



Coimisiún um Chaighdeán in Oifigí Poiblí
Standards in Public Office Commission

Investigation by the Standards in Public Office Commission
of an Alleged Contravention of
the Ethics in Public Office Acts 1995 and 2001
and Part 15 of the Local Government Act 2001

Mr Tim Caffrey
Chief Executive
Longford County Council

October 2015

Report under Section 24 of the Ethics in Public Office Act 1995, as
amended by the Standards in Public Office Act 2001 and as applied by
the Local Government Act 2001

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Foreword

The Standards in Public Office Commission (the Commission), in accordance with section 23 of the Ethics in Public Office Act 1995 (the Ethics Act) as amended by the Standards in Public Office Act 2001 (the Standards Act), has carried out an investigation to determine whether Mr Tim Caffrey, Chief Executive, Longford County Council has contravened Part 15 of the Local Government Act 2001 (the Local Government Act). The Commission, in accordance with section 24 of the Ethics Act, has prepared the following report of the result of that investigation, copies of which, in accordance with section 24(1) of the Ethics Act and section 180(3) of the Local Government Act, are being furnished to:

1. Mr Tim Caffrey, the subject of the investigation;
2. Councillor Gerry Warnock, Mayor, Longford County Council, whose predecessor, Councillor Larry Bannon, made a complaint to the Commission and
3. the Minister for Public Expenditure and Reform.

Mr Justice Daniel O'Keeffe
Chairperson

Mr Seamus McCarthy
Comptroller and Auditor General

Mr Peter Tyndall
Ombudsman

Mr Peter Finnegan
Clerk Assistant of Dáil Éireann

Ms Deirdre Lane
Clerk of Seanad Éireann

Mr Jim O'Keeffe
Commissioner

October 2015

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1. Introduction

1.1 The Commission was established by section 21 of the Ethics Act, as amended by section 2 of the Standards Act, as brought into operation by the Standards in Public Office Act 2001 (Commencement) Order 2001. The members of the Commission for the purposes of this investigation are:

Mr Justice Daniel O'Keeffe (Chairperson)
Mr Seamus McCarthy, Comptroller and Auditor General
Mr Peter Tyndall, Ombudsman
Mr Peter Finnegan, Clerk Assistant of Dáil Éireann
Ms Deirdre Lane, Clerk of Seanad Éireann
Mr Jim O'Keeffe, former member of Dáil Éireann

1.2 The Commission's role, briefly, is to supervise the operation of the Ethics Acts in so far as they concern office holders, an Attorney General who is not a member of a House of the Oireachtas, Ministerial special advisers, designated directors and employees of specified public bodies and certain civil servants; to provide guidance and advice on the applicability of the Ethics Acts and to carry out investigations into possible contraventions of the Ethics Acts and/or Part 15 of the Local Government Act.

1.3 The investigative function of the Commission is a formalised procedure giving its Chairman statutory powers that include the power to compel the attendance of witnesses and to procure documents or other material. The Ethics Acts oblige the Commission to hold sittings for the purpose of investigations. The detailed procedure determined by the Commission for the conduct of investigations is available on the Commission's website at www.sipo.gov.ie.

1.4 Having carried out an investigation under section 23 of the Ethics Act to determine whether there has been a contravention of the Ethics Acts or of Part 15 of the Local Government Act, the Commission, pursuant to section 24 of the Ethics Act and section 180 of the Local Government Act, is required to prepare a report and to furnish a copy of the report to:

- the person the subject of the investigation,
- a person who made a complaint,
- where a report relates to the Chief Executive of a local authority, to the Cathaoirleach of the authority,
- the Minister for Public Expenditure and Reform.

1.5 In addition, section 24(2) of the Ethics Act provides that, where the Commission is of the opinion that a person the subject of an investigation may have committed an offence relating to the performance of his or her functions, it shall prepare a report in writing in relation to the matter and furnish it to the Director of Public Prosecutions.

- 1.6 This report, under section 24 of the Ethics Act, sets out the findings of the Commission together with its determinations in relation to:
- (a) whether there has been a contravention of Part 15 of the Local Government Act, and whether the contravention is continuing,
 - (b) in case the determination is that there has not been a contravention of Part 15, whether the Commission is of opinion that the complaint made was frivolous or vexatious or that there were no reasonable grounds for it, and
 - (c) in case the determination is that there has been a contravention of Part 15 -
 - (i) if the determination is that the contravention is continuing, the steps required to be taken to secure compliance with Part 15, and the period of time within which such steps should be taken,
 - (ii) whether the contravention or act was committed inadvertently, negligently, recklessly or intentionally,
 - (iii) whether the contravention or act was, in all the circumstances, a serious or a minor matter, and
 - (iv) whether the person being investigated acted in good faith and in the belief that his or her action was in accordance with guidelines published or advice given in writing by the Commission under section 25 of the Ethics Act.

2. Background

2.1 On 30 January 2014, the Standards Commission received a complaint dated 29 January 2014 from Councillor Larry Bannon, then Mayor, Longford County Council, concerning Mr Tim Caffrey, County Manager, Longford County Council. The post of County Manager was replaced by a post of Chief Executive with effect from 1 June 2014 under the provisions of the Local Government Reform Act 2014.

2.2 In his complaint, Councillor Bannon stated:

"At no time did I receive any notification in writing from the County Manager Tim Caffrey of his interest in a proposed sale of his dwelling to the Muirósa Foundation in accordance with the provisions of section 178(2)(b) of the Local Government Act 2001, notwithstanding that Longford County Council appeared to be involved in arrangements to facilitate the financing of this proposed purchase. While it is accepted that the proposed sale did not take place, my allegation is that Longford County Manager Tim Caffrey failed to comply with the provisions of section 178(2)(b) of the Local Government Act 2001, in that he as manager of a local authority had actual knowledge of a matter that he had a pecuniary or other beneficial interest in, or which is material to, any matter which was proposed or otherwise arose from or as regards the performance by the authority of any of its functions under the Local Government Act 2001 or any other enactment."

2.3 Having considered the matter, the Commission appointed Mr Brendan O'Neill of the Office of the Ombudsman as Inquiry Officer on 14 February 2014 under Section 6 of the Standards Act to conduct a preliminary enquiry into the complaint, to prepare a report of his enquiry, to furnish any statements made to him by the persons complained of and any other relevant persons, along with any relevant documents and to express an opinion as to whether there was *prima facie* evidence to sustain the complaint. The Inquiry Officer presented the report of his enquiry to the Commission on 9 September 2014, along with relevant statements and documents. He expressed the opinion that there was *prima facie* evidence to sustain an investigation of the complaint.

2.4 Having examined the provisions of the Ethics Acts and the Local Government Act and having taken account of the report of the Inquiry Officer, the Commission decided on 9 February 2015 that it was appropriate to carry out an investigation under section 23 of the Ethics Act to determine whether Mr Caffrey had contravened Part 15 of the Local Government Act. Details of the alleged contravention are included in the Commission's correspondence with Mr Caffrey dated 14 May 2015 - see Appendix 1.

2.5 Relevant extracts from legislation and the Code of Conduct for Employees are included in Appendix 2.

3. Investigation Sitting of the Commission

- 3.1 The Commission determined that its investigation sitting would commence on Monday 28 September 2015. The date, time, and place of the hearing were notified to Mr Caffrey as the subject of the investigation and to his legal advisers. Mr Caffrey's legal advisers informed the Commission on his behalf that he had consented to the documentation and the statements included in the Inquiry Officer's report (which had previously been supplied to him) being admitted into evidence without formal proof, which was confirmed by his counsel at the investigation sitting.
- 3.2 The sitting of the Commission took place on 28 September 2015 to hear legal submissions on behalf of the Commission and Mr Caffrey in relation to the Statement of Alleged Contravention. At the sitting, Mr Peter Bland SC (instructed by Mr Mark Connellan of Connellan Solicitors) appeared for Mr Caffrey. The Commission was represented by Mr Maurice Collins SC (instructed by Mr Peter Law of A & L Goodbody Solicitors).
- 3.3 The transcript of the investigation hearing is at Appendix 3.

4. The Alleged Contravention

- 4.1 The issue to be determined by the Commission was whether Mr Caffrey contravened the Local Government Act as set out in the Statement of Alleged Contravention.
- 4.2 The alleged contravention concerns the obligations of a county manager (now chief executive) under section 178(2)(b) of the Local Government Act (Appendix 2) to disclose in writing to the Cathaoirleach of the local authority the nature of a pecuniary or other beneficial interest in, or which is material to, any matter which is proposed or otherwise arises from or as regards the performance by the authority of any of its functions under this or any other enactment.
- 4.3 Section 15 of the Housing Act 1988 (Appendix 2) provides, inter alia, that the Minister for the Environment, Community and Local Government may, with the consent of the Minister for Finance, pay to a housing authority such grant or subsidy as may be prescribed in respect of the provision of assistance to an approved housing body. The Muiríosa Foundation is an approved housing body.
- 4.4 On 31 July 2013, Longford County Council submitted an application to the Department of the Environment, Community and Local Government under the Capital Assistance Scheme, pursuant to section 15 of the Housing Act 1988, for payment of a grant to the Council which it would then forward to the Muiríosa Foundation by way of a loan to allow the Foundation to purchase a property, 33 The Mill, Clondra, Co. Longford. It was stated that the property would be used to house two persons with disabilities.
- 4.5 In making an application under the Housing Act 1988, the Council (as a housing authority) was performing a function under that enactment.
- 4.6 The property in respect of which the application was submitted, 33 The Mill, Clondra, Co. Longford, was at all material times owned by Mr Tim Caffrey. He declared his ownership of the property on his annual declaration of interests dated 15 January 2013, made pursuant to his obligations under section 171 of the Local Government Act.
- 4.7 The application was subsequently approved by the Department, although the loan was never advanced by the Council to the Foundation. Accordingly, the purchase of the property did not proceed as the Foundation informed the Council that it had no suitable tenants to reside in the premises and in those circumstances it had no option but to withdraw its application for loan funding.
- 4.8 Section 178 applies specifically to a county manager (now chief executive) of a local authority and provides for disclosure of a pecuniary or other beneficial interest in the circumstances set out in section 178(1) of the Local Government Act:
- “This section applies where the manager for a local authority has actual knowledge that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, any matter which is proposed or otherwise arises from or as regards the performance by the authority of any of its functions under this or any other enactment.”*
- 4.9 Section 178(2)(b) provides:

*“The manager to whom subsection (1) relates shall comply with the following requirements:.....
(b) he or she shall, as soon as may be, disclose in writing to the Cathaoirleach of the local authority the nature of his or her interest or the fact of a connected person’s interest, and the Cathaoirleach shall furnish such written disclosure to the ethics registrar without delay.”*

4.10 Section 178(3) provides:

“A disclosure furnished under subsection (2) shall be recorded by the ethics registrar in the register of interests.”

4.11 Mr Caffrey gave evidence to the Commission hearing, stating that he acknowledged and accepted that he

“failed to notify the Cathaoirleach of Longford County Council of the nature of my interest in a house that was the subject of an application by the Council for funding for a grant under the Capital Assistance Scheme.”

4.12 The following submissions/evidence were advanced by or on behalf of Mr Caffrey:

- As stated by Mr Caffrey’s solicitors in their letter of 17 September 2015, Mr Caffrey stated that he inadvertently contravened section 178(2)(b) of the Local Government Act by failing to disclose in writing to the Cathaoirleach of Longford County Council the nature of his interest in the property at 33 The Mill, Clondra, Co. Longford.
- He stated that at all times he acknowledged his interest in the property through his annual declaration to the Ethics Registrar under section 171 of the Local Government Act. He stated that his failure to inform the Cathaoirleach was due to the fact he was not aware of the existence of such a requirement. He stated that he had notified all appropriate County Council staff involved in processing the application for the Muiríosa Foundation of his ownership of the property. In his evidence to the hearing, he said:

“I should have written to the people but I was not aware that I was required by that section of the Act to do so, but the four people were made aware of it and they have accepted that in their statements.”

