

Terms of reference for investigation by Lorna Lynch SC

Background

Following media reports in April 2022 raising issues with potential conflicts of interest, the operation of two-person Boards and procedures in relation to allocation of case files and amendments to inspectors' reports, An Bord Pleanála's (the Board's) then Chairperson, David Walsh, instructed three members of the Board's Senior Management Team to undertake an internal review.

The internal review team examined approximately 300 case files ('the Case Files').

Separately, the OPR conducted a review of certain systems and procedures used by An Bord Pleanála. As part of the review, the OPR published two reports published on 4 October 2022 and 20 December 2022 which contain a number of findings and recommendations intended to address strategic and governance issues within An Bord Pleanála.

There is some degree of overlap between the matters considered by the OPR and the matters considered by the internal review team.

Terms of Reference for Lorna Lynch SC:

Part 1:

The Chairperson of An Bord Pleanála has now instructed Lorna Lynch SC to carry out a scoping investigation into the following matters, having regard to the Case Files:

- (I) Conflicts of interest and objective or actual bias
- (II) Statutory declarations under s.147 and 148 of PDA 2000
- (III) Allocation of Board files to Board Members and Inspectors
- (IV) The use of 2 person Boards
- (V) Amendments to Inspectors' reports
- (VI) Communications with external parties outside of the formal statutory or administrative channels

In investigating these matters, the investigator is instructed to:

- (i) Review such material in the possession of An Bord Pleanála or other entities/persons as they think necessary,
- (ii) To interview, or seek written submissions from such person or persons as they think necessary,

- (iii) Upon completion of such review, and interviews as are thought necessary, report to the Chair of An Bord Pleanála, as to whether there are sufficient grounds to:
 - a. In the case of a Board member to refer the matter to the Minister for consideration as to whether there has been stated misbehaviour within the meaning of section 106 of the Planning and Development Act, 2000, as amended;
 - b. In the case of an employee, to initiate procedures in accordance with applicable disciplinary procedures.

For the avoidance of doubt, the investigator will be furnished with all material that was considered by the internal review team and can request further information and/or carry out whatever interviews with current and former staff and board members as they consider necessary in order to conclude this scoping investigation.

If the report concludes under (a) above that there are sufficient grounds in the case of a Board member to refer the matter to the Minister, the Chair of An Bord Pleanála may then refer the matter to the Minister.

If the report concludes under (b) above that there are sufficient grounds in the case of an employee to initiate a disciplinary process, the Chair of An Bord Pleanála may then refer the matter to the appropriate person under the Board's disciplinary procedures.

The Chair shall also be entitled, upon review of the report, to refer any matter to any other statutory authority.

Part 2:

The investigator is also instructed to consider the recommendations made by the OPR in its reports published on 4 October 2022 and 20 December 2022 insofar as they relate to the matters at I to VI above and report to the Chair whether any additional matters beyond those recommendations are needed to mitigate as far as possible the risk of these matters affecting the integrity and fairness of the Board's future decision-making processes.

Ms. Lorna Lynch SC provided an interim report to the Chairperson on the progress of her investigation on the 5th of October 2023. Her initial investigation was delayed due to the unavailability of an essential witness due to illness, the necessity to review a large number of hard copy planning files within scope of this investigation and a significant volume of soft copy data. Ms Lynch hopes to deliver her investigation Report in November.

Ends.