Certificates of tax free allowances will be issued on the basis of the list - individual tax returns for couriers are not required at this stage. If any courier has additional allowances/reliefs to claim over and above the basic personal and PAYE allowances and expenses e.g. mortgage interest, VHI etc., they can be claimed directly by 'phoning or writing to Unit 967, 14/15 Upper O'Connell St., Dublin 1 or by calling in person to the Central Revenue Information Office, Cathedral St., Dublin 1, immediately they receive their tax free allowance certificate.

Courier firms who do not opt for the voluntary PAYE system will be visited or contacted bt 'phone etc., shortly to obtain a list of couriers in order to set the couriers up on the self-assessment system for tax and PRSI purposes.

I will be kept informed of progress and will be available to clarify matters of policy etc. Apart from that, I am now regarding the matter as closed - the administration of the voluntary PAYE system is now with PAYE 4 District and the relevant outdoor personnel who are fully aware of the matter.

Des Murray can be contacted by 'phone at 8746821, Extensions 4671, 4672, 4673, 4675 or by fax at 8786920. Some courier firms have already made contact on the basis of my letter of 7 March 1997. Contact from other Courier firms will be expected by Des Murray and his staff over the coming week.

Des Murray and his staff over the coming week.

Finally, because of the special circumstances surrounding the Couriers' status for tax and social welfare purposes, the arrangements governing couriers should not be taken as a precedent for other cases you may have with the Revenue Commissioners.

I would be obliged if you could arrange to have this lettercirculated immediately to the Courier Industry as before.

Yours Sincerely,

Bob Dowdall

The 'Special Tax Agreement'

Oifig an Árd-Chigire Cánach,
Úrlar 1, Ionad Setanta,
Sráid Thobair Phádraig,
Baile Átha Cliath 2.

Office of the Chief Inspector of Taxes,
1st. Floor, Setanta Centre,
Nassau St.,
Dublin 2

Uimh. Thag. -
(Ref. No.) -

Tel. No. (01) 671 6777 Ext.4356
Fax No. (01) 671 6668

7 March 1997

Re: Couriers

1. *Introduction*

1.1 While this letter is addressed to you because of your professional involvement in discussions to date, it also has an immediate impact on courier firms and couriers engaged by the courier firms. To ensure that this letter reaches the courier firms and couriers please arrange, as discussed, to have it circulated to all known courier firms, particularly those represented at the meeting in the Burlington Hotel on Monday, 3 March 1997. The courier firms, in turn, should make the contents known to their couriers

1.2 For some time past the taxation and PRSI position of couriers has been under discussion.

1.3 It would appear that there is a generally held perception that certain return compliance and tax/PRSI obligations of courier firms and couriers were "put on hold" until the status of couriers for tax and PRSI purposes was concluded. This was not the case. Because the PAYE system for tax and PRSI purposes was not generally applied by courier firms on couriers earnings

- there was always an obligation on courier firms to make a return of all couriers who were paid in excess of £3,000 (gross) and
- there was always an obligation on couriers to make annual tax returns and pay their tax liability under self-assessment.

2. *Couriers Status*

2.1 As you are aware, the Department of Social Welfare Appeals Office have decided that a motorcycle courier who provided his own equipment (e.g. motor cycle, special gear etc.) and was engaged under the standard courier contract was insurable as a self-employed contractor under the Social Welfare Acts.

While the decision is not binding on Revenue I propose, as previously stated, in the interest of uniformity and with a view to bringing the matter to a conclusion, to treat couriers as self-employed for tax purposes, whether deliveries are made by van, motorcycle or bicycle -

- where the vehicle is owned by the courier and
- all the outgoings in relation to the vehicle are paid by the courier and
- they are engaged under the standard contract and
- a basic wage is not paid in addition to a "mileage" rate.

This arrangement does not override the statutory rights of couriers, courier firms, Revenue or the Department of Social Welfare in this particular area for the future.

2.2 It should also be noted that any arrangement in relation to the status of couriers and the voluntary PAYE option referred to in paragraph 4 below is for tax purposes only, unless a change in status is warranted by a future change in circumstances (e.g. by an overriding decision made in another Tribunal or Court of Law). This arrangement should not be taken as a precedent in any other area of law where the status of couriers may be a factor. The matter, if relevant in the future, should be taken on its own merits.

3. *Couriers Expenses*:

Again, in the interest of uniformity, simplification reducing the compliance burden on courier companies and couriers, I agree the following standard expenses regime for the coming five years 1997/98 - 2001/2002 inclusive to allow for a reasonable period of stability for all concerned. The expenses position is without prejudice to either Revenue, the couriers or courier firms proposing that the matter be reviewed or withdrawn at the end of that period. It also does not override an individual's statutory right in relation to claiming appropriate expenses incurred "wholly and exclusively" for the purpose of the trade.

3.1 *Motor Cycle Couriers*

Motor Cycle couriers' expense allowance figure, to exclude wear and tear on the motorcycle, is agreed at 40% of a courier's gross earnings.

Wear and tear element on the motorcycle will be regarded as additional to the 40% expenses. To avoid couriers, courier firms and Revenue having to compute wear and tear on an ongoing basis, particularly each time a motorcycle is changed, I agree to allow 5% of the courier's gross earnings as an additional expense to cover wear and tear on the motorcycle. This will give a total expense allowance of 45% of gross earnings for motorcycle couriers.

3.2 *Cycle Couriers*

While cycle couriers would obviously not have a similar level of expenditure to that of motorcycle couriers, I propose to agree a composite flat-rate expenses figure of 20% to cover wear and tear, replacement of the bicycle and spare parts and the purchase , replacement and cleaning of specialist gear etc.

3.3 *Van Owner/Driver Couriers*

Because of the limited numbers and the particular circumstances of owner van driver couriers there is no point in agreeing a flat-rate expense for this category. They may claim expenses incurred "wholly and exclusively" for the purpose of the trade in the normal way.

4. *PAYE*

4.1 Because I propose to treat couriers as self-employed for tax purposes, courier firms will not be obliged to deduct tax and PRSI through the PAYE system.

4.2 However, as discussed, to avoid couriers having to comply with self-assessment procedures and courier firms having to comply with annual return filing for self-employed persons to whom they make payments over £3,000 etc I would suggest that the option of operating PAYE and PRSI class S through the PAYE system **on a voluntary basis** for motorcycle and cycle couriers be seriously considered.

4.3 Operating the PAYE system voluntarily would not compromise the statutory rights of the courier firm or couriers in any way. The main advantages would be that

- even though operating the PAYE system would be voluntary, the PAYE allowance of £800 will be given to the couriers,
- approval can be given to courier firms to operate PAYE and PRSI Class S on the earnings of motorcycle or cycle couriers reduced by 45% or 20% expenses, as appropriate,
- Income tax and PRSI is collected in a structured fashion. This will avoid the couriers having to comply the the provisions of the self-assessment system, e.g. annual return form 11 filing, payment of preliminary tax, exposure to surcharge provisions for late filing etc.
- a separate PAYE registration number could be allocated, if required, to operate PAYE on the couriers. This is obviously not a necessity - the existing PAYE registration number can be used and will avoid the delay of additional registration etc.

4.4 I would hope for a unified response from courier firms on the issue of voluntary registration for PAYE in order to bring the matter to a final conclusion shortly and with a view to introducing a voluntary PAYE system for the couriers from 6 April 1997.

I will require from each courier firm a list of couriers currently employed by them showing -

- Full name and address
- RSI number
- Date of birth and mother's maiden name
- Whether the courier is single or married, if that information is available to the courier firm.

The courier firm should also state their own PAYE registered number.

The courier firm should also state their own PAYE registered number.

The start date of 6 April for the voluntary PAYE system is not negotiable as most courier firms would already be registered for PAYE purposes anyway.

4.5 The courier firm should indicate that the voluntary PAYE option is being taken up. From these lists the couriers will be set up on the PAYE system for the issue of PAYE documentation.

4.6 When the list of couriers is submitted under the PAYE option a Notice of Tax Free Allowances will be issued shortly afterwards to the courier and a Certificate of Tax Free Allowances or Tax Deduction Card (depending on whether the courier firm is computerised or not) will be issued to the courier at the same time in order to implement the PAYE system with effect from 6 April 1997.

4.7 If you do not hold a Certificate of Tax Free Allowances or Tax Deduction Card at 6 April 1997 for a courier a concessional temporary Tax Free Allowance may be used from 6 April 1997 until you receive the appropriate tax documentation.

- For a single courier the temporary concessional allowance is the personal allowance 2,900 + 800 PAYE allowance = 3,700 x 1/52 = £72.

- For a married courier the temporary allowance is personal allowance 5,800 + PAYE allowance 800=6,600 x 1/52= £127.

4.8 The concessional temporary tax-free allowance or the subsequent official tax-free allowance may be used against the couriers earnings after allowing for expenses as outlined above in paragraph 3.

5. *Non-PAYE*

5.1 Some courier firms may not opt for the voluntary PAYE option.

5.2 As previously stated, return compliance and tax/PRSI obligation were never "put on hold". Consequently, courier firms which do not opt for the voluntary PAYE and who have not made a return of all couriers who were paid in excess of £3,000 gross will be visited shortly after 5 April 1997 to obtain that list for 1995/96 (1996/97 should be returned in due course on or before the appropriate return filing date).

5.3 On the basis of the list, appropriate assessments or preliminary tax charges will be raised on the couriers based on the 1995/96 position and other relevent information.

6. *New Courier Firms*

6.1 Because of the historic background and discussions surrounding the courier industry to date, new courier firms set up will be visited for the foreseeable fixture to make them aware of the voluntary PAYE option and other tax/PRSI obligations.

This Special Tax Agreement was signed by Mr. Bob Dowdall.

This 'Special Tax Agreement' data is the 'Status Quo' the Employment Status Group decided should remain. It is the 'Status Quo' for Couriers since the 'Test Case' decision in 1995 which was claimed was a 'Test Case' by the Department of Social Welfare to the Ombudsman in 2002 which he recorded in his official report into my complaints. As the employment status for couriers is backdated to the beginning of time, this data, a 'Special Tax Agreement' to treat couriers as self-employed by group and class, is outside the powers of the Revenue Commissioners and I have a right to have that recorded in my data. It is also the unlawful creation of an 'insurability of employment' status known by Revenue, Employers and all signatories of the Voluntary Code as the 'Owner/Driver' model and it is entirely unlawful and entirely unlegislated for. It is also the precedential test case use by the Industrial Relations mechanisms, including the SWAO (but not the Scope Section) to unlawfully label groups and or classes of workers as self-employed when they are employees, exactly as Securicor said in their 'Notification of Appeal'.

What the data shows in this Special Tax Agreement and attachments is that

- **Revenue Commissioners took an interest in courier companies and correctly pointed out that they were not meeting their statutory obligations to declare payments of 3000 punt or more made to workers.**
- **They got an accountancy firm to represent ALL courier companies, not just Securicor, in what the Revenue Commissioners refer to as 'negotiations' with the Revenue Commissioners.**
- **These were not negotiations, this was full on, bald headed lobbying. What the courier companies wanted, was for Revenue to classify all couriers as self-employed. Remember, some of these companies had been operating entirely in the black economy for almost a decade, they hadn't met any tax or prsi obligations, their potential tax liabilities were enough to sink them. Courier companies needed them to be self-employed, their very survival as courier companies depended on it.**
- **Regardless of employment status, courier companies had unequivocally ignored their obligation to declare payments over 3000 punt.**
- **Revenue were prepared from the outset to ignore that courier companies had failed to declare. They were open to the idea of labelling all couriers as self-employed too.**
- **This was nothing new for Revenue. Revenue, for years, as in the Denny case, had decided on an ad-hoc basis whether workers were employees or self-employed by group and class. Except that you can't decide employment status by group or class, that's what the Denny case confirmed very strongly. Group/Class determinations have huge implications across all aspects of the legal system. The Denny Supreme Court decision, didn't invent the idea that group/class decisions are unlawful, the very learned and wise Keane J merely confirmed long standing case law. Group/class decisions could be legislated for, but what the State cannot do, is unlawfully introduce group/class decisions only where it suits them to do so. Were they to be properly legislated for, then groups and classes of people could take 'Class Actions' through the legal system on issues like environmental damage or more pertinent in this instance, groups of people would be able to make complaints to the DPC as a singular class action entity or challenge DPC decisions through the courts as 'class actions' which would apply to cases like the Public Services Card Free Travel Pass issue which impacts on almost a million PSC Travel**

pass users and each separate incident where their journey details were unlawfully harvested, many millions of such data records. If that were the case, and group/class decision were legislated for, I wouldn't be writing this reply to you, I would be one of a million in a group/class action against the Department of Social Protection for unlawfully harvesting journey data, for using the Public Services Card as a mass surveillance system and separately we would be taking other combined class actions against transport providers, the NTA and the Department of Public Expenditure for unlawful use of the leap card for mass surveillance.

- **Sometime around 1993, a number of couriers were 'selected' as test cases.**
- **In June 1995, the appeal was heard. The Scope Section decision on the single courier was overturned, and there that decision sat for the next 2 years because it was one decision on one courier and it couldn't determine the employment status of all other pushbike, motorcycle and van couriers in the country. The legislation simply doesn't exist.**
- **In parallel with this Courier process, the famous Denny case was taking its course through the Social Welfare process. Sandra Mahon was working as a supermarket food demonstrator. Denny, her employer, classified her as self-employed. She wrote to the Scope Section and they made a determination that she was an employee and not self-employed. This was also appealed to the SWAO.**
- **Unlike with the courier worker decision from Scope, the SWAO didn't overturn Sandra's Scope decision. The importance for the worker here is that if the SWAO upholds the Scope decision, it is the state who must defend it in the higher courts if the employer challenges it further, but if the swao overturns the scope decision, it is the worker who must pay to challenge it further.**
- **Denny did challenge the SWAO decision in the higher courts, from beginning to end the process took about 6 years and cost hundreds of thousands in legal fees.**
- **By 1996, the writing was on the wall, Denny had lost every step of the way and courier companies were sitting on a liability time bomb. They were still lobbing revenue to label all couriers as self-employed, still failing to declare payments over 3000.**
- **Early in 1997, the accountancy firm, senior management from Securicor and the chief inspector of taxes met in the Burlington Hotel.**
- **Revenue declined to accept the swao decision as a test case and stated that they were not bound by social welfare decisions**
- **Revenue decided that Revenue would act in 'uniform' with the Dept SWs decision to label all couriers as self-employed.**
- **The Statutory Obligation Courier employers were meant to make to Revenue courier companies were meant to make, the 3000 punt payment obligation which Revenue state is the reason for these 'negotiations', Revenue simply shrugged it off, told the companies they were always obliged employee or not. And that was that, almost 2 decades of an entire industry operating in the black economy and Revenue just shrugged it off.**
- **Revenue rushed to get this Special Tax Agreement across the line in March/April 1997 because the Denny case was all but finished in the Supreme court.**
- **The Denny decision came out in Dec 1997.**