- It was claimed on his behalf that the Manager’s Order of 10 June 2013 delegated full managerial responsibility for dealing with this matter to Mr Barry Lynch, Head of Finance and Director of Services.
- Furthermore, it was claimed that the application was withdrawn by the Muiríosa Foundation and it would never have succeeded as it did not comply with the strict criteria involved in such an application.
- He said that it did not occur to him that the Cathaoirleach could have any role in processing an application as the elected members did not have a role in the processing of such applications to the Department under the Capital Assistance Scheme.
- He said he took complete responsibility for his failure to be fully aware of all statutory requirements that attached to his position.

- He was appointed County Manager (now Chief Executive) in March 2001. He stated that he was aware that employees in situations of conflict of interest had to make disclosure to him, but was not aware that such disclosures had to be in writing.
 - He stated that his understanding was that as this was an executive function, no question of disclosure to the Cathaoirleach arose.
 - He requested the Commission to find that the contravention was committed inadvertently and it was in all the circumstances minor in nature.
- 4.13 In giving evidence to the hearing, Mr Caffrey read out a statement in which, *inter alia*, he said that he was not aware of the requirements of section 178(2)(b) of the Local Government Act; believed that his obligation was to comply with the requirements of the Code of Conduct for Employees (Appendix 2) and that it did not occur to him that the Cathaoirleach could have any role in this matter as the processing of the application was not a reserved function and the elected members did not have a role in the processing of applications to the Department under the Capital Assistance Scheme.
- 4.14 Under cross-examination at the hearing, Mr Caffrey stated that he was aware of the obligations under section 171 of the Local Government Act to make declarations of interests and also of the obligations in section 179 of the Local Government Act of employees who have a potential conflict of interest to make disclosure to the Chief Executive, although he was not aware that such employees would have to have made a written disclosure.
- 4.15 In his annual declaration of interests signed by him on 15 January 2013, Mr Caffrey declared:
- “I hereby undertake to have regard to and be guided by the Code of Conduct for Employees in the exercise of my functions. (The Code of Conduct for Employees was issued by the Minister under section 169 of the Local Government Act 2001.)”*
- 4.16 In response to further cross-examination at the hearing, Mr Caffrey stated that he had read the Code of Conduct, although he did not read it before or after he signed the declaration in that regard. Counsel for the Commission put to him the provisions of section 3.5 of the Code of Conduct concerning the statutory obligations of employees to disclose to the manager (now chief executive) any pecuniary or beneficial interest in, or material to, any matter relating to the local authority's functions with which they are concerned in the course of their duties. Counsel also put to him the specific provisions in paragraph 3.5 which states:
- “Specific statutory requirements also apply in relation to disclosure by managers.”*
- 4.17 Mr Caffrey did not recall this particular provision of the Code of Conduct, notwithstanding that he stated that he had read the Code.
- 4.18 In an email dated 18 March 2014, which Mr Caffrey sent to the Inquiry Officer, Mr O’Neill, in which he asserted that he had notified four council employees of his interest in the property as soon as he became aware that the application was being prepared, he stated:

“I can also confirm that this information was given by me verbally to all concerned, at which time I made it expressly clear that the application was to be considered entirely objectively in accordance with the normal criteria for such applications.”

4.19 He repeated this in his statement to the Commission hearing, in the following terms:

“I organised that I was fully distanced from the relevant decision making process which had been delegated by order to Barry Lynch, and I made sure that Mr. Lynch and the three other members of the Executive involved in the decision were informed of my interest.”

4.20 As noted in paragraph 3.1 above, Mr Caffrey consented to the documentation and the statements included in the Inquiry Officer's report being admitted into evidence without formal proof. These included statements by Ms Anne Glancy and Ms Anna Lane, Housing Department, Longford County Council, made to the Inquiry Officer and set out in his reports of his meetings with Ms Glancy and Ms Lane.

4.21 The Inquiry Officer's report of a meeting on 25 March 2014 with Ms Glancy, stated that she *“was never formally notified by anybody about Mr Caffrey's ownership of the property. She said that she became aware of Mr Caffrey's ownership of the property through dealing with the CAS application from the Muiriosa Foundation. She said that she did know... that Mr Tim Caffrey had a house in Clondra but she did not know what specific house.”*

4.22 The Inquiry Officer's report of a meeting on 25 March 2014 with Ms Lane stated that *“at no stage was she formally notified about Mr Caffrey's ownership of the property. I also asked her if she knew how many other people were aware that the property was owned by Mr Tim Caffrey and she replied that it was generally known among staff dealing with the CAS application that Mr Caffrey owned the property.”*

4.23 Mr Caffrey did not contest the contents of these statements in his evidence to the Commission. The statements would tend to contradict his assertions that he had notified all appropriate County Council staff involved in processing the application for the Muiriosa Foundation of his ownership of the property, and that he had made it expressly clear that the application was to be considered entirely objectively in accordance with the normal criteria for such applications. The Commission does not consider it necessary to resolve this conflict of evidence, having regard to Mr Caffrey's admission of the contravention.

5. Findings and Determinations

- 5.1 In relation to the alleged contravention, the Commission is satisfied, on the evidence before it, that Mr Caffrey contravened section 178(2)(b) of the Local Government Act 2001 in the manner alleged in the Statement of Alleged Contravention. The Commission is satisfied on the balance of probabilities that the contravention was committed negligently to a high degree and that it was, in all the circumstances, a serious matter. By its nature, the Commission finds that the contravention is not continuing.
- 5.2 In coming to these determinations, the Commission rejects Mr Caffrey's submission that the contravention was committed inadvertently and that it was in all the circumstances minor in nature. In particular, the Commission finds that Mr Caffrey's failure to inform himself of the relevant statutory provisions could not be construed as inadvertent, particularly having regard to the requirement to sign a declaration on an annual basis in respect of the Code of Conduct. The failure is particularly significant, given that he would have signed such a declaration each year following the commencement of the relevant provision in 2004. The Commission notes that Mr Caffrey did not seek any advice regarding his obligations in the particular circumstances.
- 5.3 The Commission does not accept the argument put forward on behalf of Mr Caffrey that the requirement under section 178(2)(b) would merely result in two entries in the register of interests recording the fact of his ownership of this particular property, given his compliance with the requirement to make an annual declaration. The disclosure under section 178 is triggered by the relevant interest in conjunction with the performance of specific functions by the local authority. The Act requires that, where they arise, actual conflicts of interest are disclosed to the public, separately to the requirement to disclose potential conflicts in the annual declaration. In addition to such disclosure of a conflict of interest, the Act also requires that the manager neither influence nor seek to influence a decision of the local authority as regards the matter.
- 5.4 The Commission considers that section 178, which applies to a manager (now chief executive), has an important regulatory role in relation to those persons within its ambit. Lack of knowledge of its provisions and application is no excuse for a person in Mr Caffrey's position. The Commission considers that there is a fundamental duty on the part of all public officials to fully inform themselves of all relevant statutory duties. Mr Caffrey was negligent to a high degree in not doing so and given the importance of the provision and the degree of negligence, the Commission finds that the contravention by Mr Caffrey was a serious matter.
- 5.5 The Commission does not share the view of Mr Caffrey that, as the Cathaoirleach had no role in the executive function in question, there could be no obvious reason to inform him of the interest, other than the specified requirement under section 178(2)(b) which he says he was not aware of. The Commission is of the view that Mr Caffrey should have considered that he was required to inform the Cathaoirleach of his interest given that the manager's line of accountability is to the Cathaoirleach under the Ethical Framework set out in Part 15 of the Local Government Act.
- 5.6 Having regard to all of these findings, the Commission finds that Mr Caffrey did not act in good faith.

5.7 The Commission notes that Mr Caffrey cooperated with the preliminary inquiry by providing timely responses and with the investigation in not requiring the proving of evidential documents.

Appendix 1

Letter to Mr Tim Caffrey - enclosing Statement of Alleged Contravention

14 May 2015

Mr Tim Caffrey
Chief Executive
Longford County Council
Great Water Street
Longford
Co. Longford

Dear Mr Caffrey,

I refer to the complaint, dated 29 January 2014, from Councillor Larry Bannon, then Mayor, Longford County Council, under the Ethics in Public Office Acts 1995 and 2001 (the Ethics Acts).

Having considered the complaint, the Commission pursuant to Section 6(1) of the Standards in Public Office Act 2001 appointed Mr Brendan O'Neill as Inquiry Officer to perform the functions provided for in Section 6 of that Act in relation to the complaint received. In the course of his preliminary inquiry, Mr O'Neill interviewed and obtained statements from a number of persons, including you.

Mr O'Neill concluded his investigation and furnished his Report to the Commission on 9 September 2014. In his Report, Mr O'Neill expressed the opinion that there exists prima facie evidence to sustain an investigation of the complaint.

The purpose of this letter is to advise you that, following consideration of Mr O'Neill's Report at its meeting on 20 April 2015, the Commission has decided to initiate a formal investigation under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 (the Ethics Acts) in relation to the complaint received. The Commission proposes to sit at 10.00 A.M. on Monday, 22 June 2015 at its offices at 18 Lower Leeson Street, Dublin 2 for the purposes of hearing evidence arising from this investigation. You are of course entitled, if you so wish, to be legally represented at that hearing. In the event that the proposed hearing date causes significant difficulty for you, I would be obliged if you would notify me of that fact as soon as possible.

In order to assist you in understanding the investigation process, I enclose a Statement of Intended Procedures which has been prepared by the Commission. I also enclose copies of the following:

1. Statement of Alleged Contravention
2. Report dated 9 September 2014 (including Appendices) of the Inquiry Officer appointed by the Commission.

The enclosed Report includes as Appendices certain documentation which was provided to Mr O'Neill in the course of his enquiries and also Statements obtained by him from officials of the Council. The Commission intends to rely on this documentation and these Statements in the investigation.

The Commission has extensive powers to compel the attendance of persons to give evidence to it and to procure documentation. However, it appears to the Commission that there is little or no factual dispute disclosed by this documentation and Statements and, in order to obviate the necessity of the Commission having to formally prove this and to call the authors of the Statements as witnesses to give oral evidence at the hearing in accordance with the Statements, I am directed by the Chairperson of the Commission to seek your written consent to these documents being produced in evidence without formal proof being required and for the written Statements to be admissible as evidence by the Commission at the hearing. That would not, of course, preclude you from giving evidence on your own behalf, calling any additional evidence which you consider appropriate or making submissions to the Commission.

In this context, you should note the provisions of Section 32(2) of the Ethics in Public Office Act 1995, which is referred to in para. 4.6 of the Statement of Intended Procedures. As is stated there, the Commission will endeavour to comply with any reasonable request made by you or on your behalf in relation to the exercise by the Chairperson of his powers under that section for the purposes of securing the attendance of witnesses and/or the production of documents which you wish to present to the Commission.

I look forward to hearing from you as to whether you are prepared to agree to the documentation and the Statements included in the Appendices to the Inquiry Officer's report being admitted into evidence without formal proof.

If you or your legal representative require clarification of any of the matters raised in this letter or alternatively any of the procedures outlined in the Statement of Intended Procedures, please do not hesitate to contact me.

Yours sincerely,

Paddy Walsh
Commission Secretary

**Ethics in Public Office Act 1995
Standards in Public Office Act 2001
Local Government Act 2001**

(Section 32(6)(b) of the Ethics in Public Office Act 1995)

Mr Tim Caffrey, Chief Executive, Longford County Council

STATEMENT OF ALLEGED CONTRAVENTION

That you contravened Section 178(2)(b) of the Local Government Act 2001 by failing to disclose in writing to the Cathaoirleach of Longford County Council ("the Council") the nature of your interest in a property at The Mill, Clondra, County Longford ("the Property"), namely that you were the owner of the Property, which interest you had actual knowledge of and which was material to a matter which arose from or as regards the performance by the Council of its functions, and in particular its functions under the Housing Act 1988, in respect of the submission on 31 July 2013 of an application by the Council to the Department of the Environment, Community and Local Government for the payment to the Council, pursuant to section 15 of the Housing Act 1988, of a grant under the Capital Assistance Scheme for the purchase of the Property by Muiríosa Foundation.

Appendix 2

Relevant extracts from legislation, and Code of Conduct for Employees

Local Government Act 2001

Codes of conduct for Local Government Service.

