



# *Sinn Féin*

Putting Ireland First | Éire Chun Cinn



## **GOOD BOARD/BAD BOARD**

Transparency, accountability and diversity on State boards

## INTRODUCTION

In January 2013 several news outlets ran with the story that Noel Ward, former constituency organiser for Pat Rabbitte, had been appointed to the board of Ordnance Survey Ireland by the Communications Minister. Ward was appointed to the job, despite not having applied to the role following a public advertisement by the Department.

The job pays €7,695 annually for attendance at board meetings.

Both Fine Gael and Labour promised in their pre-election manifestos to end the culture of political cronyism in State appointments. But these appointments persist and the Government has also failed to tackle other State board governance issues.

The scandal that broke late in 2013 and ran into this year concerning the CRC has highlighted how loose corporate governance of boards can result in potential financial and regulatory fall-out. Similarly, the situation at Rehab, where the public waited weeks to discover what CEO Angela Kerins' salary was, has showed that there is still a lack of transparency in agencies in receipt of public money.

The CRC scandal highlights a number of bad board practices, beginning with the appointment of former CEO Brian Conlon to replace outgoing CEO Paul Kiely in May, without the CRC using an open appointment process. This most senior appointment was also made despite the HSE stressing it did not want an appointment made without due process.

Brian Conlon was a former board member of the CRC, a board which had signed off on a highly dubious €742,000 golden handshake for the retiring Kiely. When the Public Accounts Committee (PAC) inquired as to why this payment had been allowed, especially as it included a top-up from the donations arm of the CRC, Brian Conlon denied knowledge of the details of the pay-off. Speaking to the PAC investigation into matters, Conlon stated that while he was a board member of the CRC, he was a member of 12 boards in total and his poor attendance at the CRC meetings reflected his 'passive' interest in the goings-on in CRC.

As the banking crisis broke in 2008, it became apparent that corporate governance in Ireland was not all it was made out to be. The highly paid, high flying executive and non-executive directors of banks had, between them, created a crisis that would end up costing the state €100 billion in bank bailouts and NAMA, and countless more billions in debt servicing.

All of this is illustrative of a wider malaise.

There is a process for making public appointments. The problem is, Ministers routinely flout this process and in doing so, undermine the process and undermine the board to which they have appointed. Political patronage can make board directors more biddable and compromise the mission of the board, regardless of whether there's a fee.

Six years after the onset of the economic crisis, some progress has been made in instilling better corporate governance on State boards.

However, the disclosures at CRC and Rehab only scratch the surface. There is worrying lack of State imposed standards, and monitoring of those standards, for company boards.

### SINN FÉIN'S FIVE KEY RECOMMENDATIONS FOR STATE BOARDS:

1. **Limit directorships to five per individual, including financial institutions**
2. **Implement and attain 40% gender quotas on all boards, public and private**
3. **Bring equity to remuneration for directors**
4. **Transparency in appointments**
5. **Timely provision of accounts and regular auditing**

## BACKGROUND

How all Irish boards, public or private, are composed and run is covered by numerous guidelines and pieces of legislation. The Irish corporate governance model is closest to the British and US models, where boards are established as one-tier with non-executive directors in the majority and a handful of executive directors as ex-officio board members (CEO, Director of Finance etc.). Unlike the US system, the CEO cannot also be the Chair. Sean Fitzpatrick of Anglo was infamous for among other things, moving from being the CEO of the organization to the Chair, when he resigned as CEO in 2005.

In other European countries, such as Germany, two-tier boards are common. One is made up of executive directors, the other of shareholders, trade union officials, workers etc., who then decide the executive board's pay, remuneration, appointments, firing and so forth.

Generally it is larger companies, particularly publicly listed, shareholder accountable or companies in receipt of large capital/investment sums, which

need boards, though in some instances smaller companies establish boards to ensure their operating success.

A board's role is to ensure accountability, fairness and transparency in the firm's relationship with all its stakeholders – whether they are private investors, or the public.

Company law and governance is by its nature, complex.

The current framework of Corporate Governance for listed companies is outlined by the British Finance Reporting Council (FRC). The Irish Stock Exchange (ISE) requires its listed companies follow this Code. The Code operates on a 'comply or explain' basis rather than obligatory adherence. Companies are expected to provide a reasonable explanation in their annual accounts for any deviation in their activities from the Code.

