



Wexford CEO Tom Enright – standing ovation for ethics breaches goes unsanctioned



Monaghan County Councillor, Hugh McElvaney sought cash - SIPO found he contravened parts of the Local Government Act, and the Code of Conduct for Councillors; he “failed to maintain proper standards of integrity, conduct and concern for the public interest”.

What SIPO wants

The media and politicians bang on about the need for ethics reforms but here’s the agenda of the body itself

By Michael Smith

BEFORE 1995 there really wasn’t much ethics legislation beyond bribery legislation such as the Public Bodies Corrupt Practices Act 1889. Indicative of attitudes was the Wicklow Gold Inquiry. In 1935 the Minister for Industry and Commerce, Seán Lemass, granted a mining licence to fellow Fianna Fáil politicians Michael Comyn and Bob Briscoe for an area of 2,982 acres in Wicklow. They both leased the land to a British mining company for £12. An inquiry cleared Lemass of any wrongdoing because HE did not benefit financially.

The Standards in Public Office Commission (SIPO, or ‘SIPOC’ to the cognoscenti) is an independent body established under the Standards in Public Office Act, 2001. It replaced the Public Offices Commission which had been established in 1995.

Reform of Legislation

The last government brought forward legislative reform proposals in 2015 (the Public Sector Standards Bill), but conveniently the Bill’s passage had not been completed when the Dáil was dissolved in advance of the 2020 General Election — so ethics legislation has not been revamped for 21 years.

The coalition government has initiated a process which ostensibly aims to respond to outstanding recommendations of the Moriarty and Mahon tribunals which essentially detailed corruption of the political and planning processes. In November 2021, Michael McGrath, Minister for Public Expenditure and Reform launched a formal review

of ethics legislation. The recent shenanigans of junior minister Robert Troy have added impetus.

The review will take account of other recent developments such as:

- The ‘Hamilton Report’ recommendations on preventing economic crime and corruption, published in 2020 which deprecated the adequacy of funding for the commission and recommended ring-fencing the budget as the current staff complement is insufficient to effectively support the statutory mandate;
- The Council of Europe’s Group of States against Corruption (GRECO) recommendations that “Ireland should replace the existing ethics framework with a uniform and consolidated *values-based* [Emphasis added] normative framework”;
- Consultations with the Department of Housing, Planning and Local Government on the local government aspects of a consolidated statutory regime;
- A review of current EU/International best practice;
- A Public Consultation - Consultations with various parties; and
- The Standards in Public office Commission’s experience of administering the current framework.

So let’s look at what SIPO itself says.

Non-electoral ethics in public office

SIPO’s retiring head, Sherry Perrault, told the *Irish Times* last year:

“At present, there are functions we simply cannot perform because of volume and lack of capacity”.

This author lodged a complaint more than three years ago which is progressing through SIPO but has yet to reach hearing.

Mark McSharry spent infinite days in the Covid period trying just to get through by phone.

SIPO’s 2021 report, in many cases repeating long-standing concerns, prioritises the following issues:

- SIPO should be granted the power to appoint an inquiry officer to conduct a preliminary enquiry into a matter in the absence of a complaint from an individual under the Ethics Acts. Most worthy newspaper editorials on SIPO reform don’t get beyond this one as it’s the most consistently asserted;
- Provision should be made for a quorum of not less than three members (including in all cases, the Chairperson) for the hearing of an investigation under the Ethics Acts;
- SIPO should directly lay its annual report before each House of the Oireachtas rather than furnishing it to the Minister for Public Expenditure and Reform who then lays it;
- Legislation should be introduced to ensure accountability of all former public officials, including those not currently covered by the Ethics Acts;
- There should be amendments to the time limits within which statutory declarations, tax clearance certificates and application statements, are to be made or issued and furnished to SIPO;
- A code of conduct should be adopted for public servants and members of State boards in the wider public service;
- Motions should be initiated in the House of the Oireachtas to designate the chairpersons of Oireachtas committees as office holders for the purposes of the Ethics Acts.;
- There should be a comprehensive Act consolidating the Ethics Acts and all other legislation providing for disclosure of interests and related provisions for public officials;
- a clear high level statement of the ethical principles to be followed by public servants and public representatives should be adopted, either in primary legislation or in each of the relevant statutory codes of conduct. The UK Committee on Standards in

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Public Life's Seven Principles of Public Life might provide a good starting point.

- The ultimately agreed principles should be incorporated into the Ethics Acts as public service values. Failure to abide by these principles could be cited in any complaint under the relevant ethics legislation. The provision in section 4 of the Standards in Public Office Act 2001 where a complaint may be made about a "specified act" by a "specified person" should be amended to provide that the Standards Commission may have regard to the principles when considering whether a person has done a "specified act".