169.— (3) (b) Each employee shall, in so far as the code of conduct applies to that employee, have regard to and be guided by the code of conduct in the exercise of his or her functions.

(3) (c) There shall be deemed to be included in the terms and conditions of employment of an employee an undertaking by him or her to have regard to and be guided by the code of conduct in the exercise of his or her functions.

Disclosure by manager for local authority of pecuniary or other beneficial interests.

178.— (1) This section applies where the manager for a local authority has actual knowledge that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, any matter which is proposed or otherwise arises from or as regards the performance by the authority of any of its functions under this or any other enactment.

(2) The manager to whom subsection (1) relates shall comply with the following requirements:

- (a) he or she shall neither influence nor seek to influence a decision of the local authority as regards the matter;
- (b) he or she shall, as soon as may be, disclose in writing to the Cathaoirleach of the local authority the nature of his or her interest or the fact of a connected person's interest, and the Cathaoirleach shall furnish such written disclosure to the ethics registrar without delay.

(3) A disclosure furnished under subsection (2) shall be recorded by the ethics registrar in the register of interests.

(4) Where a function would normally be dealt with by the manager, the function shall be delegated by him or her in accordance with section 154, after disclosure under subsection (2), to an employee.

(5) The manager shall inform the Cathaoirleach of any delegation under subsection (4).

Standards in Public Office Act 2001

Complaints to Commission.

4.— (1) Where a person (“the complainant”) considers that—

(a) a specified person or a person who, in relation to a specified person, is a connected person may have done an act or made an omission after the commencement of section 2 that is, or the circumstances of which are, such as to be inconsistent with the proper performance by the specified person of the functions of the office or position by reference to which he or she is such a person or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance,

(b) a specified person may have contravened a provision of the Principal Act, or

(c) a specified person may have contravened a provision of the Act of 1997,

the complainant may make a complaint in relation to the matter to the Commission.

(2) Subsection (1) does not apply to an act or omission of a specified person or a person who, in relation to a specified person, is a connected person if it—

(a) relates to a private matter and is unrelated to the functions of the office or position by reference to which the specified person is such a person, or

(b) results from incompetence or inefficiency in the performance of, or from failure to perform, such a function, on the part of the specified person.

(3) A complaint under subsection (1) shall be in writing or in such other form as may be determined by the Minister.

(4) The Commission may request an inquiry officer to carry out a preliminary inquiry into any complaint under subsection (1) falling within paragraph (a) of that subsection unless it considers the complaint to be frivolous or vexatious.

(5) Where the subject matter of a complaint made or referred to the Commission is not, in the opinion of the Commission, of sufficient gravity to warrant investigation by the Commission, the Commission, at its discretion, either, shall not investigate it or shall refer it—

(a) in case it relates to a person who is or, at the time to which the complaint relates, was a member, to such committee of the House concerned as it considers appropriate,

(b) in case it relates to a person who is or, at the time aforesaid, was the holder of a designated directorship or any directorship, or the occupier of a designated position or any position, in a public body, to the head of the body,

(c) in case it relates to a person who is or was at the time aforesaid a special adviser, to the office holder to whom he or she is or was acting as special adviser.

- (6) (a) In subsection (1), “specified person” means a person who—
- (i) is or, at the time to which the complaint concerned relates, was an office holder or the holder of the office of Attorney General but not a member,
 - (ii) is or, at the time aforesaid, was a special adviser or held a designated directorship of, or occupied a designated position, in a public body, or
 - (iii) holds or occupies or, at the time aforesaid, held or occupied a directorship or a position of employment in a public body.
- (b) Without prejudice to the generality of the expression “significant public importance” in subsection (1), a matter shall, if the Commission consider it appropriate to do so having regard to all the circumstances, be deemed by it, for the purposes of that subsection, to be of significant public importance if it relates to a benefit alleged to have been received by a specified person or a person who, in relation to a specified person, is a connected person and, in the opinion of the Commission, the value of the benefit was, is or might have been or be expected to be or to become not less than £10,000.

Housing Act 1988

Grants or subsidies by Minister for dwellings, sites and assistance provided by housing authorities.

15.—(1) The Minister may, with the consent of the Minister for Finance and subject to such regulations as may be made by the Minister under this section, pay to a housing authority, out of moneys provided by the Oireachtas, such grant or subsidy as may be prescribed in respect of—

- (a) the provision of dwellings (including houses, flats, maisonettes and hostels) by the authority;
- (b) the improvement or reconstruction of dwellings provided by the authority;
- (c) the provision or improvement by the authority of sites for caravans within the meaning of section 13 for persons to whom that section applies;
- (d) the acquisition of land for the provision of dwellings or sites referred to in this section;
- (e) the carrying out of ancillary works in connection with the provision or improvement of dwellings or sites referred to in this section; and
- (f) the provision of assistance under section 5 to a body approved of by the Minister for the purposes of that section.

(2) Regulations under this section may, in particular, but without prejudice to the generality of subsection (1)—

- (a) make provision in relation to all or any one or more of the following matters irrespective of whether or not a grant or subsidy is, or was, paid under this section in respect of particular dwellings, sites, land or works:
 - (i) the determination of rents of dwellings let by the housing authority;
 - (ii) the sale of dwellings and the application by the housing authority of the proceeds of such sale;
 - (iii) contributions by a housing authority towards the costs incurred by that authority in respect of their housing services;
 - (iv) the management, maintenance and improvement of dwellings or sites; and
 - (v) requirements in relation to the payment of any other grant or subsidy in respect of a dwelling under any enactment (including this Act);

and

- (b) insofar as they relate to the payment of a grant or subsidy under subsection (1) (f), make provision in relation to all or any one or more of the matters referred to in section 5 (6).

(3) A grant or subsidy shall not be paid under this section in respect of a dwelling, site or works unless the relevant dwelling, site or works comply on completion with such conditions, if

any, as may, from time to time, be determined by the Minister for the purposes of this section in relation to standards of construction and of works and the provision of water, sewerage and other services in dwellings or sites.

(4) A subsidy under subsection (1) in respect of loan charges may be made either to the housing authority concerned or, on their behalf, to the person who made the relevant loan in respect of which the loan charges were incurred.

Code of Conduct for Employees (relevant extracts)

3. Conflict of personal and public interest

- 3.5 In the case of certain categories of employees the Act requires them to furnish an annual declaration of certain "declarable interests": forms are supplied by the ethics registrar. The Act also provides that such employees must formally disclose to the manager any pecuniary or beneficial interest, (of which they have actual knowledge) they or a connected person have in, or material to, any matter relating to the local authority's functions with which they are concerned in the course of their duties. They must then comply with any directions given by the manager. Specific statutory requirements also apply in relation to disclosure by managers. The Act prohibits all such employees from seeking to influence the local authority improperly as regards any matter. These legal requirements must be observed at all times and failure to do so is an offence under the Act. Similar type requirements also apply under the Act to councillors; and to consultants providing a service to local authorities. The Act provides that in any proceedings under Part 15 a court may have regard to the relevant code as may the Standards in Public Office Commission in carrying out its functions.

Appendix 3

Transcript of Investigation Hearing – 28 September 2015

STANDARDS IN PUBLIC OFFICE COMMISSION

INQUIRY INTO A COMPLAINT CONCERNING MR. TIM CAFFREY

HEARD ON MONDAY, 28TH SEPTEMBER 2015

AT 18 LOWER LEESON STREET, DUBLIN 2

Gwen Malone Stenography
Services certify the
following to be a
verbatim transcript of
their stenographic notes
in the above-named
action.

GWEN MALONE STENOGRAPHY
SERVICES

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MR. SEAMUS MCCARTHY
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1 THE HEARING COMMENCED AS FOLLOWS ON MONDAY,
2 28TH SEPTEMBER 2015:

3
4 **CHAIRMAN:** Good morning Ladies and
5 Gentlemen. This morning we are conducting an 10:03
6 investigation in respect of a formal complaint that was
7 sent concerning Mr. Tim Caffrey who is the Chief
8 Executive of Longford County Council in Longford. I am
9 going to call upon Mr. Maurice Collins, Counsel on
10 behalf of the Commission, to open the matter but before 10:04
11 that I will take any representation that there is.

12 **MR. BLAND:** Good morning. Peter Bland,
13 instructed by Mark Connellan of Connellan Solicitors
14 for Mr. Caffrey.

15 **CHAIRMAN:** Thank you Mr. Bland. 10:04
16 Mr. Connellan?

17 **MR. CONNELLAN:** Yes, Chairman.

18 **CHAIRMAN:** Thank you Mr. Connellan.
19 Now Mr. Collins.

20 10:04
21 OPENING SUBMISSION BY MR. COLLINS AS FOLLOWS:

22
23 **MR. COLLINS:** Good morning Chairman and
24 members of the Commission. This is a public hearing of
25 the Commission to investigate an alleged contravention 10:04
26 by the Chief Executive of Longford County Council,
27 Mr. Tim Caffrey, of the requirements of section
28 178(2)(b) of the Local Government Act 2001. I will come
29 back in just a few moments to explain to the Commission

1 and to the members of the public what the requirements
2 of section 178(2)(b) are.

3
4 Mr. Caffrey has accepted that he has contravened the
5 subsection and, therefore, there is little in factual 10:05
6 dispute for the Commission to determine this morning.
7 There are, nonetheless, requirements on the Commission
8 to address and make determinations in respect of the
9 circumstances and the character of the contravention
10 that has been admitted, and because of that and because 10:05
11 also this is a public hearing of the Commission, and
12 because of the legitimate public interest in the
13 operation of the Commission, I propose to bring the
14 Commission through the sequence of events and hopefully
15 give a picture of the circumstances which have lead to 10:05
16 this hearing.

17
18 The Statement of Alleged Contravention is in Tab 1 of
19 the Book of Documents, which I believe the members
20 have, and which has been made available to Mr. Caffrey 10:05
21 and his advisers. That alleges that Mr. Caffrey
22 contravened section 178(2)(b) of the 2001 Act by
23 failing to disclose in writing to the Cathaoirleach of
24 Longford County Council the nature of his interests in
25 a property at The Mill, Clondra, County Longford, 10:06
26 namely that he was the owner of the property, which
27 interest he had actual knowledge of and which was
28 material to a matter which arose from or as regards the
29 performance by the Council of its functions, and in

1 particular its functions under the Housing Act 1988, in
2 respect of the submission on the 31st July 2013 of an
3 application by the Council to the Department of the
4 Environment, Community and Local Government for the
5 payment to the Council, pursuant to section 15 of the 10:06
6 Housing Act 1988, of a grant under the Capital
7 Assistance Scheme for the purchase of the property by
8 Muiríosa Foundation.

9
10 In essence I will explain in slightly more detail. This 10:06
11 was an application for a grant which once provided
12 would have enabled the Local Authority in its capacity
13 as Housing Authority to provide assistance to the
14 Muiríosa Foundation to purchase the property at 33, The
15 Mill, Clondra, which was the property of Mr. Caffrey. 10:07
16 Mr. Caffrey was obliged under 178(2)(b) to declare his
17 interest specific to that intended performance of
18 function and did not do so, and accepts now that he did
19 not do so.

20 10:07
21 In more detail then; this arises in respect of the
22 functions of Longford County Council as Housing
23 Authority and in particular its functions in relation
24 to the operation of the Capital Assistance Scheme.
25 That is a scheme for the provision of assistance by the 10:08
26 Department to Local Housing Authorities for the
27 provision of housing accommodation directly by
28 themselves or alternatively by the provision of
29 financial assistance to Approved Housing Associations.

1 At all times the Muiríosa Foundation was an Approved
2 Housing Foundation, I beg your pardon, an Approved
3 Housing Body. Under the Housing (Miscellaneous
4 Provisions) Act 1992, which is contained in your Book
5 of Legislation, provision may be given by Housing 10:08
6 Authorities to Approved Housing Bodies. The terms and
7 conditions pursuant to which that assistance is given
8 is a matter for the Elected Councillors to determine,
9 but the application in any given instance or in respect
10 of any particular application for assistance is a 10:08
11 matter for the Executive of the Housing Authority
12 concerned.