- **Revenue, regardless of what the Denny case precedents were, had a special tax agreement made on a group and class of workers which could not be overturned.**
- **There simply is no avenue/facility in Irish law to overturn an unlawful group/class decision. Individual couriers can go through scope but the decision has already been made on the individual courier by the swao using its own makeyup precedents which neither scope nor the courts know about. When it gets to the swao the scope decision is overturned, always is, at least half a dozen have been.**
- **Revenue got an industry operating largely in the black economy to agree to come into the tax net.**
- **Revenue got an 'Owner/Driver' model where only 2 questions apply 1) Do you own your own vehicle & 2) Did you agree to be self-employed** (Contract).**
- **Securicor, representing the entire industry of Courier Company Employers, did indeed get a 'contract' from the Revenue Commissioners to label couriers as 'Self-Employed' and yet treat them, in defiance of all known legislation and rulings handed down from the Higher Courts, as employees.**
- **Couriers got screwed. One of the most dangerous employments in the world, and it is an employment, guaranteed to get hurt, and the State does a deal to pull away any safety net you have for political expedience wrapped in a thin veneer of legality.**
- **The SWAO and Revenue and the Department engineered a 'test case' to run alongside the Denny Case in the SWAO. Unlike the Denny case, the Courier appeal was not a legal decision. It was a political decision.**
- **The Courier test case allowed Revenue and Employers and the Department and later Unions, maintain control over making group and class decisions they all knew to be outside the law which was being undermined by the Denny case in the SWAO. Sandra Mahon was originally labelled as self-employed by Revenue in a group/class decision and Revenue fought hard against that Denny Appeal every taking place, but it did and Revenue wanted to maintain the control they have always assumed upon themselves in this area and still do –**

  From the Denny Supreme Court Case –

  "On the 6th of May 1992, a deciding officer issued a decision that Sandra was an ordinary employee (contract of service). The decision was appealed to the Appeals Office with a number of matters for the Appeals Officers attention;
  (1) A letter dated 15th December 1992 from the Inspector of Taxes, Tralee indicating his intention not to pursue the question of requiring Kerry Group Plc to deduct income tax under PAYE system from merchandisers/demonstrators/promoters.
  (2) An unreported Circuit Court case of Cronin -v- Kerry Co-operative where Judge Moran on 24th June 1990 decided in an appeal from the EAT that the appellant Mr. Cronin, who was employed on a similar contract to Sandra Mahon and the nature of whose services were the same, had a contract for services and there was no jurisdiction to hear an appeal for wrongful dismissal"

- **The use of the SWAO to overturn legally sound Scope Section decision for political purposes results in poor case law as good case law is being deliberately prevented in and by the SWAO.**
- **The similarities between Sandra's case and mine are indisputable. Sandra got a coat and stand from the company, I got a bag and radio all with company logo's. Neither of us got sick or holiday pay. We both provided our own transport. We both relied upon letters from the company to show the true nature of control, direction and dismissal, in fact Sean Moran's letter to 'all couriers' (below) which was included in my original letter to the Scope Section, is uncanny in its similarity. There were 'special arrangements' in place with Revenue in both cases. The one big difference was that I had no contract.**

To: All Securicor Omega Sameday Couriers
From: Sean Moran
Thursday, July 13, 2000

Thank you for your cooperation over the last few months in relation to Proof of deliveries and time keeping etc. There are a few matters that have to be brought to your attention:

1. Securicor Omega Sameday is part of the Securicor Group and as such has, like any other business a responsibility to know what personnel they employ/contract. With this in mind I have enclosed a form for each contractor to complete. I would be grateful if this form is completed fully so that our records are correct for the Central Statistics Office and our own database. If you have any issues at all with the form or need help completing it please do not hesitate to contact me directly.

2. It has been brought to my attention that some couriers are refusing to do work prior to 1800hrs. This cannot continue – the fact that our phones are being answered until 1800hrs daily means a full crew is needed until all the calls are dispatched. In future any contractor refusing to do work will find they will not be entitled to their bonus and may be reprimanded.

3. Securicor Omega Express is a very important Sameday client. They introduced bar-coded deliveries to there network sometime ago and every evening a number of people

3. Securicor Omega Express is a very important Sameday client. They introduced bar-coded deliveries to there network sometime ago and every evening a number of people are employed in Omega Ballymount to input these bar-codes and signatures onto the internet. It is imperative that any parcel with an Omega bar-code attached receives a signature beside that bar-code number and like FEDEX POD'S they be returned to control the same day.

4. I have requested sample uniforms from the UK for the motorcycle couriers these items include Waterproofs & leather jackets. When they arrive if they are agreeable and enough people are interested we can place an order.

I am grateful for your support and look forward to working with you for the foreseeable future.

Yours Sincerely,

Mr. Sean Moran
Senior Business Manager

- **In the decision of Keane J in the Denny Case the acceptance of a contract for services by the Inspector of Taxes, Tralee represented a stance at local level and merely a holding arrangement whereas the Revenue generally deems demonstrator type employment to be under a contract of services. As regards the contract itself, Sandra Mahon wants the work and has very little real option but to sign the same.**
- **Demonstrators were contract of service workers deemed to be contract for services by Revenue.**
- **Couriers are contract of service workers deemed to be contract for services by Revenue.**
- **The 'Status Quo' was to overrule and ignore the Denny Case.**
- **The Status Quo is still to overrule and ignore the Denny Case.**
- **In 2000 I challenged the status quo.**
- **For 23 years, Revenue, Social Welfare, SWAO and others have, without hesitation, acted outside of the law, to overturn my Scope Section decision that I was an employee.**
- **For 23 years, Revenue, Social Welfare, SWAO and others have deliberately blackened my good name in order to achieve an unlawful test case.**
- **The closest version of the truth came from Comptroller and Auditor General John Purcell in his letter of 2002 in which he stated:**

  'What can be said is that the arrangement employed is administratively efficient in collecting tax from a sector which traditionally has been recalcitrant when it comes to paying tax. All concerned recognise that it is a far from ideal system and that there is room for improvement'

- **For 23 years, no change has been made to the 'far from ideal' system.**
- **The Employment Status Group completely wrote the Denny Case out of employment law for the most part.**
- **The Employment Status Group sat in judgement of the Denny case and decided they didn't like it and that the pre-Denny status quo should remain.**
- **That the rules were most definitely changed because of the Employment Status Group is also evidenced in the letter from the Comptroller and Auditor General where describes the excellent work of Jim Mitchell as Chairperson of the Public**

Accounts Committee for investigations into bogus self-employment in the Construction Industry. 6,200 Principal Contractor visits, 62,000 workers reclassified as employees, repeated again the next year, same results. The like of Jim's investigation has never ever been repeated. When Regina Doherty was Minister, she couldn't find 1 bogus self-employed person in the country. Now there are 600 situations under investigation in RTE.

- **The rate of Bogus Self Employment in construction is estimated by ICTU using Revenue and SW data, to be higher than it was when Jim was PAC Chairman.**
- **The ESG in 2000 was a watershed moment. Since then, nobody questions bogus self-employment. Jim was asking a lot more questions of a lot more people than are contained in this submission. Jim was onto bogus self-employment, had he lived long enough, I believe it would have surpassed his achievements with Dirt Tax.**
- **The Comptroller and Auditor General was incorrect in his letter and although not contained in my data it most certainly relevant to my data and I have a right to have the erroneous data in his letter corrected. Mr. Purcell stated –**

"I wouldn't agree the courier industry are exempt from taxation laws"

The true factual position, which I have a right to have recorded in my data is as follows –

"According to Article 107 of Treaty on the Functioning of the European Union, an EU member state should not provide support by financial aid, lesser taxation rates or other ways to a party that does normal commercial business, in that if it distorts competition or the free market, it is classed by the European Union as being illegal state aid. A Special Tax Arrangement, with a selected group of employers, to label all their employees as self-employed by group or class, particularly based on their job description alone, and which cannot be used as a precedent in any other area with the Revenue Commissioners, amounts to illegal state aid to employers who have refused to comply with their statutory tax obligations"

On the 24th of March 2001, the Chairman of the Revenue Commissioners wrote to the Public Accounts Committee in relation to bogus self-employment issues I had raised in the PAC.

I refer to your letter of 12 March 2021 requesting a response to matters raised in a submission from [redacted] dated 15 February 2021 in relation to 'Bogus Self-Employment' which was considered at a meeting of the Committee on 18 February 2021.

I already provided details with regard to taxation status of couriers in Appendices 2, 3 and 4 of my letter to you of 3 February 2021, copy attached. You will appreciate that I can only respond to the matters raised in [redacted] submission to the extent that those matters relate to Revenue. Decisions relating to the class of social insurance an individual should pay is outside Revenue's remit and is a matter for the Department of Social Protection to address, as are a number of matters raised in regard to deciding officers.

As stated in [redacted] letter, "employment status must always be decided on the applicable law and the individual circumstances of each case". That is the consistent and stated approach adopted by Revenue. To determine the status of a courier, it is necessary to examine each case by reference to the Code of Practice for Determining Employment or Self-Employment Status of individuals. Whilst the facts of each case will determine whether an individual is either an employee or self-employed, Revenue historically held the view that, in general, motorcycle and bicycle couriers

were engaged under a contract for service i.e. they are self-employed individuals. A similar view is taken in relation to the status of van owner-driver couriers, who are also considered self-employed. Revenue fully acknowledges the differential between rates of PRSI for the employed/self-employed, but Revenue has no input into this matter.

A voluntary PAYE system of tax deduction in respect of self-employed couriers engaged by courier firms was put in place in 1997. The voluntary system of PAYE allowed the contracting courier firm to voluntarily operate PAYE on self-employed courier income net of expenses (expenses agreed at 40% of income for motorcycle and 10% for cycle couriers). Many courier firms opted to implement that system at the time. Use of the voluntary system by the contracting courier firms was conditional on the courier being self-employed. However, in situations where a courier was employed directly by

system at the time. Use of the voluntary system by the contracting courier firms was conditional on the courier being self-employed. However, in situations where a courier was employed directly by the courier firm as an employee, PAYE would have been operated as normal. It was accepted that compliance issues existed with self-employed couriers at the time and the system was to the benefit of both the couriers and Revenue by way of improved compliance and a simplified system for couriers to be tax compliant by deduction tax at source under the PAYE system. There was no question of courier companies evading statutory obligations.

It is not true to say that "this agreement treated couriers as employees". It was necessary for the courier to be self-employed for the voluntary system to apply. It should be borne in mind that PAYE is not a tax in its own right. PAYE is a withholding mechanism. Employers are obliged to deduct income tax from emoluments they pay to employees. Employees remain liable to income tax and the Universal Social Charge (USC) on those emoluments. They are entitled to a credit for the tax deducted by the employer from the emoluments when computing their income tax and USC liabilities. However, they are only entitled to that credit where the employer has operated the PAYE system on the emoluments. In the case of the self-employed couriers, the application of PAYE was an administrative arrangement to facilitate the collection of tax and PRSI.

There was no question of a "secret agreement". In fact, Revenue published an article in Tax Briefing issue 28 in October 1997 detailing the voluntary PAYE arrangement allowed in the taxation of self-

issue 28 in October 1997 detailing the voluntary PAYE arrangement allowed in the taxation of self-employed couriers. This was followed by Tax and Duty manual 04-01-07 which explained the arrangement and referenced to instruction in Tax Briefing 28. Tax Briefing 28 from 1997 is available on the Revenue website[1].

In summary,

- Revenue's policy on taxation of couriers is published since 1997.
- While each case was to be decided on its own merits, couriers for the most part met the criteria, at the time, for self-employed and, as we understand it, still do. However, any individual can present their particular circumstances to Revenue and we will provide a view on whether, based on the facts, the person is employed or self-employed, taking into consideration the prevailing law contained in the Taxes Consolidation Act 1997 (as amended) and practice, as set out in the Code of Practice for Determining Employment or Self-Employment Status of individuals. This Code was agreed in 2007 between the various pillars of the then Partnership process, Unions, Management and Government. A new agreed draft of the Code is expected to be published shortly.
- The voluntary PAYE system was an administrative arrangement to assist couriers in meeting their tax and PRSI obligations as well as for Revenue.
- There was no non-compliance with statutory obligations by courier companies.

I should point out that while the voluntary PAYE deduction system is still applied by a small number of courier firms, the flat rate deduction for expenses was discontinued from 1 January 2019.

Finally, Revenue is actively monitoring the increasing prevalence of working arrangements that were not a feature of the employment landscape ten years ago. These developments contribute to a continued blurring of differences between the employed and self-employed categorisation and include the likes of zero-hour contracts, gig economy practices, and even the move to remote-working arrangements brought on by the COVID-19 pandemic. Where Revenue feels there is a need for policy change to adapt the tax system to developments in this area, it will raise the matter with the Department of Finance.

If you have any queries, please do not hesitate to contact Angela O'Gorman at (01) 8589181 or angela.ogorman@revenue.ie.

Yours sincerely,

Niall Cody,

Chairman.

- Revenue Chairman's statement that decisions relating to the class of social insurance an individual should pay is outside Revenue's remit. This statement is incorrect. The 1995 'Test Case' was a joint effort with the Department of Social Protection. The employment indicator 'Contact' was inserted into the Department's unique 'criteria' by Revenue. The class of social insurance an individual should pay was not outside of Revenue's remit in the 1995. The true factual position is that the Department of Social Protection, in conjunction with the Revenue Commissioners and the Courier Industry chose a 'Test Case' which was never going to be appealed because it was neither a 'Test Case' nor 'Representative' of some couriers who legally fit the criteria for employees and others who legally fit the criteria for being self-employed.
- The Revenue Chairman states that deciding employment status on the individual circumstances is consistent with Revenue's approach. The true factual position is that Revenue consistently make employment decisions on groups and classes of workers as is demonstrated with couriers and home tutors. Revenue's own website Revenue.ie clearly states that Revenue taxed couriers by group/class from 1997 – 2019 based on a single decision by a Social Welfare Appeals Officer -

Position up to 31 December 2018

Question

How are couriers treated for tax purposes?

Answer

Couriers are regarded as self-employed for PRSI purposes as a result of a Social Welfare Appeals Officer's decision. In the interest of uniformity Revenue decided, without prejudice, to treat them as self-employed for tax purposes.

- The Revenue Chairman's claim ***'That is the consistent and stated approach by Revenue'*** is entirely false and the Revenue Chairman knows it. It is true that Revenue consistently claim that each case is taken on its own circumstances, but Revenue consistently make group and class decisions to label workers as self-employed, deliberately, knowing it to be unlawful. Nowhere is this most acutely evidenced than in this letter to the PAC from the Revenue Chairman. He states –

  > *"While the facts of each case will determine whether an individual is either an employee or self-employed"*

  He then completely contradicts himself with –

  > *"Revenue, historically held the view that, in general, motorcycle and bicycle couriers were engaged under a contract for service i.e. they are self-employed individuals. A similar view is taken in relation to the status of van owner/drivers, who are considered self-employed"*

Before I progress on this point, it is vital to point out, that this position taken by Revenue (and Dept. Social Protection), that Revenue's 'historical view' that a job/position/title can determine one's employment status is not just limited to van, bicycle, motorcycle couriers and home tutors. Among the groups I am helping to overcome this 'historical' view Revenue hold that Revenue are the sole arbiters of employment status, are English Language Teachers, Scientists with the Geological Survey of Ireland, all kinds of agency workers*, IT workers, workers with Multinational Corporations, Construction Workers and there are many more too. I actively work with these 'individuals', represent them in the SWAO, in the WRC, in the EAT, anywhere and everywhere I can engineer an opening to do so. There are thousands of workers who are labelled as self-employed by group and class, thousands. At the moment, the workers in RTE are the focal point of the ongoing corruption by the state. Neither Revenue nor the Department of Social Protection will comment on that there is an element of fraud to the situation and the workers are left as the mercy of RTE's solicitors to tell them what is happening, and rest assured, they are not! Just this week, a worker I have been helping for 18 months received a Scope Section decision. That worker, who has been told that the worker was self-employed for two decades by RTE, Revenue and SW, is in fact and in law, an employee and Scope Section has agreed. Another worker was determined under the 'Eversheds' process to have been an employee labelled as self-employed for 3 decades. This does not happen in a vacuum. More than one quarter of RTE's entire worker numbers are now being examined by the Department of Social Protection for being bogusly self-employed. I am doing my utmost to make sure these workers are not going to receive the same treatment I did for exposing the states entirely unlawful 'owner/driver' model which has become a dumping ground for all kinds of employees Revenue historically hold are contract for service. But Revenue and Social Welfare must be forced to make a statement about what they indent to do about the prima facia evidence of fraud. Until they do, and Matt has written to the PAC

today demanding clarification, all industrial relations forums and SW and Revenue processes for determining employment status must cease immediately. Matt is in the WRC tomorrow (18.10.2022) where he will be informing the WRC of the same as will I with all the cases I have before the WRC and those scheduled to be before the WRC and the SWAO, including and particularly RTE workers.

