

A question of political will: Corruption and Public Administration in Ireland

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Abstract: A question of political will: Corruption and Public Administration in Ireland –

The paper provides the reader with a transversal analysis of the issue of corruption in Ireland – including the Irish legislation against corruption and the economical shortcomings of corruption.

Keywords: Ireland; Transparency; Corruption; Public administration.

1. Introduction

At the end of May 2018 the Irish parliament (Oireachtas) passed all stages of the Criminal Justice (Corruption Offences) Bill of 2017. The original bill was introduced in November 2017 by the Minister for Justice and Equality, Charles Flanagan, as the final piece in a range of acts entitled to ensure that Irish politics and public life was clean. The purpose of the bill was to completely modernise Irish anti-corruption laws and make them more accessible to the general public. The Criminal Justice (Corruption Offences) Act 2018 repealed and replaced seven previous Prevention of Corruption Acts dating from 1889 to 2010. The 2018 act was, however, far more than a simple consolidation of the old law. Rather it was a robust and innovative piece of legislation that provided for a number of new offences as well as stronger penalties for those convicted of corruption. The Act followed a range of open government initiatives such as the Freedom of Information Act 2014, the Protected Disclosures Act 2014, and the Regulation of Lobbying Act 2015. In that context the Act enabled the Irish state to meet with some of its international obligations as well as significantly strengthening its legislative defences against white collar crime and corruption.

Some of the key provisions of the Act are the introduction of a new offence of active and passive trading in influence as recommended by GRECO, the Council of Europe's anti-corruption body; a new offence for an Irish official carrying out a corrupt act in relation to his or her office; a new offence of giving a gift, consideration or advantage knowing that it will be used to commit a corruption offence; a new offence for creating or using false documents as required by most International Conventions; and a new offence of intimidation where a threat of harm is used instead of a bribe. The Act also extends the

presumption of corrupt gifts to connected persons; the presumption of a corrupt donation is expanded and makes failure to disclose or return a donation grounds for the presumption to apply. There are also new provisions for the forfeiture of public office and for prohibition from seeking public office for up to ten years for Irish officials. There is a strict liability offence for bodies corporate where any individual connected with the company has been found guilty of corruption with the penalty for the company being an unlimited fine. Finally there are provisions for seizure and forfeiture of bribes.¹

The enactment of this ground breaking piece of legislation came at the end of some two decades worth of hand wringing amongst Irish political elites over allegations of corruption within the body politic. A number of tribunals of inquiry were established in the mid-1990s to investigate such allegations and they dominated Irish political discourse for over fifteen years. The mammoth reports out of these tribunals forced an introspective examination by Irish political elites about undue influence in policy making. Added to this were a number of critical external reports about Ireland's attitude towards corruption, principally from GRECO. The various pieces of legislation enacted from 2014 to 2018 were designed and enacted to ensure that Ireland would continue to have a reputation for clean politics, be an attractive location for foreign direct investment, and an attractive place to work and live.

2. Expert Perceptions and Individual Experiences

Ireland has generally ranked in the higher echelons of states in global comparative assessments of perceived levels of corruption. According to Transparency International's Corruption Perceptions Index (CPI), Ireland is a relatively clean country. The CPI is only comparable year-to-year from 2012 onward. According to this index, Ireland's score has improved from 69 in 2012 to 74 in 2017. The country's rank has also improved, from twenty fifth in 2012 to nineteenth in 2017.² This puts Ireland between the US and Japan, and tenth of 28 EU member states. The World Bank is in agreement, consistently ranking Ireland in the top 10% of countries in the control of corruption between 2005 and 2016.³ In 2017, Ireland was ranked fourteenth out of 109 countries, with a score of 8.74 on a 10-point scale in the Public Integrity Index, which assesses a society's capacity to control corruption and ensure that public resources are spent without corrupt practices.⁴

It is well known that perception based measures of corruption such as these are subject to perception biases. Fan, Lin and Treisman argue that "the businessmen and experts whose perceptions are being tapped might be inferring corruption levels from its

¹ The act is available at www.anticorruption.ie/en/ABC/CriminalJusticeCorruptionOffencesAct2018.pdf/Files/CriminalJusticeCorruptionOffencesAct2018.pdf and also at www.irishstatutebook.ie/eli/2018/act/9/enacted/en/html

² www.transparency.org/news/feature/corruption_perceptions_index_2016#table

³ info.worldbank.org/governance/wgi/#reports

⁴ integrity-index.org/country-profile/?id=IRL&yr=2017

hypothesized causes”.⁵ Ireland lacks recent firm-level surveys of corruption which would provide hard evidence on firms’ experiences of paying bribes. However, we do have Eurobarometer data which suggests that petty corruption is not something that Irish people encounter with any regularity or frequency. In an October 2017 survey just 12 per cent of Irish people thought that doing a favour in return for something from the public administration or a public service was acceptable to any extent. Moreover, only 5% of Irish people say they have witnessed acts of corruption or been a victim of corruption in the past year. Furthermore, only 7% of Irish people report that they know someone who has taken a bribe.⁶

Given that some of this is likely to be a misunderstanding of what constitutes corruption it is clear that this kind of petty corruption is not a common occurrence in Ireland. The possibility still remains that firms pay bribes, although this seems unlikely to be a normal part of the business environment. Several studies have noted that corruption is a key predictor of red tape and high levels of regulation.⁷ Although we lack direct measures of corruption in business-state transactions, the World Bank’s Doing Business survey for 2018 suggests that the business environment in Ireland is very clean and favourable.⁸

3. Public Perceptions and Norms in Ireland

While the data suggest that corruption in Ireland is relatively scarce, there is, nevertheless, a widespread belief by Irish people that it is indeed a problem in the country. Indeed, contrary to the improvements in the CPI, Eurobarometer data tells us that 39% of Irish people think that corruption increased between 2014 and 2017.⁹ In the same survey, 68% of Irish people expressed the belief that corruption is widespread in the country. Ireland is typical in the context of Europe – the same share of Irish people (68%) who think that corruption is widespread is the European average. Finland lies at one extreme of this distribution, with 21% who think that corruption is widespread, and Greece at the other with 96%. Despite this, and in line with most EU member states, the perception that corruption is a problem has been falling in Ireland, with a 13-percentage point decrease between 2012 and 2017.