13
14 Equally, the operation of section 15 of the Housing Act
15 1988, the making of applications to the Department of 10:09
16 the Environment for grants in order to provide or
17 assist the provision of housing accommodation, is a
18 matter for the Executive of the Housing Authority
19 concerned. Here the Housing Body submitted a project
20 brief, as it so described, but effectively an 10:09
21 application for assistance to Longford County Council
22 on the 4th July 2013. That document, Chairman and
23 members of the Commission, can be found at Tab 6 of the
24 Book of Documents. It indicated that Muiríosa
25 Foundation was proposing to purchase 33, The Mill, 10:09
26 Clondra for a purchase price of €245,000 and it sought
27 total funding of €259,000, that including on top of the
28 purchase price professional fees and so on, and such
29 funding it was intended would be provided by way of a

1 loan from the Council to the Foundation. That
2 application was then processed by the Council and on
3 the 31st July 2013 the Council submitted a formal
4 Capital Assistance Scheme application to the Department
5 of the Environment signed by the Housing Officer, the 10:10
6 Director of Housing, I beg your pardon, Mr. Barry
7 Lynch, for a grant of €250,635. That application was
8 made pursuant to section 15 of the Housing Act 1988.
9 That application may be found at Tab 9 of the Book of
10 Documents. Given its central importance to the 10:11
11 complaint it may be appropriate for me to bring you to
12 it? It is under the cover of a letter that is signed
13 by the Administrative Officer in Housing, Ms. Anne
14 Glancy. You will see "*Capital Assistance Scheme*".
15 It's Form CAS2. It is a stipulated form to be 10:11
16 completed in respect of section 15 applications, and
17 you will see the Housing Authority is identified as
18 "*Longford County Council*". The name and address of the
19 approved body is "*Muiríosa Foundation*". The tax
20 reference number is given. Then at number, item four 10:11
21 you will see the property that is the subject of the
22 application. That is "*33, The Mill, Clondra, County*
23 "*Longford*". There is then some further information
24 concerning the categories and it is indicated that it
25 is "*Category 2*" for, for "*two handicapped*" people, as 10:12
26 they are described at a total cost of €245,000, and it
27 is indicated that the property is already built and
28 available and it is signed by the Director of Services
29 for Housing, Mr. Lynch. That is the application that

1 is referenced in the Statement of Alleged
2 Contravention, the application for a grant.

3
4 Subsequent to that application the Council was informed
5 that the grant had been approved, and that can be found 10:12
6 at the next tab of the book, and that therefore a loan
7 in the amount that had been sought by way of grant
8 could therefore be advanced to the Muiríosa Foundation.
9 Effectively the Scheme operates that grant assistance
10 is given by the Department to the Housing Authority 10:12
11 concerned and that money is then available to the
12 Housing Authority to forward by way of loan to the
13 Approved Housing Body. That loan, as it happens, was
14 never advanced and the purchase of the premises did not
15 proceed, because by letter of the 14th October 2013, 10:13
16 which the Commission will find at Tab 11 of the same
17 Book of Documents, the Foundation informed the Council
18 that it turned out that it had no suitable tenants to
19 reside in the premises and in those circumstances the
20 Foundation informed the Council that it had no option 10:13
21 but to withdraw its application for loan funding.

22
23 That in brief is the sequence of events that lead to a
24 formal complaint being made to the Commission by letter
25 of the 29th January 2014. That letter of complaint is 10:13
26 to be found at Tab 2(i) of the Book of Documents.
27 Again, given its importance perhaps it is worthwhile
28 looking briefly at that? It is a lengthy letter and I
29 don't propose to bring the Commission through the whole

1 of it because it deals with certain other matters which
2 are outside perhaps the scope of the hearing today, but
3 in relevant terms if the Commission looks at page 8,
4 the pagination being at the bottom right-hand corner of
5 the letter, you will see, this complaint I should say 10:14
6 was from the Mayor of County Longford, the then Mayor
7 of County Longford, Mr. Larry Bannon. The Commission I
8 am sure are aware that the formal statutory designation
9 of Mayor is one that may be chosen by the local
10 authorities. The Cathaoirleach, the Office is that of 10:14
11 Cathaoirleach but local authorities may elect to
12 designate the Cathaoirleach as a Mayor, and that has
13 obviously been done in respect of County Longford. The
14 formal complaint is, as I say, at page 8 in italics and
15 it is a complaint that the Cathaoirleach had not 10:15
16 received at any time a notification in writing from the
17 County Manager of his interest in a proposed sale of
18 his dwelling in accordance with the provisions of
19 section 178(2)(b). He went on to allege that while the
20 sale had not completed, did not take place nonetheless 10:15
21 there was a failure to comply with the provisions. As I
22 say, that failure to comply is now acknowledged and,
23 therefore, it is an issue that is no longer in dispute
24 for the purposes of this hearing before you today.

25
26 I propose now to say something more about the
27 provisions of the Local Government Act 2001, in
28 particular Part 15 and section 178(2)(b) in particular.
29 If I may ask you members to take up the larger folder

1 which contains, and again a copy of this has been
2 provided in advance to Mr. Caffrey's advisers, this
3 contains the relevant legislation as well as the
4 Capital Scheme, to which I have already referred at Tab
5 5. Tab 1 contains a relevant extract from the Local 10:16
6 Government Act 2001 comprising the updated provisions
7 of Part 15. If I can ask you to turn to page 28, that
8 is the pagination in the book, the original pagination
9 is also available, it is 217. Part 15 starts at that
10 page and the Commission will note that it is directed 10:17
11 to providing or creating an ethical framework for the
12 Local Government Service. To that end it imposes a
13 number of important obligations both on members of
14 local authorities and employees, including employees as
15 senior as Manager, as the position was known in 2001, 10:17
16 Chief Executive with effect from the commencement of
17 the Local Government Reform Act 2014. If I can ask you
18 to note, and we will come back to it in just a moment,
19 section 169 which provides for the adoption of Codes of
20 Conduct in respect both of members and of employees? 10:17
21 section 169 is on page 31, and section 171 is on page
22 33. It requires persons within the scope of section
23 167, and there is no dispute but that Mr. Caffrey was
24 such a person, to make an annual declaration of
25 interests. Such a declaration has indeed or was indeed 10:18
26 provided by Mr. Caffrey, and I will come back to that
27 in just a moment.
28
29 Then section 172 provides that such annual

1 declarations, or at least the interests that are
2 declared in such annual declarations, plus any
3 interests that are declared pursuant to the provisions,
4 that we are just about to look at in more detail, are
5 to be placed by the Ethics Registrar in the public 10:18
6 register of interests maintained by section 172. That
7 is a feature that the Commission should bear in mind;
8 that the consequence of making a notification required
9 by section 178 (2)(b), or at least one of the
10 consequence is, as I will explain in just a moment when 10:19
11 I come to that section, that the notification is to be
12 given to the Ethics Registrar for the purposes of being
13 included in the register maintained pursuant to section
14 172. So it is not merely internal disclosure on
15 notification. 10:19

16
17 Then going forward to section 175, it explains what
18 declarable interests are but again there is no dispute
19 about the application of that provision here. Then if
20 I may bring you to 178, which is at page 40(a)? 10:19
21 Perhaps worth observing that this is a section that is
22 specific to the position of Manager or as it is now
23 known Chief Executive. So this is a section that,
24 unlike the other sections in Part 15, is not of general
25 application but is specific and particular to the 10:20
26 office of Manager. It provides that;

27
28 *"This section applies where the manager of a local*
29 *authority, for a local authority has actual knowledge*

1 *that he or she or a connected person has a pecuniary or*
2 *other beneficial in, or which is material to, any*
3 *matter which is proposed or otherwise arises from or as*
4 *regards the performance by the authority of any of its*
5 *functions under this or any other enactment".* 10:20

6
7 Here, as the Statement of Alleged Contravention makes
8 clear, it is a function under section 15 of the Housing
9 Act 1988 that is in issue. Subsection 2 provides;

10
11 *"The manager to whom subsection (1) relates shall*
12 *comply with the following requirements:*

13 *(a) he or she shall neither influence nor seek to*
14 *influence a decision of the local authority as regards*
15 *the matter, and* 10:21

16 *(b) he or she shall, as soon as may be, disclose in*
17 *writing to the Cathaoirleach of the Local Authority the*
18 *nature of his or her interest or the fact of a*
19 *connected person's interest, and the Cathaoirleach*
20 *shall furnish the written disclosure to the Ethics* 10:21
21 *Registrar without delay".*

22
23 Then subsection 3 provides that;

24
25 *"A disclosure furnished under subsection (2) shall be* 10:21
26 *recorded by the Ethics Registrar in the register of*
27 *interests",*

28
29 and thereby by virtue of the section 171, that we

1 looked at just a moment ago, be available for
2 consultation or scrutiny by members of the public. Then
3 for completeness, subsection 4 provides;

4
5 *"That where a function would normally be dealt with the 10:21*
6 *manager, the function shall be delegated by him or her*
7 *in accordance with section 154 after disclosure under*
8 *subsection (2) to an employee".*

9
10 So there are important consequences following from the 10:21
11 making of the disclosure pursuant to Subsection 178(2).
12 Then the manager is required by Subsection 5 to inform
13 the Cathaoirleach of any delegation under subsection 4.

14
15 Can I perhaps before going back to the Code of Conduct 10:22
16 provision just draw your attention to section 179,
17 which effectively provides for equivalent obligations
18 that apply to employees below the position of manager,
19 and the disclosure under section 179 is to the manager.
20 So 178 and 179 work together. Section 178 requires 10:22
21 disclosure by the manager to the Cathaoirleach and
22 section 179 requires disclosure by employees
23 subordinate to the manager and in those circumstances
24 disclosure is to the manager but an important
25 difference -- sorry, that fact does not arise. 10:23
26

27 Then going back to section 169, that provides for the
28 making after consultation of codes of conduct and in
29 respect of the performance by elected members and

1 employees of their functions. Subsection 5(b)
2 provides, and this is at page 32;

3
4 *"The Commission may have regard to a code of conduct*
5 *issued under this section in the carrying out of its* 10:23
6 *functions in relation to a local authority".*

7
8 Now the Code of Conduct you will find in this same book
9 at Tab 6. There are perhaps some provisions of that
10 Code that it is appropriate to refer you to at this 10:24
11 stage. The first of those is section 3 which
12 emphasises the importance of avoidance of and/or
13 disclosure of conflicts of interest arising on the part
14 of the - and this is the code applicable to employees,
15 there is a separate code that applies to elected 10:24
16 members of local authorities in respect of the
17 discharge of employees' functions in a local authority.
18 I draw your attention to 3.4.

19
20 *"The Act has specific disclosure requirements for* 10:25
21 *certain categories of employees which must be observed*
22 *(see paragraph 3.5 below)".*

23
24 Then it goes on to say;

25
26 *"without prejudice to those disclosure requirements",*
27

28 it gives certain examples of where disclosure is
29 required. If I may, without looking at those

1 necessarily now, bring you to 3.5, you will see it
2 provides, it is at internal page 8;

3
4 *"In the case of certain categories of employees the Act*
5 *requires them to furnish an annual declaration of* 10:25
6 *certain 'declarable interests'; forms are supplied by*
7 *the Ethics Registrar. The Act also provides that such*
8 *employees must formally disclose to the manager any*
9 *pecuniary or beneficial interest, (of which they have*
10 *actual knowledge) they or a connected person have in,* 10:25
11 *or material to, any matter relating to the local*
12 *authority's functions with which they are concerned in*
13 *the course of their duties. They must then comply with*
14 *any directions given by the manager. Specific statutory*
15 *requirements also apply in relation to disclosure by* 10:26
16 *managers. The Act prohibits all such employees from*
17 *seeking to influence the local authority improperly as*
18 *regards any matter. These legal requirements must be*
19 *observed at all times and failure to do so in an*
20 *offence under the Act. Similar type requirements also* 10:26
21 *apply to councillors and to consultants. The Act*
22 *provides that in any proceedings under Part 15 a court*
23 *may have regard to the relevant code, as may the*
24 *Standards in Public Office Commission in carrying out*
25 *its functions".* 10:26

26
27 Then, finally, if the Commission move forward to
28 internal page 17 there are just two additional
29 provisions that are worthy of note. Paragraph 13.3

1 provides that;

2
3 *"In case of doubt on any matter it is always preferable*
4 *for an employee to err on the side of caution by*
5 *consulting with his or her supervisor. Where this Code* 10:26
6 *requires a disclosure by an employee to his/her*
7 *supervisor he or she should comply with such*
8 *instructions as may be given".*

9
10 Then 13.6; 10:27

11
12 *"This Code does not prejudice specific statutory*
13 *requirements such as those set out in the Local*
14 *Government Act 2001, applying to all or to specified*
15 *categories of employees - and is also additional to* 10:27
16 *other public sector wide legislation such as the*
17 *recently strengthened anti-corruption legislation".*

18
19 So they are, subject to anything that you hear from
20 Mr. Bland, the relevant provisions of the Code of 10:27
21 Conduct.