The Companies Bill 2014 will also cover aspects of company law. The Bill, currently stuck in Dail committees, consolidates 16 existing Companies Acts which date from 1963 – when the first Companies Act was passed – to 2012 into one single piece of legislation.

Ireland also has a Corporate Governance Code for Credit Institutions and Insurance Undertakings, originally published by the Central Bank of Ireland in November 2010 and effective since January 1 2011. It has been updated since, but one of the key aspects of the Code is that it limits directorships of financial institutions to five per person.

There are a large number of other statutory requirements that board directors must comply with. These include obligations under health and safety legislation, employment legislation and insolvency law. The principal duties include the obligation to maintain proper books and records; not to knowingly carry on the business of the company in a reckless manner; act in good faith; exercise powers of the company for a profit purpose; to avoid conflicts of interests; not to misuse company property; and attend diligently to the affairs of the company.

## **SINN FÉIN'S FIVE KEY RECOMMENDATIONS:**

### **1. Limit directorships to five per person, including financial institutions**

In 2010, TASC produced a report 'Mapping the Golden Circle', which explored the interweaving and concentration of a small number of individuals on both private and public boards. The report identified a Directors' network of 39 individuals on at least two boards across 33 of the 40 boards TASC examined.

The Central Bank of Ireland's (CBol) multiple directorships code limits membership of financial boards to five per person, but no such limits apply to public boards.

The revelations that Brian Conlon, former CRC chief, was a member of 12 boards at one time, may be startling, but it is not surprising. Conlon's boards included public boards. In the private sector, multiple directorships are even more of an issue. In bankruptcy proceedings, Sean Quinn, formerly of Quinn Insurance, had 95 directors' filings for one Irish address.

The key problem identified by the TASC report when allowing multiple directorships was lack of time. As Conlon stated in his testimony to the PAC, he was a member of 12 boards when a board member of the CRC, and his interest in the CRC board was only meant to be 'passive', which was reflected in his attendance records at the board meetings. Conlon was not present at the CRC board meeting which was presented with the retirement remuneration package for Paul Kiely.

It's important to remember that, particularly, non-executive board membership is rarely a career in itself. Most board members have full time jobs as solicitors, accountants, artists, teachers, community activists, trade union officials, doctors and so forth. Which begs the question - just how many boards can any one individual be representative on and give them their full attention?

The TASC report also pointed out that multiple directorships increases the likelihood of conflict of interest – if companies are at odds on an issue, for example, competing for the same contract, a board member covering both boards would face a conflict over where their loyalties lie, even if they express a conflict of interest. This is particularly a problem if people are on the boards of private and public companies.

The existence of multiple directorships was addressed by former Financial Regulator Matthew Elderfield when producing the CBol code.

The code was produced as an initiative by the CBol in response to its assessment of the need to raise standards of corporate governance in financial services companies in Ireland and ensure that boards of directors play a stronger role in challenging management over strategy, risk appetite, compliance and other important matters.

Elderfield stated at the time of the Code's production that "Rather than a 'comply or explain' approach, our corporate governance framework has sharper teeth by being enforceable. It also includes restrictions on the number of board directorships that can be held simultaneously, with the goal of encouraging more diversity of background and robustness of challenge by broadening the gene pool of corporate life." Elderfield cited TASC's report, saying:

"One of the most contentious issues in the consultation was the limits we proposed on the numbers of directorships an individual could hold...The majority of the 99 submissions on this issue were concerned that our approach was too restrictive and would put stress on the limited pool of talent and overall quality of directors in companies. They favoured the abolition of any set limits preferring instead that we should adopt a case by case approach.

"We disagree with these concerns. We decided to retain the limits proposed in relation to directors of major institutions. But we have given some leeway to non-major institutions, by increasing the limits to 5 financial directorships and 8 non-financial directorships. These are important requirements that should help to ensure that independent non-executive directors devote sufficient time to their oversight responsibilities and should encourage more focus and attention on the board role and crucially, improve challenge in the board room."

The initiative taken by the CBol, despite a majority of submissions against regulation, is some progress. However, it only applies to directors who sit on financial boards.

The OECD report on principles in corporate governance in 2009 outlined its concern that "Service on too many boards can interfere with the performance of board members".