Matts letter to the PAC

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16 October 2022

Committee of Public Accounts
Leinster House
Dublin 2
pac@oireachtas.ie

Dear Chairman,

Thank you for your correspondence dated 11 October 2022.

Page seven of the Committee's report "Examination of the 2019 Appropriation Account for Vote 9 – Office of the Revenue Commissioners" confirms that the treatment of couriers as "self-employed for tax purposes" is based entirely on a "Social Welfare Appeals Officer's decision". The Minister for Social Protection, the Department of Social Protection, the SWAO and Revenue consistently repeat the same lie that all appeals are determined on a case-by-case basis and on the particular facts of each appeal, yet here we have confirmed by Revenue, in evidence to the PAC, and in writing in a PAC report, that ALL couriers are being treated as self-employed on the

the particular facts of each appeal, yet here we have confirmed by Revenue, in evidence to the PAC, and in writing in a PAC report, that ALL couriers are being treated as self-employed on the decision of a Social Welfare Appeals Officer on a single case.

Minister Donohoe confirms that the “PAYE system” is for “the Revenue treatment for employees” in a parliamentary question on 27 September 2022. However, Mr Niall Cody states in the letter you provided to me dated 24 March 2021, that the treatment of couriers under the PAYE system is not indicative of employee status;
“It is not true to say that “this agreement treated couriers as employees”.”
Is the Minister for Finance correct in his assertion and why is Revenue conflicted with its use of the PAYE system for self-employed workers?

In 2002 the use of test cases was confirmed by the then Minister of Social Welfare to the Office of the Ombudsman.

On 11 February 2002, the office of the Ombudsman wrote to Mr Martin McMahon in response to a number of issues he raised about his insurability of employment under the Social Welfare Acts as decided by the Department of Social, Community & Family Affairs.

Issue number 4 - “The Department referred to test cases from 1995 in determining your (Mr McMahon’s) insurability. You (Mr McMahon) assert that the test cases should’ve been presented to the Oireachtas within 6 months and that this was not done.”

Ombudsman’s response - “The insurability cases were included in the Social Welfare Appeals Office Annual Report 1995 on pages 19, 24 and 25 refer. I have enclosed a photocopy of these pages for your information.”

This information is contained in a book of evidence compiled and written by Martin McMahon, “Ramshorn Republic” which was presented and submitted as evidence to the Committee on Public Accounts in 2021.

In recent years Minister Heather Humphreys and previous Minister Regina Doherty have both denied the use of test cases on several occasions. This contradicts the admissions by the Minister in 2002.

denied the use of test cases on several occasions. This contradicts the admissions by the Minister in 2002.
The Chief Appeals Officer Ms Joan Gordon denied the use of test cases in her appearance before the Joint Committee on Employment Affairs and Social Protection in 2019. This denial has been found to be “erroneous information” by the Standards in Public office Commission.

All denials of test cases are erroneous.

While these erroneous denials are being permitted to continue and remain unchallenged by this and other Committees, I and countless workers like me are being denied proper justice. We are being denied our statutory employment rights and our constitutional right to a fair hearing.

Revenue has not clarified for myself or other workers in my circumstance (RTÉ for example) what they intend to do on the issue of bogus self-employed workers or whether they will be investigating prima facie evidence of systematic fraud.
Social Protection has not clarified for myself or other workers in my circumstance (RTÉ for example) what they intend to do on the issue of bogus self-employed workers or whether they will be investigating prima facie evidence of systematic fraud.

be investigating prima facie evidence of systematic fraud.

We are being kept in the dark and fed nonsense by the very employers who have wronged us.

It is time that both Revenue and the Department came clean.
And because there is an element of fraud everything must cease in every IR forum until those matters are resolved.

I beseech this committee to act upon the substantial evidence it has which contradicts all erroneous denials of the existence of test cases and bring this systematic fraud to an end once and for all. All appeals of insurability of employment decisions with the Social Welfare Appeals Office must be immediately directed to the Circuit Court.
Provision for referral to the Circuit Court is contained in the Social Welfare Consolidation Act 2005, Appeals to Circuit Court, 307(1).

Provision for referral to the Circuit Court is contained in the Social Welfare Consolidation Act 2005, Appeals to Circuit Court, 307(1).

I ask that this is dealt with as a matter of urgency.

Yours sincerely,

Matt McGranaghan.

Another worker with a major media organisation who I mentioned previously and who I ask you consider as a priority, has today written to SIPO voicing the same concerns as Matt –

To Whom it may concern,

On the 27 September 2022 the Minister for the Department of Social protection replied to questions from Paul Murphy TD and Claire Kerrane TD Questions 303 & 325 respectively.

The minister stated " As stated in my reply to Parliamentary Question No. 262 of 14 September 2022, I am advised by my officials that neither the Chief Appeals Officer nor the Department have ever been contacted by SIPO in relation to any such complaint and nor have they been advised of any such ruling.

I am further advised that the information provided by the Secretary General at the Public Accounts Committee in relation to classification of employment for PRSI purposes was, and remains, correct….".

The Minister has refuted the Standards in Public Office Commission finding that the denial of the use of 'testcases' by top civil servants to a committee is "erroneous information". Ms Joan Gordon denied the use of test cases on the 5th December 2019 to the Social Welfare Oireachtas committee. This is of major consequence for people like me. People who have had their Scope Decisions appealed by their employers to the Social Welfare Appeals Office. Whether test cases are used will affect how my appeal ids considered and this lack of clarity is creating a major concern for my case.

The Revenue.ie website has published that motorcycle couriers were labelled as self employed based on a SWAO decision. The Secretary General of the Department of Social Welfare, confirmed in writing to the Public Accounts Committee chair that this SWAO decision is a 'test case'. The Secretary General clearly defines what a test case is and that the department used test cases to make group / class decisions on workers to label them as self-employed. Minister Humphries has denied three times that couriers were classified as self- employed in the past, when it is clear as the light of day that the

couriers were classified as self- employed in the past, when it is clear as the light of day that the Revenue collects PRSI on behalf of the Department of Social protection from couriers. This group / class who have been determined to be self-employed by a social welfare appeals office 'test case' in 1995.

Procedures have not been followed by SIPO as they have not clarified this issue and have allowed it to fester and cause great stress and frustration for those workers who have to deal with the issue of employment status. I wish to complain about the lack of follow up and want the record to be set.

Sincerely

(Back to the Revenue Chairman's Letter to the PAC)

This 'contradiction' which in my rudimentary, non-legal, joe soap terminology is a 'Lie', is further evidenced in this letter where the Revenue Chairman states:

"it is not true to say that "this agreement treated couriers as employees""

The 'Agreement' the Revenue Chairman is referring to is the 'Special Tax Agreement' under which Revenue used Revenue's PAYE system to DEDUCT AT SOURCE (very important point, 'at source' i.e. from the EMPLOYER, the worker makes no returns to Revenue) tax under Revenue's PAYE system for employers and PRSI for the Department of Social Protection set at a rate decided by the Department of Social Protection. That rate of PRSI, is meant to be for an individual, decided on the unique circumstances of that individual focusing on the 'Reality of the Situation' (thank you again Keane J, you were truly ahead of your time) and not merely what is in a contract. In fact, it is reflected in the Voluntary Code of Practice, and is decided in law in the Denny case, that one is legally obliged to look beyond the contract, beyond the words people write, or say. On this point, and because it is mentioned in another letter from the Revenue Chairman to the PAC in January 2022 an ongoing case Karshan (Midlands) Ltd. t/a Domino's Pizza v Revenue is a Trojan Horse to label a group of workers by group and class. The very factor Revenue chose to argue this case on i.e. 'that a worker could be asked to load or unload trucks', is the very least important factor as a determination of employment status I put in my original letter to the Scope Section all the way back in 2000. It didn't figure in anyway in my Scope Section decision because it wasn't something I was asked to do, other couriers were but I was not and that is the key factor, the Scope Section decision is individual to me and me only, any organisation making decisions on a group/class basis is wrong, even if it is the High Court. The Special Tax Agreement describes in intricate detail how couriers were and are* treated under Revenue's PAYE system for employees, payslips, P60s, Allowances for Equipment under a system for Employees etc., all the trappings of being an employee working for one employer who is deducting at source the Tax and PRSI as determined by the Revenue Commissioners, and yet in his statement the Revenue Chairman is saying it is not true to say that this agreement treated couriers as a group/class as employees and that Revenue are entirely correct to label them as self-employed because and only because, Revenue hold a historic view that they are self-employed.

However, the stated position of the Revenue Chairman, to the Public Accounts Committee in letters of March 2001 and January 2002 are completely contradicted but the Minister for Finance Paschal Donohoe for Written Answer on: 27/09/2022. The question number and reference are: Question Number(s): 130 Question Reference(s): 47056/22 and the question was asked by Paul Murphy T.D.:

QUESTION

To ask the Minister for Finance the frequency of the Revenue Commissioners not following the lead role of the Department of Social Protection in relation to employment status; when this has occurred; the areas in which this has happened; and the way that a difference in employment status determination between the Revenue Commissioners and the Department of Social Protection is resolved (details supplied). (Details Supplied) On 24 January 2019, the Chairman of the Revenue Commissioners at the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach stated ***"Ultimately, the Department of Employment Affairs and Social Protection is the lead in regard to the setting of employment status... We try, as much as possible, to have a***

***shared common view between ourselves and the Department of Employment Affairs and Social Protection**."*

REPLY

Employment classification is a complex area and there is no single clear definition of the terms 'employed' or 'self-employed' in Irish or EU law. As a matter of clarification, questions of employment versus self-employment status impact the work of three different Government bodies. The Department of Social Protection (DSP) has responsibility for the PRSI system and determines employment status for social insurance purposes; the Workplace Relations Commission (WRC) determines employment status when adjudicating on employment rights matters; and Revenue may determine a worker's employment status in the context of his/her treatment for income tax purposes and in allocating the income earned to the appropriate Schedule under the Taxes Consolidation Act 1997.

While in most situations involving determinations of employment status there is commonality of approach across the three bodies, the decision of one organisation is not binding on the other, and as a consequence, a determination of employment status in one context may not be the same as in another context.

There are close working relationships between the three bodies, including conducting joint compliance interventions to ensure that employers are operating employment arrangements correctly. Furthermore, in July 2021, an interdepartmental working group comprising the DSP, Revenue and the WRC further updated the Code of Practice on Determining Employment Status. The purpose of the revised Code is to provide an enhanced understanding of employment status, taking into account current labour market practices and developments in legislation and case law. These developments include, for example, new forms of work such as platform work and the gig economy. It is a 'living document', which will continue to be updated to reflect relevant changes into the future.

Instances where determinations of employment status between Revenue and the DSP (and/or the WRC) differ are very rare and there is open dialogue between the relevant bodies to discuss the respective views. However, as already stated, the decision of one organisation is not binding on the others.

***One example where the approach between DSP and Revenue is different involves home tutors. The Department of Education has an administrative agreement with Revenue that while home tutors are subject to class S PRSI (self-employed for DSP purposes), income tax and PRSI are deducted under the PAYE system (the Revenue treatment for employees) and the tutor must file an income return only if they are in receipt of other income**.*

Given how fine the dividing lines can be between employment and self-employment, it is a testament to the good working relations between the three Government bodies involved that there is, by and large, a common view on employment status issues.

In the highlighted passage of Minister Donohoe's reply, the Minister is clearly describing a situation exactly the same as couriers being used for Home Tutors by the Revenue Commissioners. That it is so exactly the same was confirmed in a reply to Donnchadh Ó Laoghaire T.D on the 06/10/2022 by the Minister for Education Norma Foley -

QUESTION

To ask the Minister for Education the legal basis for an administrative agreement with the Revenue Commissioners that while home tutors are subject to class S PRSI that is self-employed for Department of Social Protection-purposes, income tax and PRSI are deducted under the PAYE system; and if she will supply a copy of the agreement to this Deputy.

REPLY

My Departments Home Tuition Grant Schemes provide funding towards the provision of a compensatory educational service for children who, for a number of specific reasons, are unable to attend school. By its nature, it is intended to be a short term intervention.

The Home Tuition Grant Schemes are governed by annual circulars which sets out the purpose, eligibility criteria and details of the scheme. Circular 0046/2022 provides information in relation to the 2022/2023 Home Tuition Grant Scheme and can be accessed by clicking on the following link: https://www.gov.ie/en/circular/22b2a-home-tuition-grant-scheme-20222023-special-education-component/

For children and students who qualify under the Home Tuition Grant Schemes, sanction i to approve a grant towards the engagement of a tutor who will provide home tuition for the child/student in question. Home tutors are engaged by the parents/guardian of the child who is to receive tuition and the tutor has no contractual relationship with the Department of Education.

In accordance with an agreement with the Office of Revenue Commissioners, payments under the Home Tuition Grant Scheme are subject to statutory deductions at source. In order to facilitate parents, my Department acts solely as payroll agents on behalf of the parents/guardian. ***The Department of Social Protection has determined that Home Tutors are engaged under a contract for service and are therefore self-employed and subject to PRSI Class S.***

In the highlighted passage of Minister Foley's reply, Minster Foley is confirming that Home Tutors are classified en masse as self-employed by the Department of Social Protection. It is absolutely undeniable for all parties, Revenue, Social Welfare, Social Welfare Appeals Officer, (WRC too), Ministers Donohoe, Foley, Humphreys and former Minister Regina Doherty, that this is two groups of workers, who have been determined by the SWAO, by group and class to be self-employed. It is also absolutely undeniable that Revenue's treatment for these two groups/classes of workers is entirely different. Home tutors as a group/class are labelled by Revenue as 'Contract of Service' employees under Revenue's PAYE system for employees and Couriers are labelled as 'Contract for Service' self-employed under Revenue's PAYE system for employees. That Revenue's PAYE system is Revenue treatment for employees is confirmed by Minister Donohoe in his Dail reply where he states ***– "income tax and PRSI are deducted under the PAYE system (the Revenue treatment for employees)"***

The Revenue Chairman's statements to the PAC that ***"it is not true to say that "this agreement treated couriers as employees""*** and ***'That is the consistent and stated approach by Revenue'*** to treat individuals insurability of employment of insurability circumstances on the basis of ***"each case will determine whether an individual is either an employee or self-employed"***, is demonstrably false data and I have a right to have that reflected in my data.