22
23 As will be clear both from Part 15 of the 2001 Act
24 itself and from paragraph 3.5 that I have just read to
25 you from the Code of Conduct, the obligation to make an 10:27
26 annual declaration is distinct from the obligation to
27 make a disclosure if the circumstances that are
28 specified in section 178(1) arise. In other words, it
29 is not an excuse from compliance with section 178 to

1 say that one has made a declaration pursuant to the
2 annual declaration obligations that identifies the same
3 interest or the same property. That is the position
4 here; it was declared in the annual declaration but the
5 obligations that arise under section 178(2) are clearly 10:28
6 distinct from and additional to the obligations to make
7 an annual declaration.

8
9 As I have said already, Mr. Caffrey had declared his
10 interest in 33, The Mill, in his relevant annual 10:28
11 declaration. That is in the Book of Documents at Tab 5
12 and perhaps we might just look at that for a moment?
13 My copy is a little bit difficult to read but you will
14 see that it is dated the 15th January 2013, signed by
15 Mr. Caffrey. It is a statutory form and it contains a 10:29
16 confirmation and undertaking that is a standard form.
17 He;

18
19 *"furnishes the following particulars of my declarable*
20 *interest as required by section 171, which I have set 10:29*
21 *out at paragraphs 1 to 10 of this form",*

22
23 and he undertakes to have regard to and be guided by
24 the Code of Conduct for Employees in the exercise of
25 his functions. The Code of Conduct for Employees was 10:29
26 issued by the Minister under section 169. That is the
27 Code of Conduct we have just looked at, members of the
28 Commission.

1 Then on the next page you will see under the heading of
2 "*Land (ownership, interest)*" there is a number of items
3 and one of them is "33, The Mill, Clondra, County
4 Longford" described as "*residence for work*".

5
6 As I have explained, the proposed funding by Longford
7 County Council for the purchase by the Muiríosa
8 Foundation of the premises at 33, The Mill, clearly
9 involved the performance by the Council of statutory
10 functions. Specifically the application to the 10:30
11 Department of the Environment for the grant for the
12 purpose of funding the purchase of the premises
13 involved the performance by the Council of functions
14 under section 15 of the Housing Act 1988. It also
15 involved obviously functions under the Housing 10:30
16 (Miscellaneous Provisions) Act 1992 in terms of the
17 provision of the loan.

18
19 while it will ultimately be a matter for the Commission
20 to make a determination, I suggest that Mr. Caffrey's 10:30
21 ownership of 33, The Mill, gave him the direct and
22 significant interest in the performance of those
23 functions such as to trigger the application of
24 178(2)(b). Mr. Caffrey should therefore have made a
25 written disclosure of his interests in the proposed 10:31
26 purchase of 33, The Mill, and that disclosure would
27 have then been included in the register of interest by
28 the Ethics Registrar and then available to members of
29 the public pursuant to section 172. Mr. Caffrey did

1 not make that disclosure. That has not been disputed
2 by Mr. Caffrey. In correspondence recently received
3 from his solicitors Mr. Caffrey has also expressly
4 accepted that he contravened section 178(2)(b). That
5 letter characterises the contravention as "*inadvertent* 10:31
6 *and technical*" and states that Mr. Caffrey was not
7 aware of the existence of a requirement to disclose his
8 interests to the Cathaoirleach, and explains that what
9 was involved was an executive function and not a
10 function of the elected members. He understood that 10:31
11 his obligation, which he understood are characterised
12 as ethical rather than legal, was to inform the
13 appropriate members of the Executive. Mr. Caffrey
14 maintains that he notified all of the appropriate
15 County Council staff. In his statement to the Inquiry 10:32
16 Officer he states;

17
18 "*When the application came in I immediately notified*
19 *the Director of Housing, Barry Lynch, the Housing*
20 *Officer, Anne Glancy, and subsequently Anna Lane and* 10:32
21 *Theresa Duffy*".

22
23 That statement, for completeness I should just say, is
24 in the Book of Documents at Tab 4. I don't propose to
25 open that statement Mr. Chairperson because, as I think 10:32
26 the Commission is aware, Mr. Caffrey has now furnished
27 a statement which is going to be the basis of his
28 evidence to the Commission today. I propose then
29 simply to focus on that evidence when that evidence is

1 given because, as the Commission will be aware, that
2 statement, earlier statement from Mr. Caffrey addresses
3 certain matters which are not the subject of the
4 hearing today.

5
6 In the course of this investigation the Inquiry Officer
7 met with Mr Lynch. At tab 15 of the Book of Documents
8 there is a statement from Mr. Lynch. Mr. Lynch
9 confirms in that statement that Mr. Caffrey informed
10 him of his ownership of 33, The Mill, around the time 10:33
11 of the application and he expressed his belief that
12 everyone involved in processing the application was
13 aware of the fact. The Inquiry Officer met also with
14 Ms. Glancy, the Housing Officer, and her statement is
15 at Tab 16 of the Book of Documents. She told the 10:33
16 Inquiry Officer that she was never formally notified by
17 anybody about Mr. Caffrey's ownership of the property
18 but became aware of it through dealing with the Capital
19 Assistance Scheme application from Muiríosa Foundation.
20 She also stated that Mr. Caffrey's ownership of the 10:33
21 property was not recorded on the CAS, Capital
22 Assistance Scheme, application file.

23
24 Ms. Lane told the Inquiry Officer in her statement, it
25 is at the Book of Documents at Tab 17, that at no stage 10:34
26 was she formally notified of Mr. Caffrey's ownership of
27 the property but that it was generally known among
28 staff dealing with the CAS application. Ms. Lane was
29 unaware of Mr. Caffrey's ownership of the property as

1 of late June 2013 when she first had contact with the
2 Muiríosa Foundation.

3
4 Ms. Duffy told the Inquiry Officer that she had known
5 for some years that Mr. Caffrey owned the property at 10:34
6 33, The Mill, and that is a statement at Tab 18 of the
7 Book of Documents.

8
9 The procedure to date follows consideration of the
10 complaint made by the Cathaoirleach, the then Mayor, 10:34
11 Councillor Bannon. The Commission, in accordance with
12 its usual practice, decided to appoint an Inquiry
13 Officer to carry out a preliminary enquiry into the
14 complaint. Mr. O'Neill, the Inquiry Officer, duly
15 carried out that inquiry and provided a detailed 10:35
16 written report to the Commission on the 9th
17 September 2014. That report is at Tab 3 of the Book of
18 Documents. That is a substantial document which I
19 don't propose to refer to beyond the fact that it is
20 there. In his report at section 7 Mr. O'Neill stated 10:35
21 that in his opinion there was prima facie evidence to
22 sustain the complaint.

23
24 Having considered the report of the Inquiry Officer the
25 Commission decided to initiate a formal investigation 10:35
26 under the Ethics Act and notified Mr. Caffrey of that
27 decision by letter of the 14th May 2015. That is at
28 page 47 of the Book of Correspondence. The report of
29 the Inquiry Officer and the appendices to it were

1 provided to Mr. Caffrey. The appendices included
2 documents provided to the Inquiry Officer and
3 statements from Council officials, including the
4 statements I have just referred to. Mr. Caffrey was
5 invited to agree to the admission of those documents, 10:36
6 including the statements, without formal proof and
7 without the necessity for calling oral evidence in
8 accordance with the procedures set out in the
9 Commission's Statement of Intended Procedures, and
10 helpfully that has been agreed. That is in a letter of 10:36
11 the 3rd July at page 53 of the Book of Correspondence.
12

13 Subsequently, by letter of the 17th September 2015,
14 Mr. Caffrey's solicitors expressly acknowledged that
15 Mr. Caffrey had contravened section 178(2)(b). If I may 10:36
16 I am going to ask the Commission to look at that
17 letter? It is perhaps a loose document at the back of
18 your Book of Correspondence, a letter dated the 17th
19 September 2015. It says;

20 10:37
21 *"We write to reiterate that our client accepts that he*
22 *inadvertently contravened section 178(2)(b) of the*
23 *Local Government Act by failing to disclose in writing*
24 *to the Cathaoirleach of Longford County Council the*
25 *nature of his interest in the property at 33, The Mill, 10:37*
26 *Clondra, County Longford, which property was material*
27 *to the performance by the Council of its functions in*
28 *respect of the submission on the 31st July 2013 of an*
29 *application by the Council to the Department of the*

1 *Environment for the payment pursuant to section 15 of a*
2 *grant under the Capital Assistance Scheme for the*
3 *purchase of that property by the Muiríosa Foundation.*
4 *Our client's failure to inform the Cathaoirleach of his*
5 *interests in the property was wholly and exclusively* 10:37
6 *due to the fact that he was not aware of the existence*
7 *of this requirement. At all times he acknowledged his*
8 *interests in the property through his annual*
9 *declaration under the Ethics Register, as required by*
10 *section 171 of the Local Government Act 2001, which* 10:37
11 *registered interest was made available for public*
12 *inspection.*

13
14 *Furthermore, he had notified all of the appropriate*
15 *County Council staff involved in processing the* 10:37
16 *application for the Muiríosa Foundation of his*
17 *ownership of the property in an open and transparent*
18 *disclosure. By the Manager's order dated the 10th*
19 *June 2013 our client delegated full managerial*
20 *responsibility for dealing with this matter to Barry* 10:38
21 *Lynch, Head of Finance and Director of Services for*
22 *Housing, and this order was subsequently noted in the*
23 *Minutes of the Council meeting held on the 19th June*
24 *2013. The application was processed by Mr. Lynch*
25 *without reference to our client. The application was* 10:38
26 *withdrawn by the Muiríosa Foundation on the 14th*
27 *October 2013. On review it is obvious that the*
28 *application could never have succeeded since it did not*
29 *comply with the strict criteria involved in such an*

1 application. This was an administrative error and
2 could not reasonably be construed as an ethical or
3 moral transgression.

4
5 Our client had understood that his responsibility was 10:38
6 to inform the appropriate members of the Executive as
7 distinct from the elected members since the issue
8 related to an executive function and not a function of
9 the elected members. As soon as he became aware of the
10 content and import of section 178(2)(b) our client 10:38
11 accepts that he should have notified the Cathaoirleach
12 in writing of his ownership of the property. Our
13 client sincerely regrets the technical
14 mis-notification.

15 10:39
16 Mr. Caffrey is anxious to avoid the disruption of
17 Council business and the inconvenience to Council staff
18 that will be suffered by providing, by requiring" I beg
19 your pardon, "formal proof by evidence before the
20 Commission of the Inquiry Officer's report and the 10:39
21 documents included as appendices to that report. He
22 offers to agree the reception of this material in
23 evidence without the necessary for any oral evidence.

24
25 Our client trusts and believes the Commission will 10:39
26 consider his response fully, that it will have regard
27 to the matters already held on our client. He would be
28 grateful for the opportunity to address the Commission
29 to explain and clarify the material placed before the

1 *Commission so that he can be properly understood. He*
2 *will respectfully invite the Commission to find that*
3 *the contravention was committed inadvertently and it*
4 *was in all the circumstances minor in nature.*

5
6 *We hope that this formal reiteration of our client's*
7 *position will assist the Commission in the preparation*
8 *for the hearing".*

9
10 Of course Mr. Caffrey will have an opportunity to
11 explain his position to the Commission today.