When surveyed about the giving and taking of bribes and the abuse of power for personal gain, Irish people believe that this problem is common among political parties (53%), banks and financial institutions (51%), and politicians at national, regional or local level (47%). Almost every EU member state identifies political parties and politicians as a

⁵ C.S. Fan, C. Lin, D. Treisman, *Political decentralization and corruption: Evidence from around the world*, in 93 *Journal of Public Economics* 14, 15 (2009).

⁶ ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/81007

⁷ M. Breen, R. Gillanders, *Corruption, institutions and regulation*, in 13 *Economics of Governance*, 263-285 (2012).

⁸ www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2018-Full-Report.pdf

⁹ ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/81007

problem. However, Ireland, Portugal and Spain – three of the EU countries most closely associated with the European banking crisis – are the only three countries in the EU which identify banking as one of the three most common areas for bribery and abuse of power (Greece is an outlier in this regard, at 27%). Even though these categories are identified by Irish people as the common places they perceive corruption to be a problem, the politicians and parties' categories are below the EU average. The third most common EU answer was for "Officials awarding public tenders." Only 34% of Irish respondents view this as a problem compared to 43% in EU member states. This data suggests that Irish conceptions of corruption do not entail day-to-day petty corruption on the part of civil servants but rather entail a form of collusion between the political class and financial institutions.

The available evidence also suggests that there is a strong social norm against corruption in Ireland. The Eurobarometer in 2017 shows that Ireland is third behind Malta and Denmark in terms of the share of people that state that corruption is never acceptable and it is wrong to do a favour in order to get something from the public administration or a public official. At 84%, this share compares favourably to Germany, for instance, at 75%. Similar patterns are evident in attitudes toward giving a gift or money to obtain something from a public official. The Eurobarometer tolerance index reveals that Ireland ranks fifth in the EU in terms of the share of people who view corruption as unacceptable. While no country is completely free from corruption, taken together, these data suggest that corruption in Ireland is not common and there are strong social norms against corrupt behaviour.

The divergence between the reality of corruption and public perceptions is not unique to Ireland and raises the worrying prospect of a self-fulfilling prophecy in which the view that corruption is widespread undermines the norm of viewing corruption as unacceptable. Evidence tells us that one way in which people justify corruption to themselves is through the view that "everybody else is doing it".¹⁰ A view that corruption is common can therefore serve to lower the psychic cost of engaging in acts of corruption. Some member states, and indeed the EU in general, may wish to tackle misperceptions of corruption in order to preserve and improve actual levels of good governance. In that context enforcement of corruption legislation is an important point as it pertains to Ireland.

While Ireland performs well on standard measures of corruption perceptions, it rates poorly in terms of enforcing the OECD's anti-bribery convention. Transparency International's 2018 report on exporting corruption categorises Ireland as having "little or no enforcement" of the convention.¹¹ Ireland's failure to impose sanctions in a single foreign bribery case results in a score of zero placing it in a group of countries that includes China, India, Russia, and Turkey. While Ireland's recent legal reforms impose

¹⁰ J.D. Collins, K. Uhlenbruck, P. Rodriguez, *Why firms engage in corruption: A top management perspective*, in 87 *Journal of Business Ethics* 89-108 (2009).

¹¹ Exporting Corruption: Progress report 2018: Assessing enforcement of the OECD Anti-Bribery Convention, available at files.transparency.org/content/download/2318/14294/file/2018_Report_ExportingCorruption_English.pdf

more serious sanctions for acts of foreign bribery, the lack of a track record of enforcement is cause for concern. While theory,¹² and evidence,¹³ demonstrate that monitoring and punishment can be an effective deterrent to corruption, zero probability sanctions will not change the calculus of expected costs versus expected benefits.

In addition to undermining global development efforts, this lack of enforcement poses a risk for Ireland's level of corruption at home. Irish firms paying bribes abroad may, through a change in norms or rationalisation, become firms that are willing to engage at corruption at home. To the extent that corruption benefits the firms engaging in it, Ireland's failure to enforce the convention allows such firms to gain an advantage over their competitors. Over time, this could potentially lead to the extreme situation where competitive forces may drive out honest firms, moving Ireland away from a desirable equilibrium of little corruption. While this is unlikely, it is nevertheless something that needs to be guarded against.