- On the Revenue Chairman's statement that van couriers are 'owner/drivers' and by extension motorcycle and pushbike couriers –

"Van owner drivers, who are considered self-employed"

The 1997 'Special Tax Agreement' to label couriers by group and class, based on an unlawful 1995 test case created by the SWAO and used by Social Protection to instruct Revenue to collect PRSI on a group/class of workers, is unlawful. That this unlawful group/class decision has been accepted as legal precedent by Revenue, Welfare, Unions and Employers is proven firstly by the Revenue Chairman's reference to an 'Owner/Driver' model and then also by Securicor's legal team who most certainly believe that the Circuit Court's overturning of my Employment Appeals Tribunal decision that I was an employee and not self-employed, which was a circuit court acceptance of SWAO's jurisdiction in the insurability of employment Appeal decision in my case which was an unlawful overturning of a Scope Section decision which did not use unlawful test cases and at which Circuit Court Hearing I exposed that SWI O'Connor had deliberately falsified his Report -

Employment status:
Contractors v Employers

By Killian O'Reilly (Partner)

Employers are increasingly looking at ways to achieve greater flexibility in their workforce to meet the changing demands of the commercial environment. An emerging trend is that of engaging self-employed contractors.

The recent Circuit Court decision of *McMahon v Securicor Omega Express Ireland Limited* provides important guidance to employers by highlighting factors which will be considered relevant in determining the actual status of a worker.

McMahon, a motorcycle courier, undertook a three-year legal battle to have himself considered by the Revenue Commissioners and Department of Social Community and Family Affairs to be an employee rather than a self-employed contractor. In reaching its decision the court examined the reality of the employment relationship "on the ground". The decision is considered by many commentators to be of significant relevance in the current economic climate and provides important insight on establishing whether workers are employees or

In August 2000 McMahon challenged the status of his employment. He sought a decision from the Scope Section of the Department of Social Community and Family Affairs (previously the Department of Social Welfare). The Deciding Officer found that, on the basis of information supplied by McMahon, he was insurable under Class A, ie as an employee. This decision was overturned on appeal to the Chief Appeals Officer of the Department of Social Welfare in June 2001. The Chief Appeals Officer, who adjudicates on such appeals independently of the Department, held that McMahon's employment status was "more in keeping with a contract for services rather than of an employer and employee one". This decision was based on the fact that the courier provided his own transport, was responsible for insurance, tax and maintenance, was free to accept or refuse work as he wished and was not bound by fixed hours.

McMahon appealed this decision to the Employment Appeals Tribunal where he broadened the scope of his arguments to claim

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Employment status: *Contractors v Employers*

By Killian O'Reilly (Partner)

significant relevance in the current economic climate and provides important insight on establishing whether workers are employees or employers.

Historically, workers could be categorised as employees (when working under a contract of service) or self-employed (when working under a contract for services). Whilst this distinction is often unclear, the ability of the employer to control and direct the worker where, when and how to do their job are key determinants to be considered. Taxi drivers, for example, are self-employed whilst chauffeurs are generally considered to be direct employees.

Background to the case

Martin McMahon joined Securicor Omega Express ("Securicor Omega") in August 1997. The contract he signed at the time clearly stated that he was a self-employed contractor although he disputed this had ever been brought specifically to his attention. McMahon's job specification largely consisted of collecting and delivering envelopes and small parcels within the Dublin 1 and Dublin 2 areas. Work was transmitted to him by a base-controller who contacted him on a two-way radio supplied by the company. McMahon supplied all other equipment himself, including his motorcycle, and he was responsible for all the associated maintenance and running costs, including insurance and taxation. Securicor Omega had a pool of approximately twenty such motorcycle couriers all of whom were paid per delivery at an agreed rate.

McMahon appealed this decision to the Employment Appeals Tribunal where he broadened the scope of his arguments to claim that he had been unfairly or constructively dismissed by Securicor Omega. This was successfully rebutted by his previous employers.

The crux of McMahon's arguments at the EAT were that, as far as he was concerned, his previous employers had exercised a great deal of control over him and were in a position to direct him to undertake work as they desired. The courier argued that he worked hard at his job (and this was accepted by Securicor Omega) and that he was essentially employed on a full time basis. He further contended that he was subject to dismissal and termination like regular employees. He also denied that he was free to take his lunch or tea breaks whenever he wanted.

It was accepted that McMahon had been a very good worker and had progressed through the ranks to be one of the company's top earners. Rather than collecting a parcel and delivering it from A to B he quickly realised that the more jobs that he could pick up and deliver between those two points, the more profitable his time would be spent. Typically he could handle ten to twelve jobs at any one time.

McMahon claimed that he was not in business on his own account and had no ability to profit from his enterprise or initiative, one of the tests

continued inside

used to establish whether one is regarded as a contractor or employer. The EAT held that this was not the case and Securicor Omega were able to establish that the more jobs the courier did the more he got paid. The Tribunal found that the company exercised a significant degree of control over the courier and that he had little opportunity to operate on his own account whilst working for them. The fact that the rate per delivery was set by the company and that the claimant carried

relationship of employer and employee existed in the ordinary legal meaning of that term.

Hogan J. noted the undisputed facts that the courier supplied his own motorcycle and paid for its associated maintenance, insurance and tax. He also placed particular emphasis on the fact that the courier had to contact the base controller first thing every morning to establish whether work was available for him.

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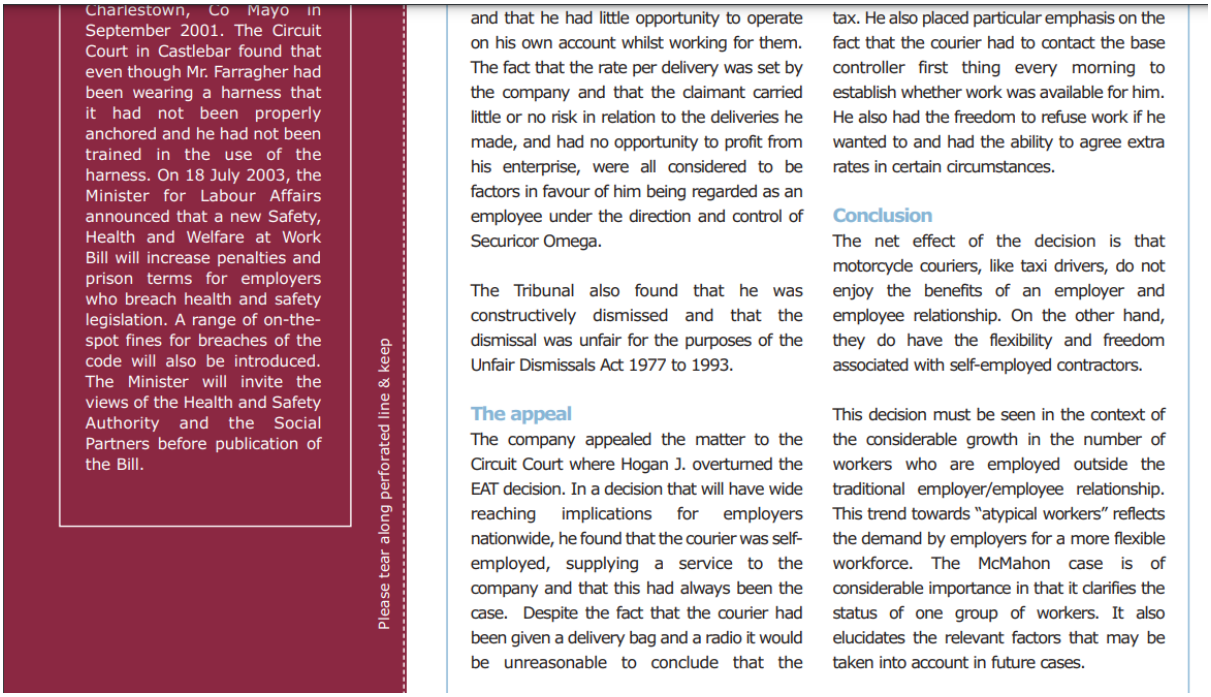
€500,000 fine for unsafe work systems

A Galway-based construction company has been fined €500,000 for unsafe systems of work following the fatal fall of one of its workers. Thomas Farragher fell almost nine metres to his death while working on a roof gutter in Charlestown, Co Mayo in September 2001. The Circuit Court in Castlebar found that even though Mr. Farragher had been wearing a harness that



Charlestown, Co Mayo in September 2001. The Circuit Court in Castlebar found that even though Mr. Farragher had been wearing a harness that it had not been properly anchored and he had not been trained in the use of the harness. On 18 July 2003, the Minister for Labour Affairs announced that a new Safety, Health and Welfare at Work Bill will increase penalties and prison terms for employers who breach health and safety legislation. A range of on-the-spot fines for breaches of the code will also be introduced. The Minister will invite the views of the Health and Safety Authority and the Social Partners before publication of the Bill.

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and that he had little opportunity to operate on his own account whilst working for them. The fact that the rate per delivery was set by the company and that the claimant carried little or no risk in relation to the deliveries he made, and had no opportunity to profit from his enterprise, were all considered to be factors in favour of him being regarded as an employee under the direction and control of Securicor Omega.

The Tribunal also found that he was constructively dismissed and that the dismissal was unfair for the purposes of the Unfair Dismissals Act 1977 to 1993.

The appeal

The company appealed the matter to the Circuit Court where Hogan J. overturned the EAT decision. In a decision that will have wide reaching implications for employers nationwide, he found that the courier was self-employed, supplying a service to the company and that this had always been the case. Despite the fact that the courier had been given a delivery bag and a radio it would be unreasonable to conclude that the tax. He also placed particular emphasis on the fact that the courier had to contact the base controller first thing every morning to establish whether work was available for him. He also had the freedom to refuse work if he wanted to and had the ability to agree extra rates in certain circumstances.

Conclusion

The net effect of the decision is that motorcycle couriers, like taxi drivers, do not enjoy the benefits of an employer and employee relationship. On the other hand, they do have the flexibility and freedom associated with self-employed contractors.

This decision must be seen in the context of the considerable growth in the number of workers who are employed outside the traditional employer/employee relationship. This trend towards "atypical workers" reflects the demand by employers for a more flexible workforce. The McMahon case is of considerable importance in that it clarifies the status of one group of workers. It also elucidates the relevant factors that may be taken into account in future cases.

Incredibly, this claim from Securicor's legal representatives is exactly the same as one '***of a number of matters'*** which the Appeal of the Scope Section Decision in Sandra Mahon's case, (which went on to be the famous Denny case I refer to so many times) was sent to the Appeals Office for the Appeal's Officer's attention. That case went on to be one, if not thee, most important precedent setting Supreme Court cases on Employment Status not only in Ireland but is taken into consideration in other Jurisdictions too. That an unreported circuit court case was attempted to be used as a precedent to label groups and classes of workers as self-employed wasn't accepted by Keane J in the Supreme Court then and cannot be accepted by Employers, Unions, Revenue and Social Welfare now -

> ***(2) An unreported Circuit Court case of Cronin -v- Kerry Co-operative where Judge Moran on 24th June 1990 decided in an appeal from the EAT that the appellant Mr. Cronin, who was employed on a similar contract to Sandra Mahon and the nature of whose services were the same, had a contract for services and there was no jurisdiction to hear an appeal for wrongful dismissal"***

That that a false 'Owner/Driver' model was created using the 1997 'Special Tax Agreement' to label couriers by group and class, based on an unlawful 1995 test case created by the SWAO and used by Social Protection to instruct Revenue to collect PRSI on a group/class of workers, is unlawful. That this unlawful group/class decision has been accepted as legal precedent by Unions and Employers is proven by this article which appeared in the Irish Independent on June 24th 2004 written by Journalist Tom Lyons –

> *DEUTSCHE Post's subsidiary, DHL, has exited talks to acquire outright or enter into a joint venture with An Post's parcels and courier delivery arm, SDS. However, the German postal giant could still be interested in snapping up individual aspects of the business if An Post decides to break up loss-making SDS. The news has placed more pressure on the board of An Post ahead of a board meeting in July to discuss SDS's options as part of its ongoing review of all aspects of its business.*
>
> *The decision by DHL to back away from a deal some weeks ago followed negotiations between the two parties that included the current managing director of*

SDS, Gareth Thornton. Prior to working with SDS, he was a former senior figure with Securicor-Omega, which was later rebranded as DHL following its acquisition by Deutsche Post. An Post's current options include holding on to some parts of SDS's operations and selling off other elements.

Although SDS is on track to make losses of between ?6m and ?8m, double what had been originally projected, it has a number of valuable assets that would be likely to excite the interest of rival players were they to come into play.

These include its sophisticated Naas sorting operation, valued at ?15m, as well as its large commercial book, which by some industry estimates has around 4,000 clients. SDS has come under fierce pressure from both domestic and international competitors in recent years.

Most of the big international postal office players have aligned themselves with companies or subsidiaries other than An Post. Among the big players, Deutsche Post uses DHL while United Postal Services (UPS) uses the Royal Mail, which in turn uses General Logistics Services (GLS), to deliver its parcels and packages in Ireland. In addition, the French Post office uses Interlink, while the Dutch use TNT. There have also been other deals between Irish-owned private operators such as Nightline and big international players such as FedEx which have further bitten into SDS's market share. This means An Post has lost out on international growth opportunities on parcels and delivery business coming from Germany, the US, France and the Netherlands. SDS currently employs around 270 staff.

In 2003 An Post reduced staff numbers by 114 by introducing ***an owner / driver model*** *in a bid to make its business model more competitive. Turnover in SDS fell just over 10pc in 2003 from ?79.9m to ?71.8m*

I had the general manager of Securicor on the stand in the Circuit Court in 2003 and that is who I believed him to be, I did not know nor had anybody told me that he was a director with SDS. I also summonsed Chris Hudson the Organising Officer to the Circuit Court. Even though the CWU had walked away from me in the EAT, actually officially came off record before the case started, and that David Begg of ICTU had promised me the sun moon and stars from ICTU to help couriers yet did nothing, I was still hoping that the unions and union movement would straighten up and fly right after I proved that SWI O'Connor had lied in his report and that the SWAO Appeal Hearing was a sham which the unions should appeal to the High Court. I did not know that Unions, Employers, Revenue and Social Welfare had used their corruption to take jobs away from 114 workers. I played 'nice' with Chris on the stand, used him to establish that I wasn't just some nutcase, used him as a 'credibility' character. Had I known what was actually going on at the time, I would have eviscerated Chris Hudson on the stand and I would have summonsed David Begg in and done the same.

To complete the circle on the unlawful 'Owner/Driver' model, I refer to a letter from the Revenue Chairman to the Chairman of the Public Accounts Committee in 2022, where the Revenue Chairman is replying to further questions which were raised at the Public Accounts Committee by me in 2021 in regard to the unlawful use of test cases. In this letter the Revenue Chairman writes –

"The full circumstances of each engagement would need to be considered and provision of own equipment and payment of insurance and other expenses would be a strong indicator of self-employment in the case of a courier. The Department of Social Protection had found couriers to be self-employed for the purposes of PRSI and the Workplace Relations Commission had also found couriers examined to be self-

*employed**. In 2003, a Circuit Court judge found a motorcycle courier to be self-employed, mainly on the basis that the courier had supplied his own equipment and paid his own expenses**. In a letter to the PAC on 4 August of 2000, Revenue had confirmed with our UK counterparts that the UK authorities also considered motorcycle couriers as self-employed for tax and social insurance purposes"*

What the Revenue Chairman neglected to tell the Public Accounts Committee is that the 2003 Circuit Court Case was an overturning of my Employment Appeals Tribunal decision that I was an employee and not self-employed, which was a circuit court acceptance of SWAO's jurisdiction in the insurability of employment Appeal decision in my case which was an unlawful overturning of a Scope Section decision which did not use unlawful test cases and that at this Circuit Court Case I exposed the wrongdoing of SWI O'Connor, the Dept., SWAO, Revenue, Employers and Unions. I have a right to have the full nature of this data recorded in my files.

