

Review Panel (Room 4.2)
Department of Public Expenditure and Reform
Sent by email

August 8th 2022

Members of the Independent Review Panel,

Re: Observations on the Process of determining pay and related terms and conditions for Senior Public Service appointments

I write to you as the current Chair of the Land Development Agency (LDA). I previously served as Chair of Transport Infrastructure Ireland (TII) for a period of nine years. Having discussed the pay and terms and conditions of senior executives with a number of Chairs of other State bodies, I know that some of the observations below are shared by my colleagues.

I believe the second paragraph of the next section should be redacted from any publication of this letter as I believe that it is commercially sensitive. [REDACTED]

Pay Level

There is a lack of transparency in how pay levels are determined for senior public service appointments. I have submitted business cases in the past to my parent department and the Department of Public Expenditure and Reform (DPER). At no time was there any discussion of that business case with me nor was I made aware of any external investigation of the strength of the case made. I believe that the skill set required for any role needs to be objectively determined using a well-established internationally recognised “job sizing” methodology. An analysis of the responsibilities for State Assets (by value) and the importance of the entity to the running of the economy should be included in this job size analysis. In addition, there is a need to establish whether the skill set is available and / or in demand in comparable employments in both the public and private sectors and the degree of competition which exists in the market for those who might apply for the role of CEO. These two factors should heavily influence the level at which pay is set. In both the case of the LDA and TII, the mix of genuine commercial negotiation experience, procurement knowledge and a public sector ethos is a rare combination, in both the public and private sectors. Suitable candidates are few and all are already in well paid jobs.

[REDACTED]

Land Development Agency
2nd Floor, Ashford House
Tara Street, Dublin 2
D02 VX67

Tel +353 1 910 3400 Web lda.ie Email info@lda.ie



This determination was in spite the fact that the new CEO had the job of implementing a complex merger of two very different organisations. The CEO was also responsible for managing the development of new road and light rail assets and maintaining road assets with a replacement value of €30bn and light rail assets of approximately €2bn. [REDACTED]

In some Commercial Semi-State Organisations, there is the additional anomaly that the Chief Executive's pay is determined by the Department of Public Expenditure and Reform, while the pay of those reporting to the CEO is not. In some cases, the pay of those reporting to the CEO can be higher than that of the CEO, resulting in the ridiculous situation where a senior executive may have to take a pay cut in order to take on the onerous role of CEO. The additional workload, responsibility and personal exposure may well deter a capable internal candidate from applying for the role of CEO. If the pay of the CEO is below that of some of their direct reports, it can be a significant deterrent to those applying for the role of CEO from outside the organisation.

There is an anomaly in the case of Semi-Sate organisations, where the pay of the CEO is determined by DPER, while the pay of those reporting to the CEO is determined by the Board. In my view, the Board of the relevant agency should carry much greater weight than it currently does in determining the pay and conditions of the CEO. Indeed, it is arguable that overriding the role of the Board in such a key task, runs the risk of DPER acting as shadow directors of the organisation. From a governance point of view this is a worrying state of affairs. I would like to see the Independent Review body commission detailed research looking at pay levels, job sizes, responsibilities for both personnel (both internal and outsourced), asset management, as well as the competition for the skill sets of the executives in different state bodies and senior civil servants. I believe that such research will identify considerable anomalies. The review body should also consider recommending the re-establishment of a permanent independent body such as that chaired by Michael Buckley past to set the pay levels of senior public servants, including the CEOs of State bodies.

Fixed Term Contracts

The insistence of DPER that CEOs cannot be appointed on anything other than a fixed term contract is a marked deterrent for well qualified candidates, in particular candidates with dependants. Suitably qualified external candidates will be in permanent contracts in their existing jobs. Internal candidates will also be in permanent roles. Neither may be willing to considerably worsen their conditions of employment to take on what is a very demanding job. I note that the fixed-term Secretary General roles, initially came with a right to draw a full pension on expiry of the contract and now comes with the understanding a similar role, with similar pay elsewhere. The insistence on both internal and external candidates for the role of Semi-State CEOs being on a fixed term basis is clearly anomalous, particularly when compared to the Civil Service.

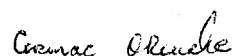
While I understand DPER's concern that contract extensions can lead to contracts of indefinite duration in law, a perception that a blanket ban exists on contract extensions is having a very negative effect on potential candidates for the role of chief executive. Potential poor performance can and should be addressed with suitable performance management systems, not by forcing the retirement of the exceptional and poor performer alike. The use of an arbitrary fixed term contract can and does deter both internal and external candidates, as I know from discussions with executives in a number of Semi-States. Private Sector companies can and do manage the performance of CEO's and executives within the law (as determined by the Unfair Dismissals Act) without incurring undue cost.

I understand that the role of County Chief Executives also has a similar stipulation for fixed term contract from DPER. However, in this case, any incumbent who reapplies for his / her own job and is successful reverts to a lower point on the salary scale and is subject to a period of probation and may not be covered for sick leave. This anomaly would bear investigation.

A number of Chairs of Semi-States have commented to me on the fact that prospective CEOs may take on the role of CEO for 2 or 3 years, in fact using it as a “stepping stone” for career enhancement, without any long-term commitment to the good of the organisation. This situation is clearly not in the best interests of the Irish State and the people we serve. As in the case of pay, I believe that the employment terms of the CEO should properly be a matter for the Board and not determined without due regard for the particular circumstances and the scarcity of the skill set required for the role. The Boards of Semi-State companies should be afforded the latitude to offer contracts of indefinite duration, if this is warranted by the circumstances of the relevant candidate.

I look forward to reading the deliberations of the Independent Review Panel.

Your Sincerely



Cormac O'Rourke

Chair