A similar problem of lack of enforcement arises when it comes to recommendations from the Council of Europe's anti-corruption body, GRECO. In June 2017 GRECO published a compliance report on Ireland relating to the state's compliance with a 2014 evaluation report on corruption prevention in respect of members of parliament, judges, and prosecutors. The original evaluation report contained 11 recommendations for action. The 2017 compliance report found that Ireland had only fully implemented three of the recommendations and partly implemented a further three. GRECO concluded that Ireland's low level of compliance with the recommendations is "globally unsatisfactory". The then Minister for Justice and Equality Charles Flanagan stated that the report was "obviously disappointing. While much work is underway in relation to all of the recommendations, we fell short of achieving a good report as the legislation in train is hugely complex" and that he was committed to achieving a significantly better result next time around.¹⁴

Unfortunately for Flanagan and the minority Fine Gael led government of which he was a senior minister GRECO's next report into compliance in Ireland in July 2018 followed a similar pattern finding that Ireland's overall implementation of the recommendations made during the fourth round evaluation was low and that Ireland's compliance with the recommendations was again "globally unsatisfactory" as per GRECO standards. Minister Flanagan again expressed his disappointment that more progress has not been made but was keen to highlight the active role the Government had taken on anti-corruption measures in the past year. In that context the enactment of the Criminal Justice (Corruption Offences) Act 2018 which represented a complete overhaul of Ireland's anti-corruption laws that were clearly out of date was described by the government as a vital piece of legislation in the fight against corruption at home and

¹² G.S. Becker, *Crime and punishment: An economic approach*, in N. Fielding e al., *The economic dimensions of crime*, London, 1968, 13.

¹³ K. Abbink, B. Irlenbusch, E. Renner, *An experimental bribery game*, in 18 *Journal of Law, economics, and organization*, 428-454 (2002).

¹⁴ GRECO publishes Compliance Report on Corruption Prevention in Ireland, available at www.justice.ie/en/JELR/Pages/PR17000222

abroad. A dedicated anti-corruption unit in An Garda Síochána was also established in 2018 to ensure more resources were allocated to the successful investigation and prosecution of corruption. Furthermore a revamped website www.anticorruption.ie was launched which provides various links to reports on Ireland and contact details in the event that an individual suspects a corruption offence has taken place.¹⁵ These measures were part of a white collar crime package which was announced by the government in late 2017. This also included including signing up to the international transparency drive known as the Common Reporting Standard to counteract tax evasion which was established back in 2014. At its heart the idea of this package was to essentially make it easier to prosecute people for insider trading, planning corruption and bribery offences.

4. Tribunals of Inquiry

The background to this set of measures lay in a number of tribunals of inquiry established by the state in the mid-1990s. For most of its existence since it declared independence in 1922, the Irish state has operated in a culture of secrecy. The result of such secrecy was that various governments, individual politicians and civil servants became targets for sustained lobbying by all manner of interest groups and private business interests seeking to influence them in order to get favourable policy decisions. Such attempts at influencing policy makers took place behind closed corridors. This became apparent when the Irish state was transfixed by a number of tribunals of inquiries into payments to politicians which laid bare the dark underbelly of lobbying in Ireland as the covert intersection between the policymaking process and those who wanted to influence it was openly revealed. These tribunals manifestly showed that the Irish policymaking process was neither open nor transparent, and was open to corruption.¹⁶ In that context the activities of individuals or groups attempting to influence national and local politicians, as well as public officials, came under particular scrutiny.

The Oireachtas has the power to establish tribunals of inquiry to investigate certain matters of urgent public importance. The original legislation dates from 1921 and has been amended on a number of occasions, most recently in 2004. Since 1991, there have been ten tribunals of inquiry. Four of these pertained to various actions of the Irish police force, the Garda Síochána, two related to cases of blood transfusion, two to payments to politicians, one to planning matters in Dublin, and one to alleged irregularities in the beef processing industry. Two of the most noteworthy the Moriarty Tribunal into payments to politicians and the Mahon Tribunal into planning matters, including rezoning by Dublin authorities were established in 1997 yet took fourteen and sixteen years respectively to conclude and revealed large, covert payments to politicians. The tribunal era did lead to significant changes in the way the Irish political elite looked at themselves

¹⁵ Minister for Justice and Equality welcomes publication of latest anti-corruption report, available at justice.ie/en/JELR/Pages/PR18000225

¹⁶ E. Byrne, *Political Corruption in Ireland 1922-2010: A Crooked Harp?*, Manchester, 2012.

and their administrative structures. In that context tribunals of inquiry are important as they exposed the question of corrupt access to decision making.

For many years the question of access to government was intertwined with financial donations to individual politicians as well as to political parties. The two major parties which have dominated the Irish political landscape since independence Fianna Fáil and Fine Gael received substantial donations from business interests over a long period. In its second interim report of September 2002, the Flood tribunal into planning in Dublin ruled that former minister Ray Burke (who at different times had held the Foreign Affairs, Justice, and Communications portfolios) had received corrupt payments from a succession of builders. It also concluded that Burke, during his time as Minister for Communications in the late 1980s, had made decisions that were not in the public interest after receiving payments from a private radio station's main backer.¹⁷ Burke was eventually jailed for six months in January 2005, becoming the first former minister to be imprisoned on foot of investigations undertaken by a statutory tribunal of inquiry. He pleaded guilty to two counts of lodging false tax returns and later made a settlement of €600,000 with the Criminal Assets Bureau.¹⁸ The link between business contributions to political parties – and by extension to the political process – and favourable treatment for such business interests was palpably proven to Justice Flood's satisfaction. In 2015, the tribunal, then known as the Mahon tribunal, did however, apologise to Burke and a number of businessmen for finding that they had hindered and obstructed its work and that all such findings of hindrance and obstruction made against individuals in its second and third interim reports would be removed. Burke and others were then entitled to claim full legal costs for their appearances at the tribunal.¹⁹

The question of financial donations and influence gained particular notoriety from the difficulties that beset the then Taoiseach, Bertie Ahern after the *Irish Times* revealed in September 2006 that, as Minister for Finance in 1993 and 1994, he had accepted payments of somewhere between €50,000 and €100,000 from a variety of business people. It also revealed that the matter was being investigated by the Mahon tribunal. Ahern went on to lead Fianna Fáil back into government after the 2007 general election. However in the wake of some unconvincing performances at the tribunal, and under pressure from within his own cabinet, he resigned as Taoiseach in May 2008, stating that the effects of the tribunal had taken its toll on him, his party and those closest to him. He insisted that he had done nothing wrong. He was severely criticised in the final Mahon report of March 2012, which found that much of the explanation provided by him as to the source of the substantial funds that he had received was 'untrue'.²⁰ He rejected all such findings.