- In his letter to the Public Accounts Committee in 2021, the Chairman of the Revenue Commissioners states:

> *"There was no question of a secret agreement. In fact, Revenue published an article in Tax Briefing issue 28 in October 1997 detailing the voluntary PAYE agreement allowed in the taxation of self-employed couriers. This was followed by Tax and Duty manual 04-01-07 which explained the arrangement and referenced to instruction in Tax Briefing 28. Tax Briefing 28 from 1997 is available on the Revenue website"*

There are serious constitutional issues with making a decision affecting a group of people without proper procedures and safeguards. There MUST be specific legislation to permit the Revenue Commissioners to make determinations on the employment status of groups or classes of workers, which there is not. Couriers were not the only group/class affected by the creation of an unlawful 'Owner/Driver' agreement based on an unlawful test case. The Revenue Chairmans position that articles published in Tax Briefings satisfies the need for specific legislation is false and I have a right to have that this is false data from the Revenue Chairman reflected in my data. Couriers were never informed of the decisions which make them self-employed. They still are not.

Former SW Minister Doherty and current Minister Humphreys have both claimed that agreements to label groups and classes of workers as self-employed based on test cases (not sample cases, no such thing), is done with the 'Consent' of workers (workers are 'happy' to be self-employed). Apart from the indisputable fact that the Department of Social Protection cannot get or accept consent of workers to act outside of the law, what Ministers Doherty and Humphreys are relying upon as 'consent' is that workers agreed to self-employed in the first place by terms of 'contract', written or implied. They rely on the presumption that if a worker does not challenge the group/class decision that they are self-employed through the Department SW system, including the SWAO that this confers 'consent'. There MUST be specific legislation to permit the Department and the SWAO to make determinations on the employment status of groups or classes of workers, which there is not. The Social Welfare Minister's positions that failure by workers to appeal unlawful and secret group/class decision to label them as self-employed, is 'consent' to label workers unlawfully by group and class is false data and I have a right to have this data reflected in my files.

- In his letter to the Public Accounts Committee of 2021, the Revenue Chairman states:

"In a letter to the PAC on 4 August of 2000, Revenue had confirmed with our UK counterparts that the UK authorities also considered motorcycle couriers as self-employed for tax and social insurance purposes"

This is the same position expressed by the Revenue Chairman to the Public Accounts Committee Chairman Jim Mitchell in 2000, from the then Revenue Chairman in his letter of August 2000 where he states:

"Motorcycle couriers are also regarded as self-employed in the UK. This has been reaffirmed today on the basis of a telephone contact with the UK office dealing with decisions relating to the status of taxpayers and tax and social security purposes"

On the Gov.UK site, under 'Employment Status' and 'Self-Employed and Contractor, it clearly states:

"Self-employed workers are not paid through PAYE"

And

"There must be a contract in place to see whether the engagement is classed as employment or self-employment. The tool assumes there is, or will be, a contract in place"

The 'contract' the UK HMRC refer to is a contract between the worker and the person who pays the worker, it does not refer to a precedential 'Special Tax Agreement' based on an unlawful test case between Revenue, Social Welfare, Employers and Unions which can be used by employers to label 'Contract of Service' employee workers as 'Contract for Service' self-employed workers. The point of 'Contract' is moot in Ireland thanks again to the wonderfully visionary Keane J in the Denny case, which is reflected in the Voluntary Code of Practice as follows:

"While statements in written contracts to the effect that an individual is not an employee may express the opinion or preference of the contracting parties, the courts have found that they are of minimal value in coming to a conclusion as to the actual employment status of the person concerned and may be overruled"

The UK 'Insurability of Employment' model does not operate on the same principles and legislation as Ireland's insurability of employment model. Ireland is an EU member, bound by EU laws and principles on employment status. The UK is not in the EU and is not bound by EU laws and principles on employment status. How the UK classifies workers is entirely immaterial and I would like this reflected in my data.

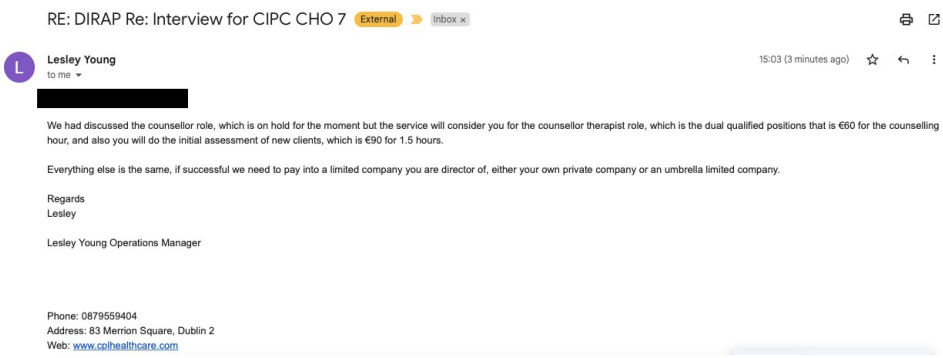
- In his letter of 2022 to the Public Accounts Committee, the Revenue Chairman States:

  "It is, of course, open to individual couriers to seek a review of their PRSI status from Scope Section in the DSP or to engage with the WRC on their employment rights.

There is no facility in Irish law for a courier to challenge his group/class determination as self-employed by group and class through the Revenue Commissioners, the Scope Section, the SWAO, the Workplace Relations Commission, the Employment Appeals Tribunal, the Ombudsman, the Office of the Comptroller and Auditor General, the Oireachtas Welfare Committee, the Public Accounts Committee, the Standards in Public Office Commission, the Oireachtas Privileges Committee, the Minister for Justice, the Minister for Enterprise, Trade and Employment nor through the Office of the Taoiseach nor through inquiries through a former Taoiseach and I have tried them all and more. There is no facility to challenge

group/class determinations on employment status, because although forcing the 2002 SW Minister to admit to the use of unlawful test cases, since then SW Ministers have denied the use of unlawful test cases despite irrefutable evidence of unlawful test cases to make group and class determinations on employment status.

One cannot overturn an unlawful group/class self-employment determination without going to the High Court. Because of the way the unlawful system is set up, this is the first point of entry into the legal system for a worker. A worker who will have been fired, blacklisted from his/her industry, has no protections in law for being fired and blacklisted for seeking an insurability of employment determination and whom the Unions will not touch with a 10 foot barge poll other than to maybe pay lip service or sham a few sit-down meetings. Unions profit from employment misclassification. The NUJ membership is made up of 30% 'freelancers' for example. It is a fact that among these 'freelancers' with be a significant number of bogusly self-employed employees. There will also be a number of highly paid 'freelancers' who operate under 'Personal Service' contracts where they will form a limited company and be paid through that mechanism. Revenue Chairperson Cody gave a detailed explanation to Deputy Paul Murphy about personal service companies and other similar structures in January 2019 at an Oireachtas Committee. Revenue Chairman Cody described this phenomenon as 'Fascinating'. The Revenue Chairman explained how 'Schedule D' workers, couriers, Home Tutors etc. are being compelled by employers into these structures. The Revenue Chairman explained that this is where the bogus self-employment model is migrating to and that the Revenue Commissioners have no 'Look-Through' powers for these structures. In the Public Accounts Committee in 2020, the Revenue Chairman was asked by the PAC Chairman if Revenue needed look-through powers to examine these situations for bogus self-employment and the Revenue Chairman replied that Revenue did not need such look-through powers. It is abundantly clear that the Revenue Commissioners and all others involved with the Employment Status Group hold an 'ideological' not legal view on bogus self-employment. It is also abundantly clear that what the Revenue Chairman refers to as 'fascinating' is not really fascinating at all, it is something far worse as this letter from an employment agency* which supplies the vast majority of Mental Health Counsellors to the Charity Sector shows –



RE: DIRAP Re: Interview for CIPC CHO 7 External Inbox ×

Lesley Young
to me

15:03 (3 minutes ago)

[redacted]

We had discussed the counsellor role, which is on hold for the moment but the service will consider you for the counsellor therapist role, which is the dual qualified positions that is €60 for the counselling hour, and also you will do the initial assessment of new clients, which is €90 for 1.5 hours.

Everything else is the same, if successful we need to pay into a limited company you are director of, either your own private company or an umbrella limited company.

Regards
Lesley

Lesley Young Operations Manager

Phone: 0879559404
Address: 83 Merrion Square, Dublin 2
Web: www.cplhealthcare.com

This letter is currently with a well-known investigative journalist.

Evidence was given in the Oireachtas Social Welfare Committee hearings about a free-phone exercise initiated by Minister Regina Doherty for workers who believed they were misclassified. Following the exercise, the Minster lauded the fact that very few if any workers had come forward for insurability of employment determinations and that this was proof that bogus self-employment was not an issue. However, during the Oireachtas Social Welfare Committee hearings in 2019, it emerged that a significant number of people had contacted the Department and that the over-riding reason for not seeking an insurability of employment determination was 'Fear of Retribution'. It is a fact that there is no facility

within the State's IR facilities, the Revenue Commissioners, or the Social Welfare process for a worker to challenge by group/class the group/class employment determination made on them in the first instance and as such no route exists to overturn it. The Revenue Chairman is incorrect, and I request that the correct data is recorded in my data.

- In his letter to the Public Accounts the Revenue Chairman Stated:

  "Revenue would also consider any requests for its view on the employment status for tax purposes of a particular individual and would conduct such a review based on existing tax legislation and criteria contained in the Code of Practice"

  23 years ago, when I set out to prove that I was not self-employed, there was no 'Code of Practice' on the Operational Guidelines: Scope Section - Insurability for PRSI purposes, now there is –

  > Decisions are then made on the basis of the statutory provisions in Social Welfare legislation (set out below) as well as the legal principles set down in relevant caselaw. Decisions about employment status – that is, whether an individual is an employee or self-employed for PRSI purposes – also involve reference to the revised Code of Practice on determining employment status. The revised Code was published in July 2021 by the Minister for Social Protection and it is the key guidance document for employers, workers and others in relation to deciding the employment status of a worker.

  23 years ago, when I set out to prove that I was not self-employed, it didn't have to say 'where applicable' in regard to a SWI's report in the Operational Guidelines: Scope Section - Insurability for PRSI purposes, now it does –

  > Each Scope case is assessed on its own merits and a separate decision is made in relation to each individual case. Employment relationships which may, on the face of it, seem to be the same can differ in the actual terms and conditions that pertain. Scope Section considers all the available evidence, including the report of the Social Welfare Inspector where applicable, and establishes the facts of each case.

  Deciding Officers with the Scope Section do not accept test cases, they cannot. Each case must be and is, taken on its own merits. That is why there is a conflict in decision making between Scope and the SWAO on insurability of employment decisions. This is no secret within the Department and the SWAO. The Scope Section will not know until I publish this reply that the SW Minister in 2002 told the Ombudsman that the 1995 appeal of a Scope Section decision that a courier was an employee and not self-employed, is officially (albeit illegally) a test case and Department of Social Protection Policy. There is a battle going on that none of us see, that battle is the Scope Section trying to remain true to the law and not be swayed by political decision on employment status. It took me many years to get the Revenue Commissioners to admit that employment status is not about whether the worker or person who pays them is 'Happy', and if you check back you will see this on the Committee recordings, I got the Revenue Chairman to admit that employment status is not about Revenue's opinions, historic or otherwise. The only criteria which matter are the criteria IN LAW to be employed or self-employed.

The Voluntary Code of Practice is not law, the Revenue Chairman admits it himself. In January 2019 at an Oireachtas Committee, the Revenue Chairman stated:

> "***We have a code of practice but it is only guidance***"

14 months later in his letter to the Public Accounts Committee, the Revenue Chairman is adamant that establishing the employment status of couriers can only be done by reference to the 'Voluntary Code of Practice':

> ***"To determine the status of a courier, it is necessary to examine each case by reference to the Code of Practice for Determining Employment or Self-Employment Status of individuals"***

The Revenue Chairman clings to the Voluntary Code of Practice for labelling all couriers as self-employed as Securicor clung to the employment status of couriers as a justification for evading their legal obligation to declare payment of over 3000 punt to a worker to Revenue. Both are red herrings, and both are factually incorrect data.

The Revenue Chairman is fully aware that the decision taken by the Chief Inspector of Taxes in 1997, contained in the Special Tax Agreement, which states –

> **"I propose, as previously stated, in the interest of uniformity and with a view to bringing the matter to a conclusion, to treat couriers as self-employed for tax purposes, whether deliveries are made by van, motorcycle or bicycle"**

is a decision by the Revenue Commissioners to treat all couriers as self-employed by group/class. The statement from the Chief Inspector of Taxes to the effect –

> ***"Because of the special circumstances surrounding the couriers' status for tax and PRSI purposes, the arrangements governing couriers should not be taken as a precedent for other cases with the Revenue Commissioners"***

Is clearly an admittance from the Revenue Commissioners that the circumstances surrounding courier status for TAX and PRSI were 'Special Circumstances'. For the Dept of SW these 'Special Circumstances' were the use of an unlawful test case. The true factual position is that Revenue knowingly accepted an unlawful SW Test Case to label all couriers as self-employed by group and class and used that SW test case to label couriers by group/class unlawfully for Revenue purposes and created an unlegislated for employment status of 'Owner/Driver'. That the 1995 test case was a joint venture between employers, Revenue and the Department of Social Protection was conceded by the Revenue Chairman under question by Deputy Paul Murphy in an Oireachtas SW Committee in 2019 –

Question

> ***"Where does the idea of treating them all as self-employed in the interests of uniformity come from? How can it be justified? I understand that there is no such thing as test cases in the sense that every case has to be examined individually because the circumstances are individual"***

Reply

> ***"Ultimately, the Department of Employment Affairs and Social Protection is the lead in regard to the setting of employment status. Social Welfare***

Officers determine the status. We try, as much as possible, to have a shared common view between ourselves and the Department of Employment Affairs and Social Protection"

In the 2019 Oireachtas Committee hearing, the Chairman of the Revenue Commissioners clearly knew why a Special Tax Deal based on an unlawful test case to label workers by group/class was advantageous for employers. The Revenue Chairman stated:

"The big challenge is that there is a fiscal advantage to having a self-employed structure in employer's PRSI. That is the monetary driver"

In the Special Tax Agreement, it clearly states that the Revenue knew what they were doing by labelling couriers as self-employed but treating them as employees was a 'Special Circumstance' which only Revenue could choose to extend to selected employers or industries as Revenue so desired –

> Finally, because of the special circumstances surrounding the Couriers' status for tax and social welfare purposes, the arrangements governing couriers should not be taken as a precedent for other cases you may have with the Revenue Commissioners.

The Revenue Commissioners made an unlawful deal with Employers to label groups and classes of workers as self-employed specifically to grant selected employers support, by way of a PRSI exemption which distorted market competition and led directly to the loss of 114 jobs in SDS and many other workers being denied their employment rights.