12
13 That there has been therefore a contribution, a
14 contravention, I beg your pardon, of section 178(2)(b)
15 is not in dispute but there are nonetheless a number of
16 matters which remain for assessment by the Commission.
17 By virtue of section 24 of the Ethics and Public Office
18 Act 1995 (as amended), which applies to Local
19 Government by virtue of section 180(2) of the 2001, the
20 Commission is obliged to prepare a report on this
21 investigation. Given the admitted contravention of
22 section 178(2)(b) that report must set out inter alia
23 the Commission's determination in relation to the
24 following matters;

25
26 Firstly, whether the contravention was committed
27 inadvertently, negligently, recklessly or
28 intentionally. These are requirements, I should
29 observe, are set out in section 24(3)(c) of section 24

1 of the Ethics Act. The Ethics Act is contained in Tab
2 3 of the Book of Legislation.

3
4 The second thing that the Commission must address and
5 make a determination on is whether the contravention 10:41
6 was in all the circumstances a serious or minor matter?
7

8 Thirdly, whether Mr. Caffrey acted in good faith and in
9 the belief that his behaviour was in accordance with
10 published guidelines? There aren't in fact any 10:41
11 published guidelines specific to this issue.

12
13 The Commission is also entitled to refer in its report
14 to any other matter which it considers appropriate.
15 These are all obviously quintessentially matters for 10:41
16 the Commission's assessment and determination. However,
17 subject to the Commission's views, I intend to make
18 certain observations in relation to them with a view to
19 assisting the Commission's considerations, but I
20 propose to defer doing so until the Commission has 10:42
21 heard from Mr. Caffrey, if that is satisfactory to the
22 Commission?

23 **CHAIRMAN:** Thank you.

24 **MR. COLLINS:** That concludes my opening,
25 Chairman. 10:42

26

27 **END OF OPENING BY MR. COLLINS**

28

29

1 Longford County Council of the nature of my interest in
2 a house that was the subject of an application by the
3 Council for funding for a grant under the Capital
4 Assistance Scheme. This failure was entirely due to
5 the fact that I just did not know about the particular 10:44
6 notification requirement in section 178(2)(b). I have
7 explained the context of the administrative error in my
8 statement of the 6th June 2014 and I would be most
9 grateful if the Commission could have regard to that
10 statement. My solicitors have confirmed my full and 10:44
11 complete acceptance of the error in correspondence
12 first to the Inquiry Officer and then to the solicitors
13 for the Commission.

14
15 My interests in the relevant property was declared to 10:45
16 the Ethics Registrar and was duly recorded in the
17 register of Interests. I believed that, therefore, my
18 obligation was to comply with the requirements of the
19 Local Government Code of Conduct and I did so by
20 ensuring that there could be confidence that the 10:45
21 discharge of the relevant function was performed
22 impartially. I organised that I was fully distanced
23 from the relevant decision making process which had
24 been delegated by order to Barry Lynch, and I made sure
25 that Mr. Longford and the three other members of the 10:45
26 Executive involved in the decision were informed of my
27 interest. My mistake was that I did not know that I
28 had to formally notify a fifth person which was not
29 actually involved in the relevant function. Had I known

1 *about the provision or had any member of the Executive*
2 *brought it to my attention I would, of course, have*
3 *complied with it".*

4
5 Can I say at this stage, and it is not in the 10:46
6 statement, I have, I have asked a number of my
7 colleagues around the country, I have asked the
8 Director of Service with a delegated function, and I
9 have asked the Director of Corporate Services in
10 Longford County Council were they aware of this and 10:46
11 each and every one of them told me that they were not
12 aware of it. Can I say I also asked my legal team were
13 they aware of this subsection and they have also said
14 that they were not aware of it.

15 10:46
16 *"The requirements of section 178(2) are not highlighted*
17 *in the Code of Conduct nor in any Department circular*
18 *or documentation of which I am aware. It did not occur*
19 *to me that the Cathaoirleach could have any role in*
20 *this matter as the processing of the application was* 10:47
21 *not a reserved function and the elected members did not*
22 *have a role in the processing of applications to the*
23 *Department under the Capital Assistance Scheme. I just*
24 *did not think that there was a further requirement to*
25 *record an interest in the register of interest when my* 10:47
26 *ownership of the property was already recorded in the*
27 *register.*

28
29 *I accept that someone in my position should ensure that*

1 *they are fully aware of all statutory requirements that*
2 *attach to that position and I take complete*
3 *responsibility for the failure to do so.*

4
5 *I also wish to express publicly my confidence and* 10:47
6 *admiration of the integrity of the staff and the*
7 *elected members of Longford County Council. My mistake*
8 *is my mistake and not that of anyone else.*

9
10 *I respectfully invite the Commission to find that on* 10:48
11 *the balance of probabilities that this transgression*
12 *was committed inadvertently and that it was in all*
13 *circumstances minor in nature".*

14
15 Thank you. 10:48

16
17 **END OF STATEMENT**

18
19 **MR. BLAND:** Thank you. Mr. Caffrey could
20 you answer any questions please? 10:48

21
22 **MR. TIM CAFFREY WAS CROSS-EXAMINED BY MR. COLLINS**
23 **AS FOLLOWS:**

24
25 1 Q. **MR. COLLINS:** Mr. Caffrey I am going to ask 10:48
26 you some questions on behalf of the Commission. You are
27 a public servant, a local authority servant of a long
28 number of years standing. You should answer, if you
29 don't mind, just for the sake of the transcript?

1 A. Sorry, I am, yes, yes.

2 2 Q. When did you become Manager, now Chief Executive of
3 Longford County Council?

4 A. On the 6th March 2006, nine and a half years ago.

5 3 Q. Would you accept that it seems surprising or it might 10:49
6 seem surprising that you were unaware of your
7 obligations under section 178?

8 A. It may seem surprising but I can honestly, honestly
9 tell you that I was not aware of it. I believed that I
10 was fully compliant. It is my mistake, it is a mistake 10:49
11 that I made, I fully accept that but I genuinely
12 believed by the annual declaration that I made and by
13 informing all of the staff members, because I suppose
14 you know having served over 40 years in local
15 Government I have in my head about executive and 10:49
16 reserved functions, and executive functions I genuinely
17 believed I had to tell the staff because it was an
18 executive function. In over 40 years one would never
19 bring something before the members unless it was a
20 reserved function, and that is my mistake, I will 10:49
21 accept that.

22 4 Q. Well you were a public servant in a different position
23 I think when the 2001 Act was enacted by the
24 Oireachtas?

25 A. Yes. 10:50

26 5 Q. That set up a whole new world of ethics for everybody
27 in local authority, isn't that right?

28 A. Yes.

29 6 Q. Including yourself?

1 A. Yes.

2 7 Q. You had been familiar with the obligation to make
3 annual declarations, for example, before you ever
4 became Manager?

5 A. Yes. 10:50

6 8 Q. You would have been familiar with the fact that Part 15
7 of the Act contained a number of provisions which were
8 applicable to members and employees of local
9 authorities?

10 A. Yes, I would have been. 10:50

11 9 Q. Did you ever look at Part 15, did you ever read it?

12 A. I looked at it in the context of doing an annual
13 declaration and you know again I admit it was my
14 mistake but can I just, in relation to the Local
15 Government Act 2015 and in particular the ethics 10:50
16 legislation, if I could compare that, for example, with
17 the recent Lobbying Act that has been passed, and I
18 have, since this complaint was made I have gone around
19 to my Chief Executive, my colleagues Chief Executives
20 and I have made them aware of this particular section 10:51
21 or subsection of the Act. I was, I suppose I was
22 surprised that they were not aware of it. The lesson
23 for me out of this is this section, this subsection
24 will stay in my head for the rest of my life. I will
25 never ever forget it. I am going to make it my 10:51
26 business, and indeed can I say that very recently,
27 within the last six months for example, the estate in
28 which my house is located has been taken in charge and
29 I actually made a declaration under this section since

1 I became aware of it. That is really all I can say to
2 you. I just genuinely was not aware. I should have
3 been aware of it with over 40 years service.

4 10 Q. Yes.

5 A. With nine and a half years as Chief Executive I should 10:52
6 have been aware of it.

7 11 Q. Exactly. Did you read the Act when you became Manager,
8 did you seek to familiarise yourself with the
9 obligations that you had as Manager under Part 15?

10 A. I genuinely believe that the -- every year in around 10:52
11 February there is a circular letter issued in relation
12 to the ethics and the annual declaration. There was no
13 such circular done on an annual basis or indeed when I
14 was appointed Manager. This is something that I have
15 taken up; that I believe that when a person is being 10:52
16 appointed as Chief Executive this information should be
17 part of a package that is given to that individual and
18 it should be signed off at that time.

19 12 Q. Well presumably, Mr. Caffrey, when you became Manager
20 you familiarised yourself with lots of other functions, 10:52
21 powers and responsibilities that managers have under
22 the Local Government Act?

23 A. I would have been aware of a lot of the functions of
24 local authority as a member or, sorry, as an Executive
25 member over those long numbers of years, I would have 10:53
26 been.

27 13 Q. Okay. Can I ask you just if you could be given the
28 Book of Legislation, if Mr. Connellan can give that? I
29 don't want to debate the law with you at all

1 Mr. Caffrey but in section 179 of the Act there is a
2 provision that requires employees who have a potential
3 conflict of interest to make disclosure to the Chief
4 Executive. Were you aware of that provision?

5 A. I would have been aware of that, yes. 10:53

6 14 Q. So you were aware of a provision that required
7 subordinate employees to make disclosure to you but not
8 of your own obligations of disclosure?

9 A. That would be again an executive matter rather than a
10 reserved matter. The point that I am making is that 10:53
11 this was an executive function and I genuinely believe
12 that by letting the staff members know that I was
13 compliant with the ethics legislation.

14 15 Q. Section 179 deals with employees who may have an
15 interest in matters before the Councillors as well. It 10:54
16 is not related to or confined to reserved matters or
17 executive matters. It requires employees to make
18 disclosure to you and for you to arrange for that to be
19 included in the Ethics Register, isn't that right?

20 A. That is right, in accordance with legislation, yes. 10:54

21 16 Q. There is exactly an equivalent obligation on you in
22 respect of positions where you are in a conflict of
23 interest, except you have to make that disclosure to
24 the Cathaoirleach and the Cathaoirleach arranges for it
25 to be published, isn't that right? 10:54

26 A. That is in the legislation and that is the section of
27 the Act, or the subsection of the Act 172 or 178(2)(b)
28 which I was not aware of.

29 17 Q. So are you saying to the Commission you were aware of

1 section 179 but not aware of 178?

2 A. I was aware of the section, the complete section of, is
3 it section 15, is it?

4 18 Q. Part 15?

5 A. Sorry, Part 15. 10:55

6 19 Q. That's right.

7 A. In terms of ethics. I was aware of that, just aware of
8 it but I was not aware of the section on which the
9 complaint is made.

10 20 Q. Okay. Just to be clear about this so the Commission 10:55
11 has a full picture. You understood that where
12 employees, including perhaps senior employees reporting
13 to you, were in a situation where they had a pecuniary
14 interest that put them in a position of conflict with
15 the performance by the Council of its functions they 10:55
16 had to make written disclosure to you and that in turn
17 had to be included in the register of interests, you
18 understood that?

19 A. I understood it. It never actually happened with me in
20 my career that anyone had to make a declaration to me, 10:55
21 in my nine and a half years as County Manager that
22 people had to make that declaration.

23 21 Q. But nonetheless you were aware of that obligation being
24 in the Act, is that it?

25 A. As well as that I would have been aware, for argument 10:56
26 sake and it happened, where councillors would have an
27 interest in something that I wouldn't bring it in
28 before, that it would come before the Council and that
29 that individual would have to, if they had an interest

1 in the issue that was being debated that they would
2 have to leave the Council chamber. That is what I
3 would have been aware of.

4 22 Q. Okay. I just want to be clear about this now. You
5 were aware of the fact that employees in situations of 10:56
6 conflict of interest had to make a written disclosure
7 to you, is that correct?