¹⁷ F. Flood, *The Second Interim Report of the Tribunal of Inquiry into certain planning matters and payments*, Dublin, 2002, 65.

¹⁸ E. Byrne, *Political Corruption in Ireland*, cit., 172.

¹⁹ www.irishtimes.com/news/politics/mahon-tribunal-apologises-to-former-ff-minister-ray-burke-1.2066176

²⁰ A. Mahon, *The Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments*, 2012, 1473 available at www.planningtribunal.ie/images/finalReport.pdf.

Importantly for Ahern and his defenders, the tribunal did not make a finding of corruption against him and he quickly stated that he had never received a corrupt payment in his life and had always told the truth to the tribunal. In any event, Fianna Fáil started preparing to expel him from the party, but he resigned his membership before that ignominy could be visited upon him. Former Fianna Fáil minister Pádraig Flynn faced similar difficulties after the tribunal found that he had wrongfully and corruptly sought a payment of £50,000 from a developer and then proceeded to utilise the money for his personal benefit.²¹ Flynn also resigned from Fianna Fáil after moves to expel him were initiated.

The Moriarty tribunal, which reported in 2011, thirteen years and six months after it was established was most effective in uncovering a whole host of payments to the former Fianna Fáil leader, Charles Haughey. Haughey had had a long and controversial career and had been Taoiseach on three occasions between 1979 and 1992. The tribunal proved extremely successful in tracking down a complicated money trail to Haughey and estimated that he had received £8.5 million in donations over a period of sixteen years. The tribunal also produced a main finding that Michael Lowry, a Fine Gael minister between 1994 and 1996, had been the recipient of direct financial contributions from businessman Denis O'Brien. In turn, it said, O'Brien had benefited from a decision made by Lowry's Department of Transport, Energy and Communications, namely the awarding of the state's second mobile phone licence to O'Brien's company, Esat Digifone. The tribunal found that a 'cocktail of irregularities' within the evaluation process was complemented by the 'insidious and pervasive influence' of Lowry, who 'not only influenced, but delivered, the result'.²² The tribunal was excoriated by O'Brien and Lowry, both of whom rejected its findings as biased, selective and not substantiated by evidence or fact. They furthermore implied that Justice Moriarty had 'gone rogue and become obsessed with destroying Ireland's international reputation'.²³

From the Hamilton report into the beef industry in 1994, through to the McCracken report in 1997 and the Moriarty report in 2011 into payments to politicians, to the Flood/Mahon report into planning corruption in Dublin in 2012, these tribunals of inquiry uncovered vast, secret and complex payments to politicians. Having heard copious amounts of evidence the judges in each case rejected at least some of the evidence given by certain politicians but, crucially, did not find politicians to have acted corruptly. They did find that an insidious nexus of builders, developers and politicians was at work and that this had led to an unhealthy interlinking of business, private and public interests in Ireland, but that this was necessarily corrupt.²⁴ It did, however, lead to a widespread perception of corrupt influence in how the state decided policy.

²¹ A. Mahon, *The Final Report of the Tribunal of Inquiry*, cit., 2458.

²² See M. Moriarty, *The Moriarty Tribunal Report. Report of the Tribunal of Inquiry into Payments to Politicians and Related Matters, Part 2*, Dublin, 2011, 1050, and E. Byrne, *Political Corruption in Ireland*, cit., 165-166.

²³ E. Byrne, *Political Corruption in Ireland*, cit., 167.

²⁴ G. Murphy, *Electoral Competition in Ireland since 1987: the politics of triumph and despair*, Manchester, 2016.

5. A fragmented regime for fighting corruption?

Despite these numerous tribunals, the Irish state has secured few convictions for corruption-related offences. Moreover, of the small number of convictions there have been, a number of them have been subsequently deemed to be unsafe or overturned on technical grounds. Foremost amongst these was the case of the former assistant manager of Dublin City Council, George Redmond. Redmond, regarded by Ireland's newspaper of record, the *Irish Times* as "among most corrupt officials in Irish history" was convicted in 2003 and being jailed for accepting bribes.²⁵ The Flood Tribunal had originally been spectacularly successful in showing that Redmond, the most important planning official in Dublin for over a quarter of a century, was literally in the pockets of a number of wealthy builders. 'I was the Council; I had the powers', he rather magisterially declared when he first entered the witness box in September 1999.²⁶ He was soon humbled by the tribunal lawyers, and Justice Flood, who warned him to reflect on the credibility of his claim that his opulent lifestyle was funded from his civil servant's salary. When threatened with up to two years in jail for misleading the tribunal, he finally admitted that he had received huge amounts of money from a variety of builders and landowners. Redmond was arrested at Dublin Airport in March 1999 by the Criminal Assets Bureau and was found to be carrying £300,000 in cash and money drafts. The second interim report of the Flood tribunal had found that for close on three decades since the 1960s he had been in receipt of regular and substantial payments from builders and developers in the Dublin area which were 'the equivalent of receiving one substantial house per annum free'.²⁷

Redmond was subsequently convicted on two counts of corruption in 2003 arising out of the payment of a £10,000 bribe but these were overturned when new evidence of bank accounts became available. The court of criminal appeal ultimately decided that had these accounts been available to the original jury a different verdict might well have been found and hence the conviction was unsafe. Two further cases were taken against Redmond by the state where he was found not guilty in one while the jury could not reach a verdict in the other. In 2008 the state announced they would not press any other charges against Redmond who had faced investigations by the Gardai, the Revenue Commissioners, the Criminal Assets Bureau and the Tribunal. Nevertheless the reputation of this at one time obscure public official was ruined and he faded off the public scene.