Multiple other reports, such as the co-written report 'Busy Directors are Detrimental to Corporate Governance Health' by Keren Bar-Harva, Feng Gu and Baruch Lev from the Hebrew University, State University of New York at Buffalo and New York University, Stern School of Business respectively, highlight international concerns about multiple directorships.

They also show that multiple directors are not a peculiarly Irish feature of corporate life.

One of the notable aspects of the CRC scandal, identified by David Duffy, author of 'The Management of Management, a practical guide to Corporate Governance' was that there were cross directorships of the board of the Friends and Supporters of CRC and the board of the CRC as an entity. One board was responsible for handling donations and other income, and the other board responsible for making decisions about pay and pensions etc. This was a red flag that there was a lack of independence in decisions being made from one board to the other.

Limiting the number of directorships any one individual can hold is likely to force companies to widen the pool of potential directors available, but in the first instance Sinn Féin believes it will ensure that Directors have time available to them to concentrate on their duties on any boards they do sit on.

We are proposing that the number of boards an individual can sit on as a non-executive/executive director is limited to five for anybody who sits on State boards. This goes beyond the CBol's code, which maintains five for financial institutions but allows eight for non-financial institutions.

This is a small State. While there may be thousands of boards, there are many more thousands of doctors, teachers, solicitors, business people, accountants, community activists, artists, musicians, trade union officials and other professions. Access to the rooms of power must be widened to all, and limited for some, in the interests of good corporate governance.

## **2. Implement gender quotas on all boards, public and private**

In 2012, the Credit Suisse Research Institute delivered a report on gender diversity and its impact on corporate performance. Its key finding was that, in a like-for-like comparison, companies with at least one woman on the board would have outperformed stocks with no women on the board by 26 per cent over the course of the previous six years.

McKinsey's 2012 report 'Women Matter: Gender Diversity, a Corporate Performance Driver' also notes that more gender diverse companies exceed operating results delivered by those companies with no women on their senior management teams by an average 56%.

TASC's 2010 report also identified gender imbalance as an issue. Its analysis found that the 39 people

identified in the director network were indicative of a wider trend – the directors were typically south-side of Dublin based, popular addresses included Foxrock, Donnybrook, Rathgar, Monkstown and Blackrock; third-level education was the norm, with most attending UCD; private schools like Belvedere, Blackrock and Gonzaga featured; and most were male, over the age of 50.

Ronan Colleran, MD of Accreate Executive Search, writing in the Irish Independent in August 2013, cited statistics from the Irish Companies Office data about the composition of domestic companies, which found there are now almost 105,000 women in director roles in corporate Ireland – a rise of 14 per cent since 2008, and one-in-five of all Irish directorships. He argues that some of this may have been driven by anticipation of potential EU-imposed quotas of up to 40 per cent by 2020 but that there is also evidence that this rate of diversification in Ireland is now stagnating.

“Figures from the European Commission on female board diversity from October 2012 ranked Ireland 21st out of the 27 member states. Our analysis of the top 25 Irish listed companies whose boards sit in Ireland reveals that, while a strong cohort of senior, experienced female non-executives has emerged over the last decade, there is a real scarcity of females in senior executive director roles, with only 2 per cent of female board members holding executive positions.” (Irish Independent, 11 August 2013)

The Bank of Ireland board gives us an insight into what financial boards still look like in Ireland 2014. On the entire board, there are two women, both non-executive directors. Speaking at an IBEC conference in January 2014, the bank’s CEO Richie Boucher revealed his not so modern attitude to women when he claimed the bank during the boom had ‘acted like a good girl at a wild party.’ (RTE, January 2014)

It would appear that in fear of an EU directive, companies are trying to bulk up numbers of non-executive women directors to meet future quotas – but women still aren’t getting near the positions of power.

A survey of women in director positions undertaken by the Institute of Directors in Ireland found that when asked about gender quotas as a means of increasing the number of women on all boards, 43% of respondents say that targets, rather than quotas, are preferable and a further 25% say that gender targets are the wrong approach and that appointments should be made on merit, not gender. This reticence regarding quotas however could soon be overshoot by gender requirements coming from the

European Commission in the not too distant future.