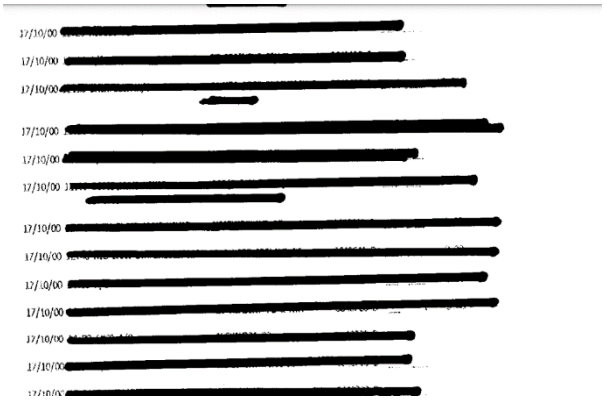
The Revenue Commissioners are fully aware that according to Article 107 of Treaty on the Functioning of the European Union, an EU member state should not provide support by financial aid, lesser taxation rates or other ways to a party that does normal commercial business, in that if it distorts competition or the free market, it is classed by the European Union as being illegal state aid.

A Special Tax Arrangement, with a selected group of employers, to label all their employees as self-employed by group or class, particularly based on their job description alone, and which cannot be used as a precedent in any other area with the Revenue Commissioners, amounts to illegal state aid to employers who have refused to comply with their statutory tax obligations and I would like this data recorded in my files because all other data in relation to this is false.

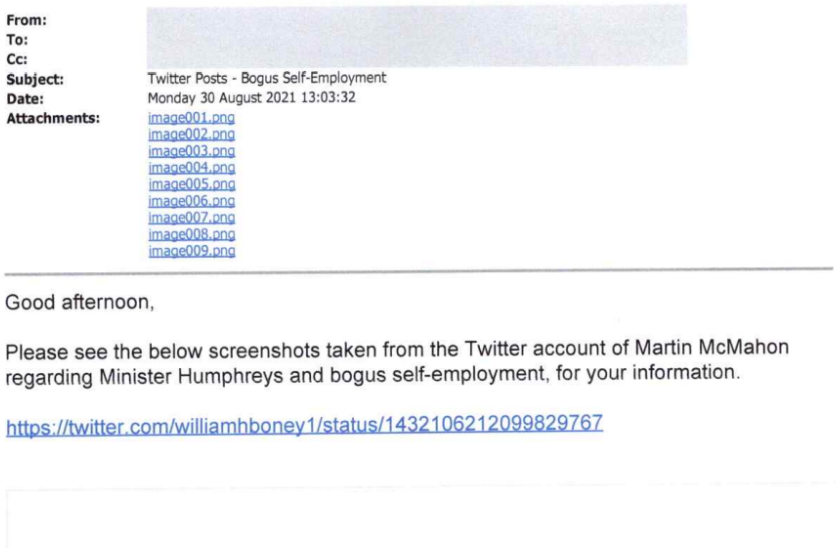
One last thought on this, Sandra Mahon fought a very long and arduous battle through the state processes, and all the way to the Supreme Court. I know that fight had a serious effect on Sandra. Had Sandra know that all along she was fighting a secret 1995 test case which gave Revenue and SW the power to unlawfully label workers by group and class, she would never have had to fight that fight at all. She could not have possibly known that the 1995 case was a test case because it was not until February 2002 that the Department finally admitted it to the Ombudsman. Now all the participants at the ESG are again denying that it was a test case so the next person through the system faces the same unnecessary battle as Sandra did.

These next examples of data, which were not included in the 2019 SAR, but are included in the 2022 SAR are examples of:

- Redacted data, I cannot possibly know what it is.



- Data showing that the Department of Social Protection is monitoring and reporting on my social media posts



From:
To:
Cc:
Subject: Twitter Posts - Bogus Self-Employment
Date: Monday 30 August 2021 13:03:32
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png
image007.png
image008.png
image009.png

Good afternoon,

Please see the below screenshots taken from the Twitter account of Martin McMahon regarding Minister Humphreys and bogus self-employment, for your information.

https://twitter.com/williamhboney1/status/1432106212099829767

- Data redacted which is clearly about me

Oifig an Ard-Rúnaí, An Roinn Coimirce Sóisialaí
Office of the Secretary General, Department of Social Protection

[redacted]
Committee Secretariat
Committee of Public Accounts
Leinster House
Dublin 2

25th March 2021

Ref: SO258 PAC33

Dear [redacted]

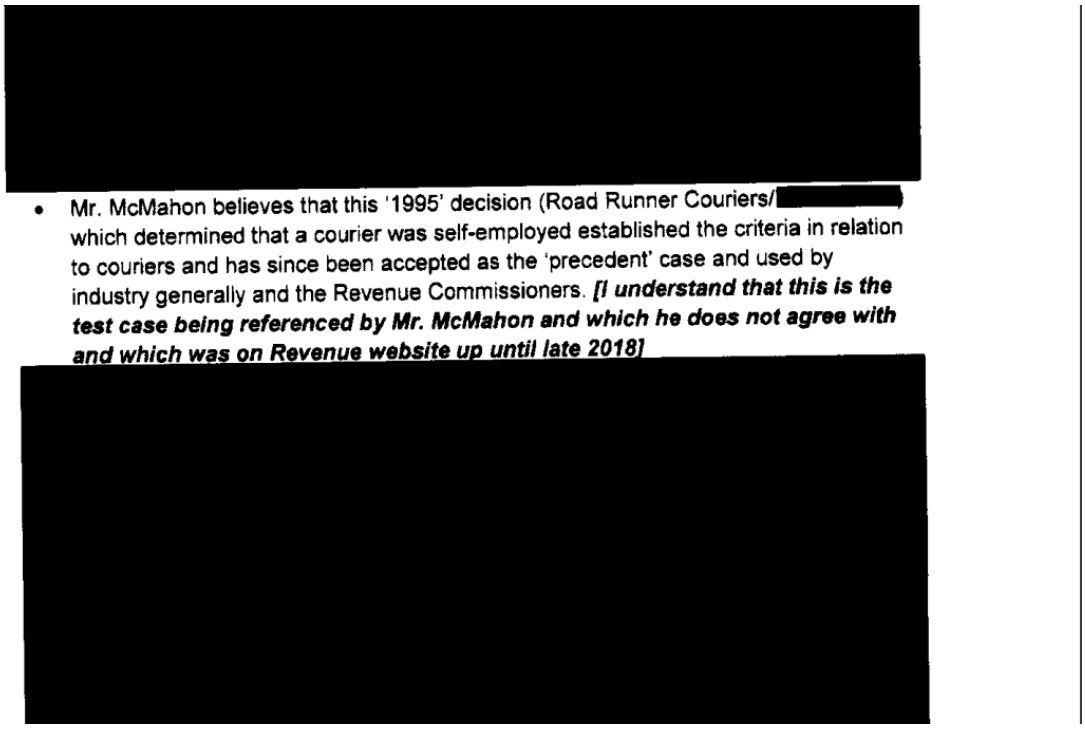
I refer to your correspondence, dated 12th March 2021, requesting a response to matters raised in the submission of Mr. McMahon dated 15th February 2021 in relation to 'Bogus Self-Employment'.

[redacted]

Áras Mhic Dhiarmada, Sráid an Stórais, Baile Átha Cliath 1, D01 WY03
Áras Mhic Dhiarmada, Store Street, Dublin 1, D01 WY03
T [redacted] secretary.general@welfare.ie
www.gov.ie/dsp

[redacted]

- This is false and redacted data. This is from data from the Secretary General's office. It states that I believe that a 1995 'roadrunner' case is the test case.



- Mr. McMahon believes that this '1995' decision (Road Runner Couriers/ which determined that a courier was self-employed established the criteria in relation to couriers and has since been accepted as the 'precedent' case and used by industry generally and the Revenue Commissioners. ***[I understand that this is the test case being referenced by Mr. McMahon and which he does not agree with and which was on Revenue website up until late 2018]***

However, according to Securicor's legal submission, which is I learned about previous SWAO cases, states that the 'Roadrunner' SWAO case was in 1993. This data is meant to be the Secretary General explaining to persons unknown my reasons for believing why the Dept. uses test cases. This is clearly not the case I am referencing, and I have a right to see the rest of this data and have this data corrected. It is also a fact that the SWAO has denied a searchable database of decisions which is clearly untrue, and I would like this recorded in my data.

> The Appeals Officer is also, with respect, referred to the position adopted by the Revenue Commissioners in relation to couriers generally and the Appeals Officer is also referred to a number of decisions of his colleagues in relation to other couriers in the past. It is submitted in the first instance that in the case of **Thunder -v- Roadrunner Couriers (Claim No SC 2443/1993)** it was determined by an Appeals Officer that a courier was a self employed person. Further in the case of **Prizeman -v- Mayday Couriers (Claim No SC 0401/2000)** it was determined that the courier was not an employee.

In this data, the General Secretary also describes how the Revenue Commissioners took down any reference to the taxation of couriers from their website for the duration of the Oireachtas SW Committee hearings and the PAC hearings into bogus self-employment.

At all times the evidence that Revenue were treating couriers by group/class based on a single decision by an Appeals Officer of the Social Welfare Appeals Office was available to revenue and hidden from those who needed to see this data for themselves.

When the Revenue Commissioners did put the material back online earlier this year, the information had changed. Previously the cessation of the 1997 Special Tax Agreement had been an 'Addendum' to Minister Pascal Donohoe's decision to get rid of flat rate expenses for EMPLOYEES which he later reversed his position on and was reported in the Irish Independent under the headline ***'Donohoe in climbdown on loss of tax breaks as Taoiseach accused of 'clobbering workers''.***

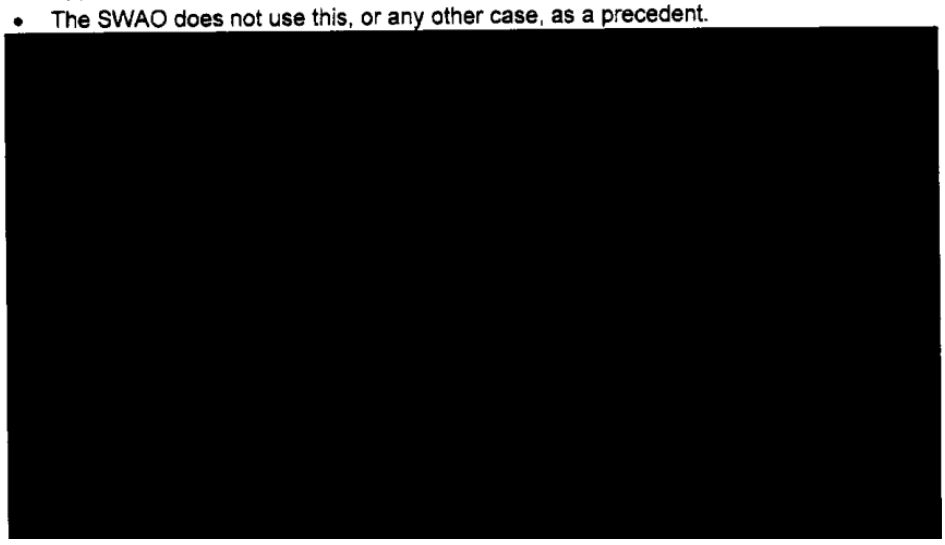
Minister Donohoe did go ahead with cuts for some workers, but the addendum in the original Tax Briefing referred only to couriers. The current version on Revenue.ie does not at all refer to the flat rate employee tax allowances under which couriers were treated in Revenue's PAYE system. I believe this change to Revenue's website is deliberate and I have a right to have a copy of the original website data attached to my data.

- This data in my files is false. I believe it was written by the Secretary General, but I cannot be sure. The SWAO does use test cases as precedent. In 2002, the Department of Social Welfare admitted to the Ombudsman that they do use test cases and it is contained in an Ombudsman's report to me. Also, it is clear in this data that it is the 1995 test case I am referring to and that cannot be the 1993 Roadrunner case.

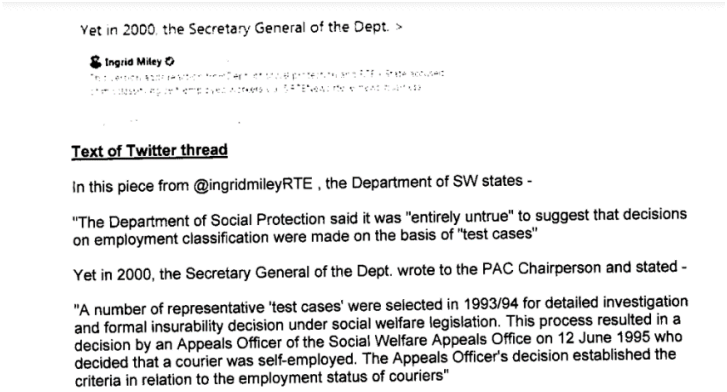
[redacted]

[redacted]

- It is my understanding that the 'secret precedent case' being referred to is an Appeals Officer's decision in 1995.
- The SWAO does not use this, or any other case, as a precedent.



- This data shows that the department is monitoring my social media conversations about bogus self-employment with journalist Ingrid Miley. There is a lot more with this particular data.



Yet in 2000, the Secretary General of the Dept. >

Ingrid Miley

Text of Twitter thread

In this piece from @ingridmileyRTE , the Department of SW states -

"The Department of Social Protection said it was "entirely untrue" to suggest that decisions on employment classification were made on the basis of "test cases"

Yet in 2000, the Secretary General of the Dept. wrote to the PAC Chairperson and stated -

"A number of representative 'test cases' were selected in 1993/94 for detailed investigation and formal insurability decision under social welfare legislation. This process resulted in a decision by an Appeals Officer of the Social Welfare Appeals Office on 12 June 1995 who decided that a courier was self-employed. The Appeals Officer's decision established the criteria in relation to the employment status of couriers"

- This data from a publication I don't know the name of reporting on the Oireachtas SW Committee hearing where the Chief Appeals Officer denied the use of test cases. The data contained in this article, in my data, in my SAR reply of 2022 is false data. I have a right to have this corrected.

BOGUS SELF-EMPLOYMENT

Claims of high level of bogus self-employment 'not compelling'

Though there is a narrative that false self-employment is prevalent in certain sectors, the number of employment status cases being dealt with by the Department of Employment Affairs and Social Protection does not reflect a growing problem, based on figures provided by Department officials at a recent committee hearing.

[illegible]

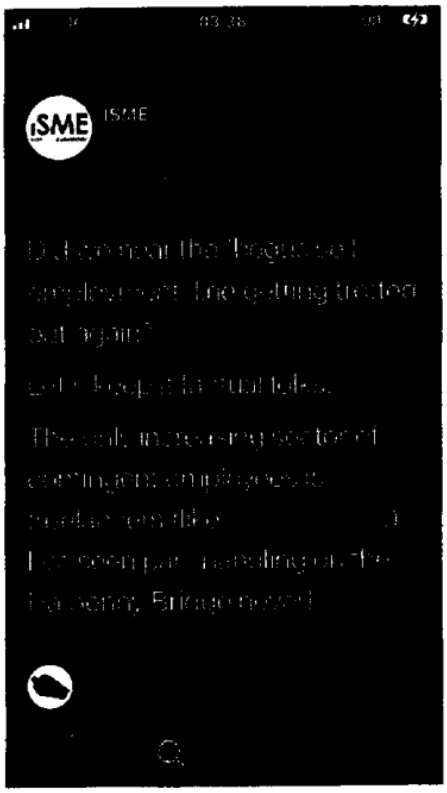
NEW INSPECTION UNIT

[illegible]

NO TEST CASES

[illegible]

- This data, from ISME which is a copy of a tweet from the ISME twitter account mocking the notion of test cases to journalist Matt Cooper. I have a right to have this copy of a tweet, which is data in my files corrected and an apology sent to Mr. Cooper for giving him false data about me.



- This data in which the General Secretary says my case was dealt with fully and properly. It was not and therefore that is false data and I have a right to have that recorded in my data.