The longest prison sentence for corruption of six years in jail, with the final two suspended, was handed down to a local politician in 2012 for receiving payments from a property developer was recently over-turned by the Supreme Court because of a legal error. By a four to one majority, the court overturned the conviction of Fred Forsey Junior who was jailed in 2012 for payments totalling €80,000 from a developer, when he was a

²⁵ www.irishtimes.com/news/ireland/irish-news/george-redmond-among-most-corrupt-officials-in-irish-history-1.2541848

²⁶ G. Murphy, *Electoral Competition in Ireland since 1987*, cit., 87.

²⁷ See E. Byrne, *Political Corruption in Ireland*, cit., 173, and F. Flood, *The Second Interim Report of the Tribunal of Inquiry into certain planning matters and payments*, cit., 8.

member of Dungarvan Town Council in 2006. Forsey had by that stage served his sentence. His conviction was overturned over a legal error in the approach at Forsey's trial to the onus of proof on a corruption charge as set out in Section 4 of the then Prevention of Corruption Acts.²⁸

One potential explanation for the lack of successful convictions is the relatively fragmented institutional landscape for investigating corruption. Primarily the Oireachtas lacks the ability to conduct full inquiries. In 2002 the Supreme Court found that the Oireachtas had no explicit, implicit or inherent power to conduct an inquiry into the fatal shooting by the Gardaí of a man named John Carthy at Abbeylara, in Longford. The ruling applied where that inquiry is capable of leading to adverse findings of fact against citizens, including a finding of unlawful killing, which would impugn their good names. That judgment had far reaching implications for the holding of Oireachtas inquiries. In 2011 the then Fine Gael Labour government held a referendum to amend the constitution which would have enabled such inquiries to be held by the Oireachtas but this was rejected by 53 percent of voters.

The Tribunal system exists, in part, due to the lack of an alternative and cohesive regime for addressing corruption. The principal reason for the state using tribunals of inquiry was that they were extra parliamentary and thus free of the party political constraints which inevitably hinder parliamentary mechanisms of scrutiny. In the Irish context, however, such tribunals tended to last for extraordinary lengths of time and cost vast amounts of money. The majority of voters were not, however, convinced that the Oireachtas should have powers of inquiry and rejected the referendum. The corruption investigatory regime consists of several agencies, including the Standards in Public Office Commission, commonly known as SIPO, which records the interests of public officials, their compliance with the tax authorities, and also records political donations, spending by politicians and political parties, and the regulation of lobbying. The Office of the Director of Corporate Enforcement (ODCE) focuses on improving the compliance environment for corporate activity. The Courts, Garda Síochána, Criminal Assets Bureau, Director of Public Prosecutions, Comptroller & Auditor General, parliamentary committees, and several government departments and agencies, including the Department of Justice and Equality, the Financial Regulator and the Revenue Commissioners, all have a central role in addressing corruption.

There does tend to be a problem with under resourcing of, and lack of expertise within, many of these agencies. This came to the fore in May 2017 when the trial of a former banker Sean Fitzpatrick collapsed after the judge declared he should be acquitted on the 27 charges he faced of misleading auditors and furnishing false information about multi-million euro loans to him and to people connected to him between 2002 and 2007. Fitzpatrick, a former chief executive and chairman of Anglo Irish Bank had become the poster boy for Ireland's economic crash in 2008 as the problems of Anglo Irish Bank were instrumental in the introduction of Ireland's bank guarantee scheme where the deposits

²⁸ www.irishtimes.com/news/crime-and-law/courts/supreme-court/fred-forsey-jnr-has-corruption-conviction-quashed-by-supreme-court-1.3690738

and obligations of Ireland's seven private banks were guaranteed by the state in 2008.²⁹ Just four months later in January 2008, Anglo Irish Bank was nationalised amidst revelations that FitzPatrick had arranged for loans of well over €100 million for himself from the bank and had then colluded with the help of Irish Nationwide Building Society chief executive Michael Fingleton to conceal this from Anglo's own auditors and shareholders.³⁰ Its demise was followed by the news that Fitzpatrick was declared bankrupt. The criminal case against him floundered when the judge in his trial ruled that the ODCE had adopted an inappropriately biased and partisan approach to his loans case.³¹ Much political angst followed with allegations that the ODCE was not properly resourced by the state and ill prepared.

6. Corruption and the Irish Economy

The Fitzpatrick case is important because it goes to heart of Ireland's reputation as being a good and clean place to do business. Reducing corruption should be a goal for all governments that hold economic growth and development as objectives. Since the seminal study of Mauro,³² numerous studies have found meaningful negative associations between corruption and economic growth. While causality issues whereby corruption arises because of low growth plague such studies, support for the notion that corruption causes low growth is provided by studies that look at the issue at lower levels of aggregation. For example, Del Monte and Papagni³³ find that more corrupt Italian regions grow more slowly and Fisman and Svensson³⁴ conclude that Ugandan firm growth is more hampered by a 1% increase in corruption exposure than by a 1% increase in taxation. Ireland, coming out of an extreme economic contraction and facing significant risks from an uncertain global situation, including sundry channels of risk from Brexit, should be aware that corruption is a risk to sustained economic recovery.