Multiple studies, including those mentioned above, show how diverse boards perform better. Ireland, while making progress, is still lagging behind best practice. Public boards are more progressive but this is an area where Sinn Féin would also like to see a proactive approach taken across the private sector. This can be done with a target of at least 40% across all private company boards. Even on public boards though, the Government is falling down. Just 25% of board members are women under the Department of Finance’s watch and this figure drops to 22% in the Department of Public Expenditure and Reform.

In a final point, as pointed out by Nat O’Connor from TASC:

“One other issue is whether worker directors are being phased out of state bodies. For example, will Irish Water have employee-elected non-executive directors, or as many of them as semi-state companies had in the past? If there is a trend away from employee-elected directors, than this too is a loss of diverse experience and information around the board table (compared to the German near universality of employee participation in companies).”

### **3. Bring equity to remuneration for Directors**

The decision to award the CRC’s Paul Kiely a €742,000 retirement package was allegedly agreed by the body’s remuneration committee and presented to the board of directors for approval. Several board members denied knowledge of the package details, despite the fact the board’s chair presented the whole package to the board for approval and even members who weren’t present, would have received minutes.

As pointed out by the aforementioned David Duffy, while it’s common practice for boards’ to establish remuneration committees to decide on issues such as pay and pensions, those committees should have terms of reference and written policy to decide on these issues. Those ToRs and policies should be agreed by the board. In that way, no packages would ever be signed off without knowledge of the board of the type of money being discussed.

The revelation, after weeks of refusing to disclose, that Rehab’s chief Angela Kerins receives a basic salary of €240,000 reveals how outdated some of these boards are when it comes to remuneration. Rehab is a Section 39 body, which means it receives some funding from the public purse – in this case

estimated to be between €50 - €80 million. It is also a charity.

Sinn Féin does not believe that everyone appointed to a board should work for free and we are also conscious that there are many people who volunteer for boards, and work very hard, for little or no remuneration. Boards carry much responsibility and some directors are far busier than others. But there must be equity in how State board executive and non-executive directors are paid which reflects salaries in wider society and also the level of work required of any given director.

In November 2013, the Examiner ran with a story about expenses claimed on the cash-strapped Irish Greyhound Board. They revealed that the seven-member board together claimed an average of €91,588 in tax-free expenses every year since 2007. In that same year, three non-executive directors received over €25,000 each.

“One of these recouped €51,000 in mileage and meals on top of his €14,000 board fee. This person was former Fianna Fáil senator Tony McKenna, who left the board in 2011, having claimed €175,000 throughout the previous five years in expenses, while earning €67,000 in fees during that time. Mr. McKenna was appointed by the then minister John O’Donoghue and claimed €51,252 in 2007 and €47,294 in 2008. He is no longer a director. Yesterday, he said he had to travel, as he sat on the board of a number of tracks and was chairman of the audit committee.” (The Irish Examiner, 2 November 2013)

During the period studied by the TASC report, non-executive director remuneration was an average of €100,000 in the Bank of Ireland. The Bank of Ireland annual report for 2012 reported ‘fees’ to non-executive directors between 33,000 and 103,000. The median level is 79,000. The executive pay remains very high, with two executive directors, paid 843,000 and 418,000 respectively.

High pay poses problems for several reasons. One is that a dependence on a high level of pay can reduce the board member’s ability to be independent and critical of the organization it serves. Another is that if the organization is State run or a charity, the high fees are being paid by either the taxpayer, or donors to the charity. One more problem is that if pay is excessively high compared to wider society, it can create a bubble for the board members, leading them to make decisions that are detrimental to wider society.

A proposal in the Sinn Féin submission to Budget 2014 to reduce all State agency board fees by 25% would have saved the State €1.5 million annually

according to the Department of Public Expenditure and Reform.

Directors’ pay, particularly in Commercial semi-states, non-commercial semi-states and any publicly funded bodies, must be tackled.

But Sinn Féin also believes that a high pay commission must be established to examine and make recommendations for pay in the private sector that features a multiple calculation approach – i.e. the top pay of the CEOs/Directors can only be e.g. 10 times that of the lowest paid in the organization.

#### 4. Transparency in appointments

Whilst Fine Gael and Labour in opposition rallied loudly against Fianna Fáil’s insider system of appointments, since entering Government they have taken up where the last lot left off. More than 60 appointments to state boards over the last three years have had links to Fine Gael or the Labour Party. Ministers have essentially ignored applications through the public advertisement system established by the Government.