8 A. I would have been aware of it, yes.

9 23 Q. No, you were aware that they had to make a written
10 disclosure to you? It wasn't a question of telling 10:56
11 you, it wasn't a question of them knowing or you
12 knowing, they had to make a written disclosure to you?

13 A. I wouldn't have been aware that they would have made a
14 written disclosure. They would have had to disclose it
15 to me. 10:57

16 24 Q. Well the obligation under section 179 is an obligation
17 to make a written disclosure?

18 A. I know that now.

19 25 Q. Okay. You didn't know it?

20 A. I didn't know it, no. 10:57

21 26 Q. Then that written disclosure was to be the subject of
22 inclusion in the register of public interests?

23 A. According to legislation.

24 27 Q. Public register of interest?

25 A. Yes. 10:57

26 28 Q. But you weren't aware of those obligations in respect
27 of yourself?

28 A. No.

29 29 Q. Even though section 178 is a section that is specific

1 to the position of Manager, Chief Executive as it now
2 is, is that right?

3 A. That's right, and I've stated that it is of extreme
4 embarrassment that I wasn't aware of that, and it was
5 my mistake but I genuinely was not aware of it. 10:57

6 30 Q. You didn't seek guidance at any stage from the Ethics
7 Registrar or from anybody else as to your obligations?

8 A. I didn't because, again, I wasn't aware of it.

9 31 Q. Your understanding that because this was an executive
10 function and, therefore, no question of making a 10:57
11 disclosure to the Cathaoirleach arose, that is your
12 position, isn't that right?

13 A. Absolutely, yes.

14 32 Q. Where did that come from?

15 A. It was, again maybe it was because I always make a 10:58
16 distinction between the executive and the reserved
17 functions, and I genuinely believe that this is an
18 executive function and I was to, I believe that I went
19 above and beyond what was required to comply with the
20 ethics legislation in letting all of the staff know. 10:58

21 33 Q. Okay. Can I ask you just to look at the annual
22 declaration that you signed, which is in the Book of
23 Documents which hopefully you have or which will be
24 provided to you if you don't. Tab 5, no, no, tab 5 of
25 the Book of Documents, do you have that? 10:58

26 A. Yes, yes.

27 34 Q. Do you see paragraph 2 underneath the box on the first
28 page?
29

1 *"I hereby undertake to have regard to and be guided by*
2 *the Code of Conduct for Employees in exercise of my*
3 *functions. The Code of Conduct issued by the Minister*
4 *under section 169".*

10:59

6 Do you see that Mr. Caffrey?

7 A. Yes, yes.

8 35 Q. Did you read the Code of Conduct?

9 A. I'd say if I read the Code of Conduct it would have
10 been years ago. I just, you know, I just --

10:59

11 36 Q. Well did you read the Code of Conduct for example just
12 before you signed that annual declaration or
13 afterwards?

14 A. No.

15 37 Q. Okay. You make a point about the Code of Conduct in
16 your statement. You say that;

10:59

18 *"The requirements of section 178(2) are not highlighted*
19 *in the Code of Conduct".*

10:59

21 Can I ask you just to look at the Code of Conduct, that
22 is in that larger book that we were looking at just a
23 moment ago, and it is at Tab 6? This particular Code
24 of Conduct I think was issued in January 2007, so quite
25 a number of years before the events that are the
26 subject of this hearing, isn't that right Mr. Caffrey?

11:00

27 A. Yes.

28 38 Q. Can I ask you to look at paragraph 3.5? It says;

29

1 *"In the case of certain categories of employees the Act*
2 *requires them to furnish an annual declaration".*
3 You did that, you understood that obligation, isn't
4 that right?
5 A. Sorry, 3.5. 11:00
6 39 Q. I beg your pardon. It is internal page 8, 232A I think
7 might be at the bottom of your, the bottom right-hand
8 corner of your page. Have you got that?
9 A. Sorry, say it again.
10 40 Q. It is 3.5, paragraph 3.5 Mr. Caffrey, sorry. 11:00
11 A. Is it "*A conflict of personal or public interest*", 3.5?
12 Just there doesn't seem to be a 3.5 in this.
13 41 Q. Sorry, we will find it for you now, sorry. Just take
14 your time and just look at that Mr. Caffrey for as long
15 as you need to. The first sentence reads; 11:01
16
17 *"In the case of certain categories of employees the Act*
18 *requires them to furnish an annual declaration of*
19 *certain 'declarable interests'; forms are supplied by*
20 *the Ethics Registrar".* 11:01
21
22 That is an obligation that applies to virtually all
23 employees of local authorities at least of a certain
24 level of seniority. That is an obligation that you
25 would have been under before you became Manager and 11:02
26 which you remained under after you became Manager, is
27 that right?
28 A. Yes.
29 42 Q. Then it goes on to say then;

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"The Act also provides that such employees must disclose to the manager any pecuniary or beneficial interest that they have material to",

11:02

they must then comply with any direction given by the manager. That is effectively a paraphrase of section 179, but it goes on then to say;

"specific statutory requirements also apply in relation to disclosure by managers".

11:02

Did you remember seeing that in the Code of Conduct when you looked at it Mr. Caffrey?

A. I honestly don't, I honestly don't.

11:02

43 Q. Well if you had read that you would have been aware of the fact that there was something additional to the requirement to make the annual declaration, isn't that right?

A. Yes, if I had read it.

11:02

44 Q. Presumably you would have looked to the Act to see what those requirements were or you'd have asked for advise on that, is that correct?

A. That's correct, yes.

45 Q. But you undertook in your annual declaration form to be guided by the Code of Conduct, isn't that right? We just looked at the form that you filled in?

11:02

A. Yes, that is the form I did fill in, yes. I was declaring everything that I had in relation to that

1 declaration.

2 46 Q. Well is it fair to say that you weren't guided by the
3 Code of Conduct in this respect at least?

4 A. There is a circular letter comes along with that, comes
5 along with that declaration every, as I say, in around 11:03
6 February and I believe that it was my responsibility to
7 declare everything that I would have and that is what I
8 did.

9 47 Q. Okay, but it is very clear, I am suggesting to you,
10 from the Code of Conduct that there is certainly an 11:03
11 important obligation on you to make disclosure by way
12 of annual declaration but that is not the only
13 obligation to make disclosure that might arise?

14 A. Absolutely, I know that, I know that now.

15 48 Q. Anybody taking the trouble to look at paragraph 3.5 of 11:03
16 the Code of Conduct would be aware of that, isn't that
17 right?

18 A. That's right.

19 49 Q. You say in your statement that you notified the four
20 Executives that were dealing with the application for 11:04
21 funding from the Foundation and funding from the
22 Department to fund the Foundation. You have seen the
23 statements that have been provided. I think you've
24 accepted without any further proof the statements that
25 have been provided by the four officers concerned, 11:04
26 isn't that right?

27 A. That's right, yes.

28 50 Q. I think you have seen therefore that, and I have
29 paraphrased it in my opening, that two of those

1 persons; Ms. Lane and Ms. Glancy, indicate that they
2 were never formally notified of your interest in the
3 property and your interest in this matter, but that
4 they were aware of it but they were never formally
5 notified? 11:04

6 A. They were never formally written to.

7 51 Q. Yes.

8 A. But they were notified.

9 52 Q. There isn't I think, and correct me if I am wrong, any
10 writing anywhere of this? I think Ms. Lane refers to 11:04
11 the fact that there is no record on the Capital
12 Assistance file indicating your interest in the
13 property, isn't that right?

14 A. Well there is no requirement for that. I mean if I had
15 been aware of that -- the one thing that is on the file 11:05
16 is a valuation in my name which clearly states my
17 name...(Interjection)

18 53 Q. Okay.

19 A.as the owner of the property.

20 54 Q. But your evidence, in any event, is that you understood 11:05
21 this to be an appropriate form of notification?

22 A. Yes, and as I say I regret that now. I should have
23 written to the people but I was not aware that I was
24 required by that section of the Act to do so, but the
25 four people were made aware of it and they have 11:05
26 accepted that in their statements.

27 55 Q. But, in conclusion Mr. Caffrey, I suggest to you there
28 is perhaps an important distinction between what you
29 did and what was required by the legislation?

1 A. And I accept that, yes.

2 56 Q. Which is a requirement for written notification that
3 would be there on file and which would find its way
4 onto the register and be available for the public?

5 A. Yes, I accept that I didn't formally write to the 11:06
6 people concerned.

7 57 Q. I have no further questions. Thank you Mr. Chairperson.
8

9 **END OF CROSS-EXAMINATION OF MR. TIM CAFFREY BY**
10 **MR. COLLINS** 11:06
11

12 **MR. BLAND:** I don't have any questions
13 arising.

14 **CHAIRMAN:** Thank you very much Mr. Caffrey,
15 you may sit down over there. 11:06
16

17 **THE WITNESS WITHDREW**

18

19 **CHAIRMAN:** Now Mr. Bland what do you wish
20 to do next? 11:06

21 **MR. BLAND:** Thank you. If I may make a
22 submission on behalf of Mr. Caffrey?

23 **CHAIRMAN:** Certainly, yes.
24

25 **SUBMISSION BY MR. BLAND AS FOLLOWS:** 11:06
26

27 **MR. BLAND:** As the Commission has heard
28 Mr. Caffrey has served the community in the local
29 Government sector for 45 years. Such was his ability,

1 and application and integrity that he was promoted to
2 the highest position in that sector. He retires this
3 Spring from a lifetime of public service. This is a
4 public servant with an exemplary reputation and that
5 reputation earned over a career of 45 years is now at 11:07
6 risk. It is at risk because of a mistake that he
7 accepts he made. He made the mistake. He missed it,
8 he missed section 178(2)(b). He has accepted this
9 mistake throughout this process and he has repeated his
10 acceptance of, and his responsibility for that mistake 11:07
11 in correspondence to the Inquiry Officer and to this
12 Commission and he apologises without reservation.
13 I ask on his behalf for recognition that his mistake
14 was as a result of not being aware of the requirement
15 in section 178(2)(b) of Local Government Act 2001. This 11:07
16 was clearly an inadvertent error, an innocent mistake
17 and I submit that no other conclusion is available on
18 the evidence.

19
20 I also ask that the Commission have regard to the fact 11:08
21 that this mistake took place in the context of full
22 compliance with the statutory requirement of disclosing
23 the very same interest in the Ethics Register, or to
24 the Ethics Registrar so that it becomes recorded in the
25 register of interests. I would pause and refer back to 11:08
26 what Mr. Collins said in a very fair presentation, and
27 I thank him for that. He makes the point that there is
28 a legal distinction between an annual declaration of
29 property interest, such as this, and a section 178

1 declaration. He says;

2
3 *"The fact that there was an annual declaration of this*
4 *property interest is not an excuse".*

5
6 Of course he is right, you are not excused from your
7 obligation under section 178(2)(b) to disclose in
8 writing a particular property, a beneficial interest in
9 property if that beneficial interest in property is
10 material to the performance of the function, but when 11:09
11 one looks at the purpose of the section what happens is
12 that the Cathaoirleach is then required to furnish the
13 notification of that beneficial interest in the
14 property to the Ethics Registrar and then the Ethics
15 Registrar, under section 178(3), records that property 11:09
16 interest in the register of interests. So what should
17 have happened was that there should have been two
18 entries recording the fact of ownership of this
19 particular property, not the materiality to the
20 performance of a particular function but just the fact 11:10
21 of the ownership of this particular property. Now that
22 should have happened and it is Mr. Caffrey's mistake
23 that it didn't happen but it is, it is no excuse the
24 fact the property was already in the register of
25 interests because of the annual declaration but I do 11:10
26 think it is something that the Commission should take
27 into account when considering the materiality of the
28 mistake.

1 I also would ask the Commission to have regard to the
2 fact that the mistake took place in the context of
3 Mr. Caffrey's attempt to comply with the Code of
4 Conduct in notifying those involved in the processing
5 of the application of his ownership of the property and 11:11
6 in distancing himself from the decision making process.
7 So that in the particular facts of this case the public
8 can have confidence that, or can have confidence in the
9 integrity of the performance of the function by
10 Longford County Council. I do think that is very 11:11
11 important because that is the purpose of the
12 legislation.