Indeed, Ireland's specific economic model makes the country particularly vulnerable to corruption. The Irish economy is extraordinarily dependent on foreign direct investment and multi-national firms. According to the Industrial Development Agency, the non-commercial, semi-state body promoting foreign direct investment into Ireland, almost 200,000 people were directly employed by foreign multinational companies in

²⁹ D. Donovan, A. Murphy *The Fall of the Celtic Tiger and the Euro Debt Crisis*, Oxford, 2013. T. Lyons, B. Carey, *The Fitzpatrick Tapes: The rise and fall of one man, one bank, and one country*, Dublin, 2011.

³⁰ M. Cooper, *Who Really Runs Ireland: the story of the elite who led Ireland from bust to boom and back again*, Dublin, 2010.

³¹ www.independent.ie/irish-news/courts/taxpayer-hit-for-tens-of-millions-as-fitzpatrick-trial-collapses-35749487.html

³² P. Mauro, *Corruption and growth*, in 110 *The quarterly journal of economics*, 681-712 (1995).

³³ *Public expenditure, corruption, and economic growth: the case of Italy*, in 17 *European journal of political economy* 1-16 (2001).

³⁴ R. Fisman, J. Svensson, *Are corruption and taxation really harmful to growth? Firm level evidence*, in 83 *Journal of development economics* 63-75 (2007).

2016.³⁵ Numerous studies have found that foreign direct investment is lower in countries that are perceived to be more corrupt and that the effect is economically significant as well as statistically significant. Wei,³⁶ for instance, concludes that were Singapore to find itself perceived to be as corrupt as Mexico, this would have the equivalent effect of a 50-percentage point increase in the corporation tax rate.

On average, standard international perceptions of corruption drive foreign direct investment rather than firms' experiences of corruption.³⁷ Perceptions of corruption can differ from objective measures. For example, Razafindrakoto and Roubaud³⁸ find that individuals' experiences of corruption can differ considerably from experts' evaluations. If Ireland loses its strong position in international corruption indices, it could miss out on the foreign direct investment inflows on which its economy is uniquely dependent. Therefore, maintaining and improving Ireland's reputation for being a clean country should be a central policy objective for government.

Another legacy of Ireland's experiences in the years following the global financial crisis is a backlog of large-scale infrastructure requirements. One of the ways in which corruption undermines growth is through a negative effect on the quality of infrastructure and the efficiency of public investment.³⁹ Ireland finds itself planning and implementing a number of large-scale infrastructure projects as the economy recovers. Perhaps the most pressing of these is the National Broadband Plan. This project to roll out high-speed internet access across the country has a budget of three billion euro and was engulfed in controversy in 2018 when it emerged that the Minister for Communications and Energy, Denis Naughten, who had responsibility for the plan had held a least four meetings with representatives of a bidder in the tendering process. Naughten eventually resigned after he had been asked to do so by the Taoiseach, Leo Varadkar, claiming he had done nothing wrong but public perceptions regarding the integrity of the project were seriously undermined.⁴⁰ While there is no evidence that the minister was involved in any acts of corruption, the danger remains that a perception of corruption can change the "tone at the top" which has been identified as one the most vital elements in the fight against

³⁵ www.irishtimes.com/business/economy/employment-in-ida-backed-firms-reaches-record-high-1.2924276

³⁶ S.J. Wei, *How taxing is corruption on international investors?*, in 82 *Review of economics and statistics* 1-11 (2000).

³⁷ R. Gillanders, S. Parviainen, *Experts' Perceptions versus Firms' Experiences of Corruption and Foreign Direct Investment*, in 86 *The Manchester School* 195-218 (2018).

³⁸ M. Razafindrakoto, F. Roubaud, *Are international databases on corruption reliable? A comparison of expert opinion surveys and household surveys in sub-Saharan Africa*, in 38 *World development* 1057-1069 (2010).

³⁹ A. Del Monte, E. Papagni, *Public expenditure, corruption, and economic growth*, cit., and R. Gillanders, *Corruption and infrastructure at the country and regional level*, in 50 *Journal of Development Studies* 803-819 (2014).

⁴⁰ www.irishtimes.com/news/politics/naughten-had-four-private-dinners-with-broadband-contract-bidder-1.3660218

corruption.⁴¹ More generally, by undermining trust in the state and its agents,⁴² perceptions of corruption can undermine Ireland's ability to regain the ground lost during the economic crisis

Only a couple of months earlier Naughten had been involved in another controversial episode when during a phone call he told a lobbyist for Ireland's largest media firm Independent News & Media (INM) of a likely course of action he was going to take regarding a proposed merger between INM and the much smaller operator Celtic Media. In this instance Naughten stated that he had expressed "a purely personal view" to the lobbyist that the likely course of action would be a referral of the merger to the Broadcasting Authority of Ireland (BAI). The lobbyist then passed on this detail to senior executives at INM. Details of the phone call emerged when the ODCE applied to have inspectors appointed to investigate corporate governance issues at INM.⁴³ A month after this phone call took place Naughten refused to tell the Dáil what his plans were in relation to the takeover but insisted once the detail of his phone call with the lobbyist became public knowledge that he had done nothing wrong or inappropriate in expressing his personal view at the time. He then defended not informing the Dáil what that view was. He later expressed his regret for speaking to the lobbyist about the merger calling it a political mistake.⁴⁴ The INM takeover was ultimately dropped before the BAI issued its opinion on the merger.

Both these cases are important because they brought attention to one of the flagship pieces of the Fine Gael Labour government's legislation to combat corruption, the Regulation of Lobbying Act of 2015. Neither of Naughten's interactions in relation to both the media merger and broadband affairs were registered with the lobbying regulator. Lobbying regulations are meant to promote transparency and accountability and shed light into policy making. In that context they should improve the overall nature of decisions made by governments. As long as governments are open about who has lobbied them, then it makes sense that they can robustly defend their public policies, safe in the knowledge that there is no secrecy about what might have influenced any specific decision.