Such a principles-based approach would have avoided the mid-October negative finding by SIPO on a complaint this author made after Wexford County Council afforded an ovation to its CEO, Tom Enright, who'd been reprimanded by SIPO itself last year for bullying a local radio station which broadcast hostile content about his Council.

However, perhaps the finding was grounded in weakness of SIPO's membership rather than in the weakness of the legislation;

- There should be an amendment of the definition of a "connected person" rendered subject to the legislation, to provide that a person is a "connected person" to a company of which he or she is a director and that the other directors of that company are also "connected persons" to that person. This recommendation dates back to the Annual Report 2009 which followed an unsuccessful complaint this author had made about Sean Fitzpatrick, Chairman of Anglo Irish Bank who had served on the Docklands Authority determining heights and social-housing provisions for companies to which his bank was providing loans;
- There should be a requirement that liabilities and not just assets be disclosed as a "registerable interest";
- Explicit provision should be made to allow complaints against members of the Oireachtas in circumstances where the matter has come to light after the member has left office. Former FG TD Dara Murphy famously resigned as a TD before a promised SIPO investigation of his dodgy expenses.
- The Act should be amended to require that public bodies notify SIPO upon the making of an appointment to senior office, to ensure SIPO obtains tax clearance certificates from them within nine months of their appointment;
- The role of the ethics registrar in local authorities should be rotated less frequently than the current two years, to allow for capacity-building and the development of knowledge and expertise, and should be at a senior level within the organisation.



SIPO recommends that the people covered by registers of interest should be expanded beyond Oireachtas members, to advisers, senior civil servants and others. And that registers should embrace more things: liabilities, such as debts, as well as assets, for example

Electoral Ethics

SIPO's recommendations on Electoral Ethics

The 1997 Electoral Act is weak in regulating sophisticated modern political graft: for example on preferential treatment and nepotism and improper influence; and on gift-giving including the Irish political penchant for bestowing match-tickets etc, especially during periods when officials are not actively considering a proposal from an interested party.

At base SIPO seeks elimination of the 'revolving door' between politics and business. It was decided that the new Electoral Reform Act 2022 would not address these issues.

SIPO also suggests that the people covered by registers of interest should be expanded beyond Oireachtas members, to advisers, senior civil servants and others. And that registers should embrace more things: liabilities, such as debts, as well as assets, for example.

The Electoral Reform Act 2022

The Electoral Reform Act was adopted in July and aims to increase voter engagement and participation in our democratic processes through a simplified registration process as well as providing enhanced public education and information in relation to the holding of elections and referendums.

The Act regulates digital means of influence during an electoral or referendum campaign, reflecting advancing communications technology.

The government will shortly instigate a statutory and independent Electoral Commission, which would replace SIPO's electoral functions as well as handle other functions relating to elections and referendums in the state.

The new Electoral Commission will have the power to implement a large number of SIPO's recommendations. For example:

- SIPO recommends that consideration should be given to imposing some accountability, in the context of spending limits, in respect of a specified period prior to commencement of the legally defined election period (i.e. that the election period might be extended to include a period before the dissolution of the Dáil or the moving of the writ at an election);
- SIPO wants to change the definition of what constitutes a "third party", currently "individuals or organisations that accept donations of more than €100 for political purposes". It would be based on spending,

over a threshold amount, rather than on receipt of donations, as it is currently;

- SIPO has recommended that the registration process for "third parties" and for "other persons" (who intend to incur election expenses less than whatever the limit is) should be amalgamated. Registration of third parties should be allowed for the duration of a particular campaign only, or on an on-going basis;
 - SIPO has recommended that provisions should be made for transparency in funding and expenditure on referendum campaigns;
 - SIPO has recommended that expenditure limits should apply at referendums as well as elections;
 - SIPO has recommended that provision should be made for the disposal of surplus donations in situations where a person is no longer required to maintain a political donations account and there are unused funds remaining;
 - SIPO has recommended that consideration should be given to setting aside specific funding to support the operation and development of less prominent political organisations, which, under the current legislative provisions, are unlikely to qualify for receipt of exchequer funding;
 - SIPO has recommended that offences should be provided for failure to open political donations accounts;
 - SIPO has recommended that consideration should be given to whether definition of political purposes should be modified to include only campaigns relating to elections or referendums, or also campaigns that seek to influence decisions or functions of public bodies;
 - SIPO has recommended that there should be consolidation of other legislation relating to use of public funds for electoral purposes.
- According to People Before Profit TD, Paul Murphy:
- "Every year SIPO cries out for support to seriously tackle corruption and misconduct by politicians. Every year it is ignored by politicians. It needs to be given teeth to tackle the widespread issues. In practical terms that means resourcing SIPO properly and empowering it by allowing it to initiate investigations without a complaint, by having it report directly to Dáil Éireann and through a new more comprehensive Ethics Act". 📌.