Only 15 of the 64 people appointed to State boards under the auspices of the Minister for Jobs, Enterprise and Innovation applied through the public advertisement system. Of the 40 who applied for positions on the board of HIQA, only one was appointed.

The Minister for Health appointed 52 people to State boards early in 2013 including a Fine Gael councillor who was appointed to the board of St. James’s Hospital and a former Fine Gael programme manager who was appointed to the board of HIQA. In his first two years in office the Minister for Education and Skills appointed just five of the 190 members of the public who applied to sit on the three education boards under his remit - Léargas, Quality and Qualifications Ireland and the Higher Education Authority. None of the 49 who applied through the Public Appointments Service to sit on the board of Léargas was deemed appropriate to be appointed.

As the Minister for Arts, Heritage and the Gaeltacht Jimmy Deenihan replied in a parliamentary question to Sinn Féin’s Pearse Doherty in January ‘I would point out that as Minister, I am not bound by the list of applicants when making appointments and that I can also approach candidates who in my view may have a contribution to make and be willing to serve.’

TASC’s 2011 document, ‘Public Appointments – options for reform’ criticized the ad hoc and politicized nature of public appointments, saying:

“The mere fact of ministerial patronage, and the potential for abuse involved, is compounded by an opaque selection procedure. Many bodies list their board members on their website but very few include an explanation of the selection criteria used. Even in cases where there is an official selection process, the public is ill-informed on how it operates. Overall, there is a lack of clarity regarding the expertise or experience which might objectively justify an appointment, and there is no effective independent input into the appointments process. The Oireachtas has negligible influence on public appointments, since they are at the Minister’s sole discretion.”

The Institute of Directors, analyzing how state board appointments are made, undertook a survey of the issue in 2012. Almost three-quarters of those they interviewed believed that the process of appointment to State boards was not fair or transparent. Nearly two-thirds of those surveyed said the positions were not advertised widely enough and most people heard about vacancies on State boards by word of mouth or through contact with the relevant minister. The Institute’s Chief Executive Maura Quinn said she believed appointments to State boards should be put through the public appointments process.

Sinn Féin believes the Government must start compiling a State Agency Database of all commercial and non-commercial state agencies/bodies, board members, competencies and remuneration. This work must come under the auspices of the Department of Public Expenditure and Reform. The ‘State Agency Database’ must be publically accessible on the department’s website.

An additional database must be compiled of potential board appointees selected on the basis of their capabilities and this database must also be made available on the department website.

We would argue that all vacated or new board positions must be advertised through publicjobs.ie and available for open competition, bar where legislation provides for another course.

## **5. Timely provision of accounts and regular auditing**

The Rehab story which broke in December/January 2013/14, revealed the problems associated with Section 39 bodies, which, while receiving some public money, also operate as commercial entities. The failure of the state to ascertain what the salary

of the group’s CEO during early stages of the crisis highlight the lack of transparency when it comes to the accounts of agencies that receive even a small amount of public funding.

In addition, parliamentary questions put by Sinn Féin in 2013 revealed a delay in state boards annual accounts being provided to the state, with bodies routinely flouting their responsibility to produce reports and accounts within 12 months of year end, let alone the ten months operated by private companies. We found that in May 2013, the last published accounts for the Irish Film Classification Office were for 2009 and that subsequent accounts hadn’t been filed “due to an oversight”. We also learned that the latest accounts filed for the Competition Authority were for 2010.

Any agency in receipt of public money must be regularly audited and provide annual accounts no later than the 12 months in the subsequent period of a full business year. These accounts must be published and publicly available.

In the main, the ‘big four’ accountancy firms are responsible for auditing most State bodies. Sinn Fein would like to see competition to audit these agencies opened up to allow smaller accounting and auditing firms access to these lucrative contracts.

## **CONCLUSION**

Six years after a crisis caused by mismanagement and corporate governance abuse, stories like that the recent CRC and Rehab ones shouldn’t be still breaking. The sad reality is that most people suspect and know that these kinds of stories are just the tip of the iceberg and, more worryingly, that we wouldn’t know anything about them at all were it not for the excellent work of the Public Accounts Committee, investigative journalists and whistle-blowers. The absence of Government standards is allowing problems to continue developing in the world of State board rooms – but as this short policy paper has identified, these problems can easily be addressed, if there is the will power and the political inclination to do something.