The 2015 Regulation of Lobbying Act provides for a web-based Register of Lobbying to make information available to the public on the identity of those communicating with designated public officials on specific policy, legislative matters or prospective decisions. In broad terms, it is designed to provide information to the public

⁴¹ J. Lambsdorff, *Preventing corruption by promoting trust: Insights from behavioral science* (Vol. 69, No. 15). Passauer Diskussionspapiere, Volkswirtschaftliche Reihe, 2015.

⁴² See: M.A. Seligson, *The impact of corruption on regime legitimacy: A comparative study of four Latin American countries*, in 64 *Journal of Politics* 408-433 (2002); C.J. Anderson, Y.V. Tverdova, *Corruption, political allegiances, and attitudes toward government in contemporary democracies*, in 47 *American Journal of Political Science*, 91-109 (2003); E.C. Chang, Y.H. Chu, *Corruption and trust: exceptionalism in Asian democracies?*, in 68 *Journal of Politics*, 259-271 (2006); S.D. Morris, J.L. Klesner, *Corruption and trust: Theoretical considerations and evidence from Mexico*, in 43 *Comparative Political Studies* 1258-1285 (2010).

⁴³ www.independent.ie/irish-news/politics/minister-insists-he-said-nothing-wrong-or-inappropriate-during-call-with-pr-exec-about-proposed-merger-between-inm-and-celtic-media-36820758.html

⁴⁴ www.independent.ie/irish-news/politics/communications-minister-denis-naughten-apologises-for-speaking-to-lobbyist-about-media-merger-36839706.html

as to ‘who is lobbying whom about what’.⁴⁵ The legislation covers practically the full spectrum of the lobbying industry. It has clear definitions of what lobbying involves, and of which policy-makers and what policy issues are involved.⁴⁶ The register is freely available on the internet, and it is relatively easy for lobbyists to use as they can file their returns electronically. The act makes clear what information lobbyists must disclose, with a facility for delayed publication of information in specified circumstances. Crucially, the Office of Lobbying Regulation resides within SIPO and is independent of both government and the industry. There are regular reviews of the system, and reporting by both the head of lobbying regulation and the Minister for Public Expenditure and Reform to the Oireachtas. There are also significant penalties for not registering with the regulator and not providing the necessary information but the above examples would tend to suggest that there are still many who have not come to terms with the lobbying regulation agenda. Nevertheless since 2014 the passing of acts covering lobbying, freedom of information, protective disclosures and corruption have all gone some significant way in giving the state a legislative architecture in which to ensure that its public life is free from corruption. However, there are several areas of concern, which might affect Ireland’s corruption performance in the future.

7. Corruption risks

While Ireland performs very well on international rankings of corruption and has enacted significant legislation around corruption, both corruption itself and perceptions of corruption still pose significant risks to the country. This is particularly the case given the Irish economy’s integration within a global economy that is itself undergoing significant changes, and the recent social and economic issues that the country has endured in the wake of the financial crash of 2008. Two particular areas of concern are the concentration of ownership in the media and the possibility of police corruption. Ireland performs very well on international rankings of press freedom. In 2018, Reporters without Borders ranked Ireland as sixteenth out of 180 countries in press freedom. In comparative terms, Ireland ranks tenth in the EU 28, considerably ahead of the United States, for instance, which ranks forty fifth.⁴⁷ Freedom House, the independent watchdog organisation dedicated to the expansion of freedom and democracy around the world, ranks Ireland 21 out of 199 countries.⁴⁸ While both these show the robustness of media freedoms in Ireland, Reporters without Borders notes that the highly concentrated nature of media ownership poses a distinct threat to media plurality which in itself is a strong indicator of a free press, and contributed to a two-place fall from 2017. Broadcast media is dominated by the semi-state company RTE. There are some significant commercial

⁴⁵ www.lobbying.ie/

⁴⁶ G. Murphy, *Ireland* in A. Bitonti, P. Harris (eds), *Lobbying in Europe: Public Affairs and the Lobbying Industry in 28 EU Countries*, Basingstoke, 2017, 203.

⁴⁷ rsf.org/en/ranking

⁴⁸ freedomhouse.org/report/freedom-world/2018/Ireland.

alternatives including the television station, Virgin Media, and a number of national radio stations, such as Newstalk and Today FM. Local radio stations also remain popular. Nevertheless RTE remains in a dominant position. In the print media the commercial group INM controls a large share of print media across several daily and weekly titles. Another factor which may limit Ireland's performance are strong defamation laws, which often result in successful lawsuits with high settlements. A further concern is that members of the police force in Ireland are not allowed to discuss matters with journalists without prior authorisation, although there is significant anecdotal evidence of leaks to crime journalists from within the Gardaí.

A free press is one of the most effective means of combating corruption. By acting as an external monitor of corruption, the media can raise the expected cost or lower the expected benefits of an act of corruption. Competitive forces also provide a motive for journalists and media outlets to expose corruption; such incentives are often lacking or compromised in the state's own internal monitoring agencies. The links between corruption and press freedom extend well beyond perceptions. Binhadab et al. (2018) show fewer firms report being solicited for bribes in countries with a freer press. Press freedom is particularly effective in combating corruption in construction and tax – both areas where Ireland has historically had issues.⁴⁹ As we have seen the Mahon and Moriarty Tribunals investigated alleged tax irregularities and issues related to planning and zoning.