Oifig an Ard-Runaí,
An Roinn Gnóthaí Sóisialacha,
Pobail agus Teaghlaigh,
Áras Mhic Dhiarmada,
Sráid Stórais, Baile Átha Cliath 1.

Office of the Secretary General,
Department of Social,
Community and Family Affairs,
Áras Mhic Dhiarmada,
Store Street, Dublin 1.
☎ : (01) 8748444 Fax: (01) 7043721

9 October 2001

Mr Martin Mc Mahon

Ashbourne
Co Meath

Dear Mr Mc Mahon,

I have been asked by the Secretary-General to refer to your correspondence to him in connection with the Scope decision on your case.

correspondence to him in connection with the Scope decision on your case.

The Secretary-General is satisfied that your case has been dealt with fully and properly in accordance with the legislation. The decision of the Appeals Officer in the matter is final and conclusive and can only be revised in the light of new facts or fresh evidence. The only other alternative available under Social Welfare legislation is an appeal to the High Court on a point of law.

Yours sincerely,

Carmel Fields
Private Secretary to
the Secretary General

- Also contained in the 2022 SAR reply is this pdf of an article –

Employee? Question

McMahon himself says that if he eventually wins the day, at least 70 more like him are prepared to take their own cases against various courier companies. "They are waiting to see what happens at the moment. But if Securicor end up having to pay just one penny in employers' PRSI, then the others will take claims as well," he says. Presumably if they too were successful, the floodgates would open.

On top of that, the companies would also have to fork out for some form of third party insurance to protect them against claims that would arise if their employees were involved in accidents. As couriers are currently classed as self-employed, they are liable if they are found to be responsible for injuring someone else. If they were re-classified as employees, then the liability falls on their employers' shoulders.

But if the ruling was met with a sigh of relief from one side, it left McMahon, the CWU, and legal team hired on his behalf by the union, shocked. "We were very taken aback by the appeals officer's finding," he says. As well as going for a further appeal, the union is also going to raise the issue with the Irish Congress of Trade Unions (ICTU) and with a number of interested politicians.

At the heart of the issue is the question of what exactly constitutes an employee. Broadly speaking, employees operate under the control and direction of their bosses. They can be fired, cannot work for anyone else (at least on their employer's time), they work set hours and have set breaks. And work, in the sense that someone else cannot move them from one post to another. They have no entitlement to sick or holiday pay. They operate from their own business premises. And they carry the risks associated with their work, for example, they lose out if demand for their goods or services dries up.

Scope deciding office[redacted] found, amongst other things, that McMahon was subject to control, direction and dismissal by the company. He had to work from 9am to 6pm, and could be reprimanded for leaving before time. He was also told when he could take his lunch, which was limited to 30 minutes. The company could have moved him from job-to-job, and he did not carry any risk for faulty or sub-standard work.

At the same time, he supplied transport, had no holiday or sick pay entitlements, stood to lose or gain according to the number of deliveries made and had no contract of employment.

On the basis of the facts supplied to him, [redacted] decided that McMahon was an employee. His ruling states bluntly that there was no evidence that the courier was in business on his own account, and found that it would have been difficult for him to take on other work. "He is subject to a great deal of control by the company," [redacted] report concluded.

"In this case the company has placed a self-employment label on Mr McMahon as they regard all couriers to be self-employed. In reality, Mr McMahon is an ordinary employee who is an integral part of the business and is not in business on his own account." [redacted] dismissed the argument that he supplied his own transport, pointing out that sales people, who are usually employees, frequently use their own vehicles.

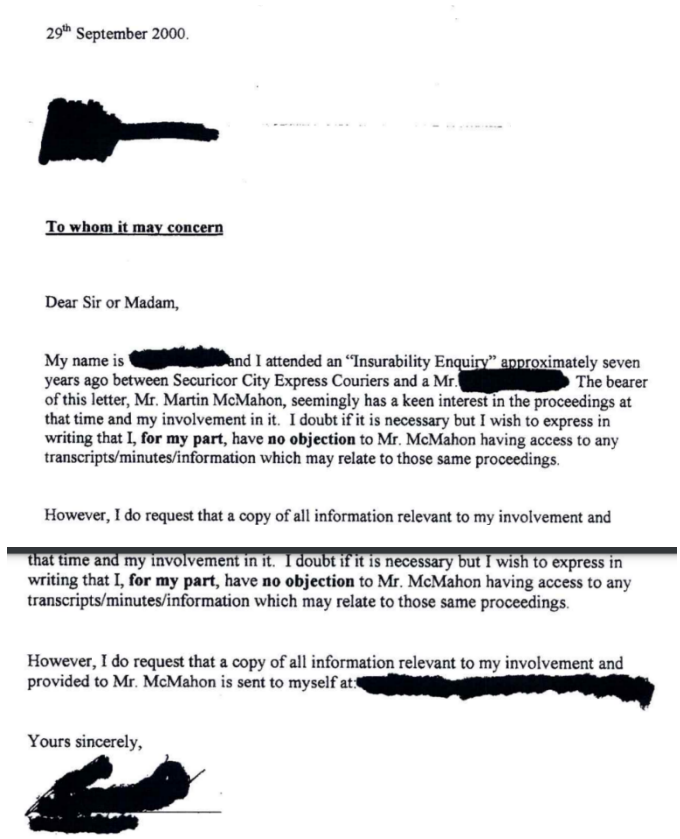
In its turn, the company claims that [redacted] finding was factually incorrect. It denies that McMahon was subject to control, and argues that instead he made himself available to work on Securicor Omega's behalf. It also claims that couriers are free to accept or refuse specific requests to do particular runs. "The position simply in that Mr McMahon has entered into an either party could end couriers' contracts.

The company also denies that McMahon was obliged to work specific hours, that the company determined his breaks and that he could have been reprimanded for leaving early. On the issue of risk, the company argues that he was at risk in respect of his motorbike costs and the cost of replacing items he carried.

McMahon himself dismisses many of these arguments. "They say that I could have refused to do a job, no courier can do that," he says. "They had a sign on the wall in the base that said 'the base controller's decision is final'."

[redacted] also argues that McMahon's role fitted the definition of an employee. "There are a number of criteria there and he fits them," the trade unionist points out. [redacted] says that as a result of last year's national pay deal talks, unions and employers established a forum on employment status. It drew up a code of practice, which remains voluntary, despite the unions' efforts to have it written into labour law. The CWU official says that tough cases like McMahon's are widespread. "This problem goes far beyond this one," he says. ■

Also contained in the August 2022 SAR reply is this document –



29th September 2000.

[redacted]

To whom it may concern

Dear Sir or Madam,

My name is [redacted] and I attended an "Insurability Enquiry" approximately seven years ago between Securicor City Express Couriers and a Mr. [redacted] The bearer of this letter, Mr. Martin McMahon, seemingly has a keen interest in the proceedings at that time and my involvement in it. I doubt if it is necessary but I wish to express in writing that I, **for my part**, have **no objection** to Mr. McMahon having access to any transcripts/minutes/information which may relate to those same proceedings.

However, I do request that a copy of all information relevant to my involvement and

that time and my involvement in it. I doubt if it is necessary but I wish to express in writing that I, **for my part**, have **no objection** to Mr. McMahon having access to any transcripts/minutes/information which may relate to those same proceedings.

However, I do request that a copy of all information relevant to my involvement and
provided to Mr. McMahon is sent to myself at: [redacted]

Yours sincerely,

[redacted]

The first data, the article from Business & Finance Magazine is a very poor copy and quite a lot of data is unreadable. What the unreadable data states is that three men were selected as 'Test Cases' back in 93/94. It states that the three men were couriers for Securicor. What the second piece of data states is that the author attended at an insurability enquiry circa 93/94 with another man.

One of these men we have come across already and he is named in the false report written by SWI O'Connor and in 2000 he spoke to me personally, told me that he had been 'put forward' as a test case, that the Scope Section decision had been appealed, but that he had emigrated in the meantime and was not in the country when the appeal took place. This version of events was confirmed in the Employment Appeals Tribunal written decision where it is recorded that the General Manager of Securicor stated (copy also contained in 2022 SAR) –

"It was the norm that these people were employed as contractors and not as employees. This norm had been tested in the 1990s on a voluntary basis and the respondent company had in fact put forward one of its own drivers as a test case. While a deciding officer with Social Welfare had decided that this driver was an "employee" there had been no definitive outcome to this test case as the driver in question had emigrated in the meantime"

The third man, Alan Somers, is named in the false report written by SWI O'Connor and the only evidence which claimed this false report had any kind of veracity was contained in the false data adducted into evidence by Mr. V long on the 11th of November 2000. In the false SWIs report, it describes Mr. Somers as one of two managers of Securicor's express delivery service. There is absolutely no reason to doubt this version of accounts. The data confirms it to be so.

However, Securicor were in the SWAO on the 12th of June 1995. An Appeal did take place, this Appeal is officially a 'Test Case' according to the Department in 2002, so who was the 'representative test case' courier who appealed the Scope Section decision that he was an employee, and whose appeal has been used since 1995 test case to label all couriers as self-employed. Surely as a matter of employment and civil rights, couriers have a right to know?

It is quite possible that the Scope Section Deciding Officer in the Appeal was not dealing with the same person who had completed the INSI form and on whom the inspectors report reported, and the Deciding Officer's decision was based. The fact that the Scope Section does not have an inspectorate of its own and must rely on general SWIs to gather any additional evidence the Deciding Officer requires and then send a report back to the Deciding Officer with both completed INS1 forms is a weakness in the Scope Section process. The deciding Officer's report is the first point of weakness, as in my appeal, the Deciding Officer's questions to be asked by the SWI do not always get asked and as with the SWIs report in my appeal, the report may be entirely falsified.

That this did happen in my appeal means that the Scope Section Deciding Officer is entirely reliant on the honesty of the SWI, who is also present at the appeal, to ensure that the worker who signed the INS1 form and on whom the Deciding Officer's Decision is based, is actually the person sitting in front of the Deciding Officer.

It is however stunning, that through the entire process of two Scope Section decisions (mine and Richie McArdle), two Appeals Office hearings (me and Richie again), 3 days in the Employment Appeals Tribunal and 3 days in the Circuit Court, not once ever did Securicor refer to the 1995 test case. They cited many other cases as relevant in their written legal submissions, but never the 1995 test case. Every Scope Section decision that a courier was an employee had been overturned in the SWAO up to 2001.

Only the SWAO should be able to answer that, and really, it shouldn't have mattered all that much because legally, you can't use test cases, but it was used as a test case and it does matter. However, if you attempt to request data from the SWAO, you are directed to the Department instead. The much lauded 'independent' SWAO does not have a separate Data Controller and the Department is the SWAO's Data Controller, so one must ask the Department instead.

They 'over-doctored' the Appeals Office decision anyway. It is a decision which was demonstrably legally unsustainable, a monkey could have nodded along and agreed with everything Securicor's legal representatives said, which is exactly what happened. But I believe not just me, but every worker in the country, employee or self-employed, has a right to know who represented them at an Appeal where the concept of group and class determinations on employment status was unlawfully agreed to and where the unlegislated for 'owner/driver model' was created.

It would also be of great interest, but maybe not a separate question, to know if SWI O'Connor and Mr. V Long were working for the Department on the 12th June 1995.

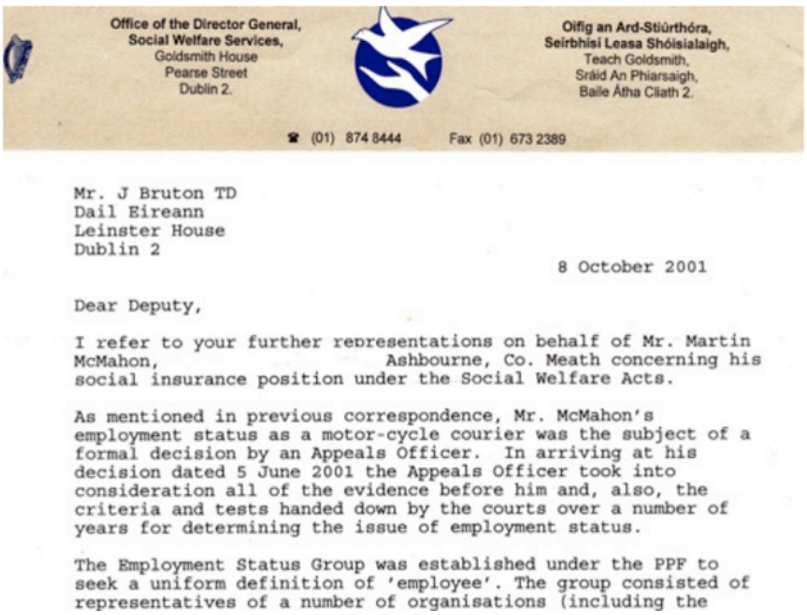
How can couriers from Securicor twice get Scope Section decisions that they are employees and not self-employed, one which was never overturned and mine which was, and yet the decision that not just all of Securicor's couriers, but all couriers

from the start to the end of time, be decided in another test case nobody has heard about?

When these three men were 'selected' as 'representative test cases', all of these men were couriers for Securicor to the best of my knowledge. But between the time of the 'representative test case' couriers being 'selected' and the actual Appeal Hearing on 12th June 1995, two of those men had become Courier Company Directors and there were documents in the Companies Office to prove that fact, that's what the rest of the poorly copied article states.

The very existence of these files containing multiple documents going back more than 20 years, including documents which were withdrawn as evidence, entirely falsified documents, actionable slurs on my good name, redacted documents, identities of Department employees hidden to disguise wrongdoing, incorrect information and evidence of much data still missing, is undeniable evidence of the Department's deliberately orchestrated contempt for my data, my GDPR rights and my rights under the ECHR.

- I cannot possibly address all of the false data in my files which were sent to me in August 2022. There is 23 years' worth of false data in my files. I will only address one or two more but please understand, there are many in my files, and far far more indicated not to be in my files. This data is from John Hynes Director General of the Dept to Deputy John Bruton. Again, it says I was dealt with fairly. This is false data and I have a right to have it corrected.



Office of the Director General,
Social Welfare Services,
Goldsmith House
Pearse Street
Dublin 2.

Oifig an Ard-Stiúrthóra,
Seirbhisi Leasa Shóisialaigh,
Teach Goldsmith,
Sráid An Phiarsaigh,
Baile Átha Cliath 2.

☎ (01) 874 8444 Fax (01) 673 2389

Mr. J Bruton TD
Dail Eireann
Leinster House
Dublin 2

8 October 2001

Dear Deputy,

I refer to your further representations on behalf of Mr. Martin McMahon, Ashbourne, Co. Meath concerning his social insurance position under the Social Welfare Acts.

As mentioned in previous correspondence, Mr. McMahon's employment status as a motor-cycle courier was the subject of a formal decision by an Appeals Officer. In arriving at his decision dated 5 June 2001 the Appeals Officer took into consideration all of the evidence before him and, also, the criteria and tests handed down by the courts over a number of years for determining the issue of employment status.

The Employment Status Group was established under the PPF to seek a uniform definition of 'employee'. The group consisted of representatives of a number of organisations (including the

The Employment Status Group was established under the PPF to seek a uniform definition of 'employee'. The group consisted of representatives of a number of organisations (including the Irish Congress of Trade Unions) in addition to four Government Departments / Agencies. In July 2001 the group published a 'Code of Practice for determining the Employment or Self-Employment status of individuals' (copy enclosed). The criteria outlined in the Code of Practice are based on the same tests that have been handed down by the Courts and which were relied upon by the Appeals Officer.