13
14 I would ask the Commission to have regard to the fact
15 that there is nothing to suggest that Mr. Caffrey 11:11
16 deliberately and consciously decided to flout section
17 178(2)(b), there was no benefit in him doing so, his
18 property interests is already recorded there. There is
19 nothing to suggest that he deliberately and consciously
20 avoided making a formal declaration of his ownership of 11:11
21 a property that already had been formally declared. On
22 the contrary it would, in my respectful submission, be
23 irrational to come to that conclusion on the evidence
24 before the Commission and the evidence only points in
25 one direction. 11:12

26
27 I would ask the Commission to have regard to three
28 matters. First, the fact that this is an inadvertent
29 mistake. Second, the fact that it did not cause any

1 impropriety or partiality in the processing of this
2 application. Third, the fact that Mr. Caffrey took
3 other measures to protect the substantive requirements
4 of public confidence. In those circumstances this is a
5 mistake of form rather than of substance. I would 11:12
6 submit in those circumstances to the Commission that it
7 would be disproportionate and unfair to come to a
8 conclusion and to characterise this contravention in
9 such a way as would destroy that reputation of
10 Mr. Caffrey. Thank you. 11:12

11 **CHAIRMAN:** Thank you. Now do you have
12 anything to say in relation to some other matters I
13 think that we may have to consider under this section?
14 You have already stated in your submission that it was
15 done inadvertently. 11:13

16 **MR. BLAND:** I am submitting --

17 **CHAIRMAN:** You don't want to say anything
18 in relation to the difference or otherwise in the
19 standard of adjudication there should be in relation to
20 inadvertence or negligently, which is set out in the 11:13
21 Act?

22 **MR. BLAND:** I am submitting that the finding
23 is inadvertent. I am inviting the Commission to find
24 it is inadvertent. That it is a minor and not a serious
25 transgression. 11:13

26 **CHAIRMAN:** A minor, it is a minor matter.

27 **MR. BLAND:** Also that Mr. Caffrey at all
28 times acted in good faith. There were no guidelines as
29 such and perhaps he would have been alerted of his

1 requirement if there had been guidelines or circulars
2 but he acted in good faith throughout. I am submitting
3 there is no evidence contrary to those three
4 characterisations.

11:14

5
6 **END OF SUBMISSION BY MR. BLAND**

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8 **CHAIRMAN:** Grand. Well Mr. Bland I will
9 give you an opportunity to come in at the end in case
10 there is anything else that Mr. Collins raises with
11 you.

11:14

12
13 **SUBMISSION BY MR. COLLINS AS FOLLOWS:**

14
15 **MR. COLLINS:** May it please you Chairman. I
16 don't respectfully think it is my function to tell the
17 Commission what view it should take of this but what I
18 propose to do - because that is peculiarly a matter for
19 the expert judgement of the Commission - what I propose
20 to do is to indicate matters which I think are relevant
21 to the Commission's consideration, which the Commission
22 may consider relevant to its consideration of the
23 issues in terms of reaching the determinations that the
24 Oireachtas requires pursuant to Section 24 of the
25 Ethics Act.

11:14

11:14

11:14

26
27 The first of those issues is the issue of, I suppose,
28 the mens rea of the contravention. The Act refers to
29 four potential findings which range from, I suppose,

1 the most innocent to the most serious. It refers to
2 "*inadvertent, negligence, reckless or intention*". In
3 considering those issues, that single issue perhaps,
4 the Commission should have regard to all of the
5 circumstances. It should have regard to the evidence 11:15
6 of Mr. Caffrey but is entitled to probe that evidence
7 and entitled to ask itself a number of questions as to
8 whether it is inadvertent to not take the trouble to
9 understand, familiarise yourself with the obligations
10 that are imposed by the Oireachtas in respect of ethics 11:15
11 in local Government, whether it is surprising perhaps
12 that in circumstances where employees, including the
13 Managers, now Chief Executives, are required as part of
14 their annual declaration to undertake to act in
15 accordance with the Code of Conduct? You have heard 11:16
16 from Mr. Caffrey that effectively he didn't read
17 paragraph 3.5, which would inevitably have made it
18 clear to him that obligations of annual disclosure
19 under section 171 did not necessarily exhaust his
20 obligations under the Act and would have pointed him 11:16
21 toward the fact that there were additional specific
22 requirements in respect of disclosure by the manager in
23 circumstances within the scope of section 178.

24
25 In terms of the issue of minor or serious, it isn't 11:16
26 clear that the Oireachtas considered firstly that while
27 it was important clearly to have a system of annual
28 declarations that it was equally important to have
29 obligations on employees, under section 179, and on the

1 manager, under section 178, to make specific disclosure
2 in circumstances where the employee or manager was
3 aware that an interest that they had bore on the
4 exercise by the Council of any of its statutory
5 functions. I disagree, with respect, with Mr. Bland in 11:17
6 his suggestion that this really would have required
7 Mr. Caffrey to make the same declaration as was made
8 already pursuant to section 171. The disclosure under
9 section 178 is triggered by that interest but the
10 disclosure is of an interest in the performance of 11:18
11 specific functions by the local authority. Therefore,
12 it would not have been a sufficient disclosure for
13 Mr. Caffrey to simply say I am the owner of 31, The
14 Mill, but the disclosure would have had to encompass
15 the fact that that itself, that that property was the 11:18
16 subject of potential exercise of performance of
17 functions by the Local Authority, so that anybody
18 looking at the register would have been in a position
19 to see that a pecuniary interest of the Manager was
20 relevant to the performance of functions. That is the 11:18
21 intent and purpose, and obvious purpose of section 178.

22
23 I think the Commission is entitled to say to itself
24 that the, or perhaps put it differently, it is entitled
25 to ask itself whether it is in fact correct to say that 11:18
26 this was an error of form rather than of substance?
27 Because what was not done here was that there was no
28 written notification, the Cathaoirleach was not
29 informed of the fact that the exercise, the intended

1 exercise by the Council of certain functions under the
2 Housing Act 1988 were very closely connected indeed to
3 a pecuniary interest of the Manager vis-a-vis his
4 ownership of 33, The Mill, Clondra. Not just was there
5 not notification to the Cathaoirleach in written form 11:19
6 there wasn't, as a result, any entry in the register,
7 the public available, the publicly available register
8 of interest maintained pursuant to Part 15.

9
10 So I respectfully say that the Commission in 11:20
11 approaching Part 15 shouldn't take the view that
12 somehow section 171 is the important provision and that
13 therefore any additional disclosure obligations can
14 properly be characterised as subsidiary, or ancillary
15 or inferior in any way. The Oireachtas has been careful 11:20
16 to impose additional specific obligations when
17 triggered by the imminent conflict of interest or
18 potential conflict of interest that sections 178 and
19 179 are intended to avoid, because it is the
20 consequences that are triggered by circumstances coming 11:20
21 within the scope of section 178 are important. One of
22 them is disclosure but the other is a clear statutory
23 prohibition on participating in the performance of the
24 functions. I mention that not because that is before
25 you in any specific way but simply to indicate the 11:21
26 importance of section 178 itself and its important
27 position in the architecture of Part 15 of the 2001
28 Act. It is perhaps surprising, and the Commission may
29 consider it surprising, that a provision that is

1 specific to managers, as section 178 is, is one that
2 Mr. Caffrey says he was unaware of.

3
4 In terms of determining the issue of minor or serious
5 it is, I suppose this is common case between Mr. Bland 11:21
6 and myself, something for the Commission to assess,
7 having regard to all of the circumstances, as to
8 whether the contravention was serious or minor? It is
9 for the Commission, I think, to determine whether
10 Mr. Caffrey acted in good faith? All of those matters 11:21
11 are matters for the Commission to determine but it
12 didn't follow at all from, if the Commission find that
13 Mr. Caffrey was unaware of his obligation it doesn't at
14 all follow that a finding of inadvertent contravention
15 is appropriate because at the minimum it is open to the 11:22
16 Commission to take the view that if Mr. Caffrey was
17 unaware of his obligations he ought to have been aware
18 of his obligations, that he was as Manager under an
19 obligation to inform himself of his obligations and
20 that his failure to do so brings this contravention out 11:22
21 of the category of inadvertence. In that context and
22 in relation to that issue the Commission is also, I
23 think, entitled to have regard to the fact that
24 Mr. Caffrey was sufficiently unaware of the Code of
25 Conduct, that even the specific reference to the 11:22
26 specific requirements of managerial disclosure in
27 paragraph 3.5 was one that he was unaware of. It was,
28 it is also open to the Commission to take the view that
29 Mr. Caffrey had ample time to familiarise himself with

1 those obligations and to seek such advice on them as he
2 considered necessary and appropriate.

3
4 unless there is anything I can assist the Commission
5 with, they are my submissions? 11:23

6
7 **END OF SUBMISSION BY MR. COLLINS**

8
9 **CHAIRMAN:** Thank you very much. Do you have
10 anything else to say? 11:23

11 **MR. BLAND:** If I could just briefly respond
12 to three points made by Mr. Collins?

13 **CHAIRMAN:** Yes.

14
15 **REPLYING SUBMISSION BY MR. BLAND AS FOLLOWS:** 11:23

16
17 **MR. BLAND:** The first is his suggestion that
18 it is surprising that Mr. Caffrey was not aware of
19 section 178(2)(b) in general and in particular having
20 regard to the contents of paragraph 3.5 of the Code of 11:23
21 Conduct. The reference in paragraph 3.5 is, it is
22 somewhat oblique and it is not specific. Mr. Caffrey
23 has given evidence that he is deeply embarrassed and
24 truly contrite about his, the fact he did not know of
25 section 178, and he has said that nobody else involved 11:24
26 in the process and nobody else that he had spoken to
27 was aware of it. He should have been aware and he
28 wasn't.

1 The second point is with regard to the seriousness of
2 that mistake. I don't seek to trivialise it and the
3 whole experience and the consequences have been, I
4 think the Commission can see from his demeanour,
5 catastrophic on a personal level for Mr. Caffrey but 11:24
6 that does not equate to a finding of, or should not
7 equate necessarily to a finding of such a degree of
8 culpability as a finding of a serious transgression. I
9 would ask the Commission to characterise this
10 transgression proportionally. 11:25

11
12 The third issue that I should respond to, Mr. Collins
13 disagrees with my interpretation of section 178 and I
14 don't wish to go down a rabbit hole of statutory
15 interpretation, I just merely say that the obligation 11:25
16 is to inform the Cathaoirleach in writing of a
17 pecuniary or beneficial interest. That pecuniary or
18 beneficial interest must be communicated to the
19 Cathaoirleach if it is an interest in a matter or
20 material to a matter. This is a property interest that 11:25
21 is material to a matter that arose in performance of a
22 function. My reading of the section is that the
23 notification is of that beneficial or pecuniary
24 interest. Obviously it'd be that the most use and
25 ultimately a matter for -- it would be preferable if 11:26
26 the full extent of its materiality was disclosed but an
27 interpretation of section 178 simply requires the
28 recording in the register of interests of that property
29 of beneficial interest or pecuniary interest.

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In any event it is the -- I had stressed, and Mr. Caffrey does accept that the fact that he had declared this property interest is no excuse. The point was simply made as to explain and not to excuse. I also, in case the Commission misunderstands the submission that was made, I did not, as suggested, characterise an inadvertent mistake as always a minor one. It is quite possible that an inadvertent mistake may be serious. I ask in all of the circumstances of this particular case the Commission would characterise the mistake as both inadvertent and minor as well as one made in good faith.

END OF SUBMISSION BY MR. BLAND

CHAIRMAN: All right, thank you. I don't know if any of my colleagues have any questions or comments to raise before we adjourn the matter in order to enable us to prepare a report, as we are required to do under section 24? In due course we will prepare the report and it will be circulated to the parties. I think I will just thank everybody for their cooperation in presenting the matter in an efficient manner.

MR. COLLINS: Thank you very much.

CHAIRMAN: That concludes the hearing.

THE HEARING CONCLUDED.