeffe. Who made the final decision about the package she got? Who signed off on it? The cheque had to be paid out and someone had to sign the cheque so someone had to sign off on it.

Mr. Richard Collins

I did not sign off on it. The first I knew of it was when we were doing the March accounts in the middle of-----

Deputy Colm Burke

Someone signed the cheque.

Mr. Richard Collins

It would have been put through payroll. It was an instruction.

Deputy Colm Burke

Someone gave the instruction.

Mr. Richard Collins

An instruction came from HR.

Mr. Kevin Bakhurst

I have seen some emails on this because I made inquiries after the last committee meeting. It was agreed between the then director general and the then CFO.

Deputy Colm Burke

The then-----

Mr. Kevin Bakhurst

It was agreed between Dee Forbes and Breda O'Keefe.

Deputy Colm Burke

Was any other third party involved?

Mr. Kevin Bakhurst

There was in the processing but not in the agreement.

Deputy Colm Burke

Would people involved in the processing not raise a question as regards what-----

Mr. Kevin Bakhurst

Yes. They may well do.

Deputy Colm Burke

Were questions raised?

Mr. Kevin Bakhurst

We are looking at the process and we are having a wider look at exit packages.

Mr. Adrian Lynch

If I may, I will give a clarification. I have received a text from the former CFO to say she would dispute the idea that nobody on the executive board knew-----

Deputy Verona Murphy

A Chathaoirligh, there is something wrong with introducing text messages from somebody into this discussion. My God.

An Cathaoirleach

Yes, we cannot receive second-hand evidence. The next speaker is Deputy Catherine Murphy.

Deputy Catherine Murphy

Going back to the redundancy issue, we were told there were two sets of redundancies, which were in the public domain. There were the redundancies in 2017. We were told Breda O'Keeffe was party to the 2017 redundancy package. Is that right?

Mr. Adrian Lynch

My understanding is that she exited in 2019.

Deputy Catherine Murphy

I had understood she was still there in 2020.

Mr. Adrian Lynch

I apologise. She exited in March 2020.

Deputy Catherine Murphy

Then there was a 2019 exit package. Is that right?

Mr. Adrian Lynch

There were two packages, in 2017 and 2021. In regard to Ms O'Keeffe, I cannot comment on individual cases but we are going to look into this and then report back.

Deputy Catherine Murphy

Was she the most senior person who exited, as Mr. Lynch recalls? He would have been involved or would have had a responsibility, as would the director general and the HR person, to sign off on this. Is it right to say he would have considered this?

Mr. Adrian Lynch

All the voluntary exit package, VEPs, applications came to the executive board. I joined the executive board in September 2017. I think this was happening in October or November. I remember the process.

Deputy Catherine Murphy

Was Ms O'Keeffe the most senior person involved?

Mr. Adrian Lynch

As I said earlier, the first time I understood Breda O'Keeffe exited on a VEP was last week, when she announced it.

Deputy Catherine Murphy

The whole idea of this was that there would be a cost saving. I have already highlighted that the role was still there. Was there a cost saving in this?

Mr. Adrian Lynch

Again, we need to investigate the detail. Overall, the cost saving was €12.7 million, but we need to look specifically into that situation.

Deputy Catherine Murphy

If the role is not redundant, I imagine there is a revenue issue there. That will have to be clarified.

Mr. Kevin Bakhurst

If I may, I will comment on this in general terms. Sometimes, one role goes and the argument is that another role within the team is suppressed as a cost saving. It is not directly one role for the exact same role. That is what we need to look into.

Deputy Verona Murphy

On a point of order, we need to address the fact Ms O'Keeffe has said she has nothing further to add to this committee and has not come before us today. I am at a loss to know exactly how seriously Mr. Lynch is taking this, when he thought it was appropriate to correspond through text message in the middle of our committee meeting and was going to deliver a message from someone who has refused to appear in front of the committee.

An Cathaoirleach

Does he have an update for the committee?

Deputy Verona Murphy

On a point of order, I am at a loss to know how we can do business like that and how Mr. Bakhurst can have confidence in him. That is so serious. I am not sure Mr. Lynch understands the seriousness of what is actually happening here.

Mr. Adrian Lynch

Can I respond to that, please?

An Cathaoirleach

Please do.

Mr. Adrian Lynch

I will be really brief. I received a text 20 minutes ago or whatever it was. Therefore, I thought it was very important, having made a statement in front of the House, that it should be correct with that information. I felt it was material, otherwise I would have walked out of here today-----

Deputy Verona Murphy

Unfortunately, the member that he-----

An Cathaoirleach

Ms O'Keeffe has the opportunity to come back and appear before the committee again.

Deputy Paul McAuliffe

She cannot come back. She has never been here before.

Deputy James O'Connor

She has never appeared before this committee. She appeared before the Joint Committee on Tourism, Culture, Arts, Sport and Media but not the Committee of Public Accounts.

An Cathaoirleach

She has appeared before the Joint Committee on Tourism, Culture, Arts, Sport and Media, but we would like her to appear. Are we agreed that we would like to see her at the Committee of Public Accounts in the future?

Deputy Verona Murphy

No, Chair, I am not agreeing to that. What I am saying is we need to address the fact we are being corresponded with by an outside person via text message.

An Cathaoirleach

That is not going to happen. That has been clarified.

Deputy Catherine Murphy

Chair, I would like to-----

An Cathaoirleach

We might agree to ask Ms O'Keeffe to appear before this committee. She has appeared before the Joint Committee on Tourism, Culture, Arts, Sport and Media.

Deputy Catherine Murphy

I will finish off the point with regard to the redundancy. Mr. Lynch was on that executive board - he told us that - yet he told us that the first time he heard about this exit package was two weeks ago. How could that be? If he was on that board, how would he not know?

Mr. Adrian Lynch

I never saw paperwork with regard to Ms O'Keeffe.

Deputy Catherine Murphy

How does he sign off on a very big amount-----

Mr. Adrian Lynch

In terms of the process, it will literally come from the people in operations, content and channels who deal with that. For what is happening in terms of the backfill and cost savings, that documentation would have been provided.

Mr. Kevin Bakhurst

I will add to that if I may. This is one of the issues here. Some of these major decisions did not come to the full executive to the best of my knowledge. One of the things I am trying to address is that all significant decisions across the organisation come to the full leadership team now.

Deputy Verona Murphy

In the context of what we are going to discuss this afternoon, I want to come back to Breda O'Keeffe's exit package. A process was in place for someone taking a voluntary redundancy programme package. The process is that package would have been sanctioned or agreed by the executive. That process did not happen.

Mr. Adrian Lynch

I need to check that, but for the-----

Deputy Verona Murphy

Mr. Lynch stated earlier that he did not sign off on it. He was part of the executive, was he not?

Mr. Adrian Lynch

Yes, I was. I stand over that. I did not sign off on it.