Brunetti and Weder⁵⁰ argue that there is an important distinction between collusive and extortive corruption, and suggest that press freedom is particularly effective in constraining the former. As we noted above, there is no evidence that Ireland has a problem with extortive corruption. Recent tribunals have shown that corruption in Ireland tends to be collusive in nature. Therefore, if policymakers wish to curb corruption and improve Ireland's standing in international corruption indices, improving press freedom is a particularly useful way of addressing the problem.

One of the first acts of the new Irish state was to establish an unarmed police force which it called the Garda Síochana. Since its foundation the organisation has developed a well-earned reputation for probity and has a high degree of public satisfaction. However, a series of recent high profile cases involving senior Garda figures and ordinary members of the force have uncovered several instances of systematic and individual acts of corruption. Between 2000 and 2017 four separate tribunals of inquiry were established to investigate alleged Garda malpractice. Two of these, the Barr Tribunal (2002-2006) and the Smithwick Tribunal (2005-2013) pertained to specific incidents involving individual members of the Gardaí.

The other two tribunals dealt with institutional practices. The Morris Tribunal (2002-2008) examined allegations of Garda misconduct. Its final report was published in eight volumes and exposed a litany of malpractices including the fact that gardaí were

⁴⁹ N. Binhadab, M. Breen, R. Gillanders, *The Role of a Free Press in Combating Business Corruption*, 2018, available at mpra.ub.uni-muenchen.de/88954/7/MPRA_paper_88954.pdf.

⁵⁰ *A free press is bad news for corruption*, in 87 *Journal of Public Economics*, 1801-1824 (2003).

involved in planting explosives in order to orchestrate hoax bomb finds, senior gardaí were guilty of negligent oversight and management, including failure to implement Garda procedures which, if properly complied with, would have brought corruption to light, and that alleged “witness” statements were corruptly obtained.⁵¹ The Disclosures Tribunal into Garda Whistleblower opened in February 2017 and uncovered a campaign of calumny against individual officers who had uncovered and reported the widespread abuse of police powers. The chairman of the tribunal, Justice Peter Charleton decided that the campaign was organised by the then police commissioner and other senior officers. The campaign was directed at two officers, Maurice McCabe and John Wilson who had reported the widespread practice by police officers of deleting records of traffic offences.⁵² The numbers involved were truly staggering. There were 74,373 cancellations of fixed charged notices for driving offences. One senior Garda cancelled 744 fixed charge penalty notices across 17 counties, and that of the 442 members of the Gardaí authorised to cancel these notices one cancelled 46,161 notices over five years between 2009 and 2014. Moreover, cancellations were routinely carried out by certain members of the Gardaí without any attempt being made to discover why the charge was issued in the first place. “Cancelled” was the reason given in a staggering 72 per cent of cases. In other words, no reason was given at all.⁵³ In November 2017 the Garda Síochána Ombudsman Commission decided to drop its probe into the fixed charge cancellation scandal because the cost outweighs the benefit. Moreover it was discovered that close to two million fake breath tests for drink driving were entered into the Garda database between 2009 and 2017.⁵⁴ The scale of the falsehood was staggering and the Policing Authority, which oversees policing in Ireland, noted that the problems in the Gardaí were ‘endemic’, ‘dishonest’, ‘unethical’, and a glimpse of what occurs when no one is watching.⁵⁵ While the system worked in the sense that these issues were revealed and the whistle-blowers were vindicated, public perceptions of the integrity of the police have clearly suffered.

8. Conclusion

Ireland’s economy depends on significant inflows of foreign investment and multinational activity and these flows depend in turn on perceptions of corruption. Ireland, then, is a country that must take particular care with its reputation for probity. While Ireland is currently ranked in the top 10 percent in this regard by the leading agencies, several dangers remain. First, there is a widespread public belief that Ireland is a corrupt country.

⁵¹V. Conway, *The Blue Wall of Silence: The Morris Tribunal and Police Accountability in Ireland*, Dublin, 2010.

⁵²M. Clifford, *A Force for Justice: The Maurice McCabe Story*, Dublin, 2017.

⁵³ www.gardaombudsman.ie/news-room/archive/gsoc-investigation-fixed-charge-notice-cancellations-2009-2014/.

⁵⁴ www.irishexaminer.com/breakingnews/ireland/new-report-into-exaggeration-of-breath-test-figures-finds-400000-more-cases-812284.html

⁵⁵ www.irishtimes.com/news/politics/pressure-mounts-for-action-against-gardai-in-breath-test-scandal-1.3277036.

This is not unusual in EU states, but is cause for concern in that it could undermine the strong and very important norm that corruption is unacceptable. Secondly, enforcement is cumbersome within the state and essentially non-existent when it comes to foreign bribery. Once again, this carries with it a danger of normalising corruption and undermining the ability of clean firms to compete with firms that are involved in and getting away with corruption. Thirdly, there are economic, political, and legal issues in Ireland's media sector that undermine journalists' ability to serve as effective non-state monitors of corruption and the situation is not improving. Finally, like every country, there is corruption in Ireland. Political and police scandals suggest that there are serious issues in local government and policing that must be resolved to restore public trust in some of the fundamental institutions of the state.

Since 2014 the Irish state has taken significant steps to implement a legislative agenda based on the idea of open government. The Criminal Justice (Corruption Offences) Act 2018 is clearly a substantial piece of legislation and a sign that at last Ireland is serious about both prosecuting corruption and living up to its international obligations in this crucial area. But the state's history in prosecuting individuals for corruption is notoriously weak and attitudes towards white collar crime have been lackadaisical for many years. In that context it remains to be seen whether recent initiatives in strengthening Ireland's architecture for combatting corruption will achieve their aim. It certainly remains a possibility that the while having legislative ability to fight corruption, the Irish state will lack the political will to do so.