As publication of the Code of Practice post-dated the Appeals Officer's decision in Mr McMahon's case it was not available at the time. However, it is clear from his report and commentary of the appeal hearing that the Appeals Officer did apply the appropriate tests in arriving at his decision.

Copies of the Code of Practice have been circulated throughout the Department and also to the independent Social Welfare Appeals Office.

Yours sincerely

John Hynes
Director-General

This series of documents which were not in the 2019 SAR reply but were in the August 2022 reply, contain documents I have never seen before. Erroneous documents and names of agents of the state, acting for the state, to conceal serious wrongdoing.

On 5th June 2001, the SWAO sent me the Appeals Officers appeal decision in my case. It states:

I. ***That I am 'Contract of Service' (employee).***
II. ***That I am insurable under the Social Welfare Acts at the self-employed class S contribution.***
III. ***The circumstances here of the engagement of Mr. McMahon by the appellant company are more in keeping with a contract of services rather than an of an employer and an employee one.***

One cannot be both 'Contract of Employment' and 'Self-Employed' ('Contract for Employment') whilst performing the same duties for the same employer. One must be one or the other.

Points of fact:

I. This position, that one can be both 'Contract of Employment' and 'Contract for Employment' instantaneously for the same employer whilst performing the same duties, was first advanced, on 16th October 2000, by Securicor's representatives, Kieran Ryan & Co., in their 'Notice of Appeal' to the Chief Appeals Officer.
II. In their notice of appeal Securicor stated:

> ***"The contract in existence between Mr. McMahon and the company together with the method of implementation of this contract is such that Mr. McMahon is regarded as a supplier of services under contract for service"***

Securicor further clarified this position in their legal submission to the Appeals Officer on the 1st of March 2001 as follows:

> ***"the treatment of couriers by Revenue was indicative of self-employed status'***

The treatment of couriers by Revenue is the 'Special Tax Agreement' which treats couriers by group and class as employees under Revenue's PAYE system yet labels couriers by group and class as self-employed.

PRSI is deducted by Revenue at Class S PRSI under the 'Special Tax Agreement' from couriers, by group and class based on an unlawful 1995 'Test Case' which Revenue knew to be an unlawful test case yet acted 'in uniform' with this test case.

The implementation of this 'Contract', the 'Special Tax Agreement', on couriers by group and class, is the vehicle to unlawfully label employees as self-employed by creating a 'Contract' between employers, Revenue, the SWAO and the Department of Social Welfare where an employee can be both 'Contract of Employment' and 'Contract for Employment' instantaneously for the same employer whilst performing the same duties and can thus be deliberately mislabelled as 'Self-Employed'.

SOCIAL WELFARE
APPEALS
OFFICE

5 June 2001

Appeal No: 00/14917
RSI No:
Claim No: SC1010/00
Appeal Type: Insurability

Dear Sirs,

I have been asked by the Chief Appeals Officer to refer to your Insurability appeal, and to inform you that the Appeals Officer's decision is as follows:

"I decide that the employment of Mr Martin McMahon, by Securicor Omega Express Limited, during the period from 2 August 1997 to date is insurable under the Social Welfare Acts at the self-employed Class S rate of contribution provided total reckonable income is £2,500 or more a year".

period from 2 August 1997 to date is made at the
S rate of contribution provided total reckonable income is £2,500 or more a year".

A note on the reasons for the Appeals Officers decision is set out hereunder.

"Having carefully considered all the available evidence, including the submissions and legal arguments of all sides, in this case, I am accepting the appellant side's rebuttal of the case for a contract of services as advanced by the Deciding Officer".

"The rebuttal, seems to me to be particularly forceful in regard to control, dismissal, personal service, fixed hours, contact with the base controller, and transferability to work other than that of motor-cycle courier. It is also considered to be relevant that the courier provides his own transport (motor-cycle) and is responsible for insurance, tax and maintenance".

"I have also considered the implications of the McAuliffe (High Court, 1995) and Denny (Supreme Court, 1998) judgements with respect to control and a person being in business on his own account, and I consider that the courier here is employed under a contract of services. In that respect, I am specially conscious of the necessity of each case being considered in the light of its own attendant circumstances".

"As indicated, the circumstances here of the engagement of Mr McMahon by the appellant company are more in keeping with a contract of services rather than of an employer and employee one"

SOCIAL WELFARE
APPEALS
OFFICE

Consequently, on the evidence and in law the appeal succeeds".

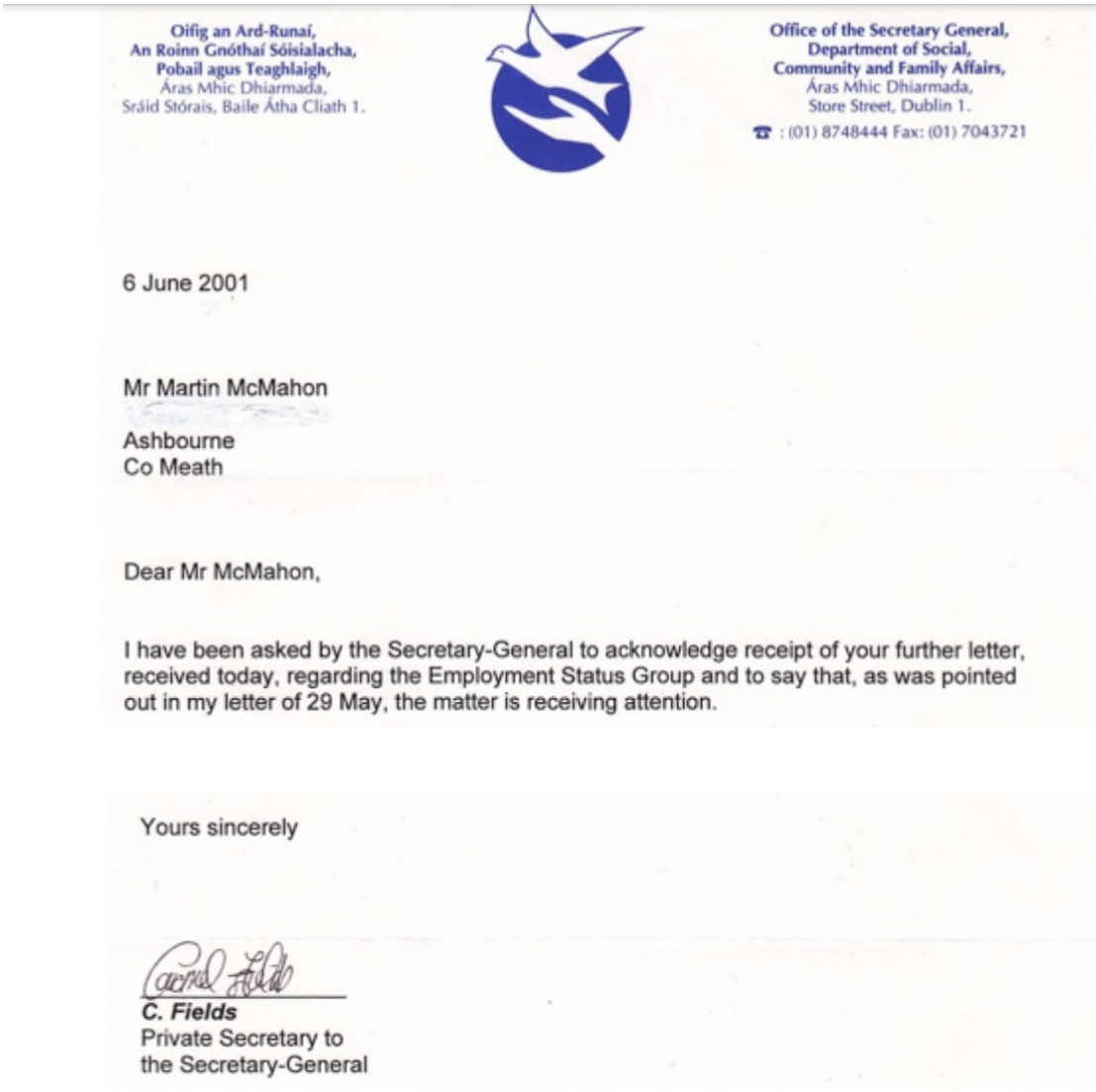
A copy of this letter has been sent to the Social Welfare Services Office.

Yours sincerely

Bridget Cass

On receipt of this Appeals Office appeal decision, I rang the Appeals Office and asked how they could make such a stupid decision. The Appeals Office insisted that I was self-employed and contract of service. I rang Secretary General O'Sullivan's office and spelled out that this decision was the result of having the ESG involved, employee and self-employed at the same time.

The following day a letter was sent to me from the Secretary General:



Oifig an Ard-Runaí,
An Roinn Gnóthaí Sóisialacha,
Pobail agus Teaghlaigh,
Áras Mhic Dhiarmada,
Sráid Stórais, Baile Átha Cliath 1.

Office of the Secretary General,
Department of Social,
Community and Family Affairs,
Áras Mhic Dhiarmada,
Store Street, Dublin 1.
☎ : (01) 8748444 Fax: (01) 7043721

6 June 2001

Mr Martin McMahon

Ashbourne
Co Meath

Dear Mr McMahon,

I have been asked by the Secretary-General to acknowledge receipt of your further letter, received today, regarding the Employment Status Group and to say that, as was pointed out in my letter of 29 May, the matter is receiving attention.

Yours sincerely

C. Fields
Private Secretary to
the Secretary-General

On 11th June 2001, another decision from the Social Welfare Appeals Office was sent to me. It again stated that I was 'contract of employment' and self-employed. This data is not included in any of the SAR replies to me and it should be.

SOCIAL WELFARE
APPEALS
OFFICE

11 June 2001

Appeal No: 00/14917
RSI No:
Claim No: SC1010/00

Dear Mr McMahon,

I have been asked by the Chief Appeals Officer to refer to the Insurability appeal of Securicor Omega Express Ltd., and to inform you that the Appeals Officer's decision is as follows:

"I decide that the employment of Mr. Martin McMahon, by Securicor Omega Express Limited, during the period from 2 August 1997 to date is insurable under the Social Welfare Acts at the self-employed Class S rate of contribution provided total reckonable income is £2,500 or more a year".

A note on the reasons for the Appeals Officers decision is set out hereunder.

"Having carefully considered all the available evidence, including the submissions and legal arguments of all sides, in this case, I am accepting the appellant side's rebuttal of the case for a contract of services as advanced by the Deciding Officer".

"The rebuttal, seems to me to be particularly forceful in regard to control, dismissal, personal service, fixed hours, contact with the base controller, and transferability to work other than that of motor-cycle courier. It is also considered to be relevant that the courier provides his own transport (motor-cycle) and is responsible for insurance, tax and maintenance".

"I have also considered the implications of the McAuliffe (High Court, 1995) and Denny (Supreme Court, 1998) judgements with respect to control, and a person being in business on his own account, and I consider that the courier here is employed under a contract of services. In that respect, I am specially conscious of the necessity of each case being considered in the light of its own attendant circumstances".

"As indicated, the circumstances here of the engagement of Mr. McMahon by the appellant company are more in keeping with a contract of services rather than of an employer and employee one"

Consequently, on the evidence and law the appeal succeeds.

A copy of this letter has been sent to the Social Welfare Services Office.

Yours sincerely

pp. **Bridget Cass**

On 13th June 2001, I received another letter from the Social Welfare Appeals Office on behalf of the Chief Appeals Officer. In this letter, the Chief Appeals Officer states:

"Due to a typing error the decision which issued to you on the 5th June was incorrect'

The Chief Appeals Officer also states in this letter of 13th June 2001:

> ***"As indicated, the circumstances here of the engagement of Mr. McMahon by the appellant company are more in keeping with a contract for services than of an employer and employee"***

Points of Fact:

I. **The letter from the Appeals Office dated 5th June 2001 was stated to be a 'typing error' by the Chief Appeals Officer, in his letter of 13th June 2011 and was therefore 'incorrect'.**
II. **The letter from the Appeals Office dated 11th June 2001 was not stated to be a 'typing error' by the Chief Appeals Officer, in his letter of 13th June, nor in any other communications with me, and therefore is 'correct'**

The true factual position, is that the Social Welfare Appeals Office have two 'Active' and differing appeal decisions in the matter of the appeal of the Scope Section decision that I was an employee.

One of these decisions states that I am both self-employed and 'Contract of Service' instantaneously while performing the same duties for the same employer and that I am labelled as self-employed under this arrangement.

The other decision says that I am self-employed as 'Contract for Service'.

SOCIAL WELFARE
APPEALS
OFFICE

13 June 2001

Appeal No: 00/14917
RSI No:
Claim No: SC1010/00

Dear Mr McMahon,

I have been asked by the Chief Appeals Officer to refer to the Insurability appeal of Securicor Omega Express Limited and to inform you that the Appeals Officer's decision is as follows:

"I decide that the employment of Mr Martin McMahon, by Securicor Omega Express Limited, during the period from 2 August 1997 to date is insurable under the Social Welfare Acts at the self-employed Class S rate of contribution provided total reckonable income is £2,500 or more a year."

A note on the reasons for the Appeals Officers decision is set out hereunder.

"Having carefully considered all the available evidence, including the submissions and legal arguments of all sides, in this case, I am accepting the appellant side's rebuttal of the case for a contract of services as advanced by the Deciding Officer.

That rebuttal, seems to me to be particularly forceful in regard to control, dismissal, personal service, fixed hours, contact with the base controller, and transferability to work other than that of motor-cycle courier. It is also considered to be relevant that the courier provides his own transport (motor-cycle) and is responsible for insurance, tax and maintenance.

I have also considered the implications of the McAuliffe (High Court, 1995) and Denny (Supreme Court, 1998) judgements with respect to control, and to a person being in business on his own account, and I consider that the courier here is employed under a contract for services. In that respect, I am specially conscious of the necessity of each case being considered in the light of its own attendant circumstances.

As indicated, the circumstances here of the engagement of Mr McMahon by the appellant company are more in keeping with a contract for services rather than of an employer and employee one.

Consequently, on the evidence and in law the appeal succeeds."

A P P E A L S
O F F I C E

A copy of this letter has been sent to the Social Welfare Services Office.

Due to a typing error the decision that issued to you on the 5th June was incorrect. Paragraph 6 and 7 should have read contract for services. Any inconvenience caused is regretted.

Yours sincerely

Bridget Cass

The final document in this series of documents is data I have never seen before. It is dated 24th 2001 and was included in the August 2002 SAR reply. This data appears to be signed by the Chief Appeals Officer, but the signature is redacted. In 'Point 4' of this data, it states:

> ***"Reference is made to an error in issuing of Appeals Officer's decision. This was purely a clerical error in notifying the decision and it was subsequently rectified with an appropriate apology"***

Points of fact:

I. The letter notifying me of the Appeals Officer's appeal decision in my case, dated 11th June 2001 has never been rectified and, as a consequence, stands for Department of Social Welfare purposes.
II. I have never received an appropriate apology from the Social Welfare Appeals Office.

AP 00/14917 - Martin McMahon - Securicor Omega Express Ltd.

The letter of 29 June 2001 from [redacted] Solicitors, on behalf of Mr McMahon raises the following issues -

1 No new evidence produced since the date of the Deciding Officer's decision to warrant the decision of the Appeals Officer overturning that decision.

2 Draws attention to Deciding Officer's comments and findings in relation to

- level of control exercised

- subject to dismissal

- no evidence that Mr McMahon is in business on own account

- not possible for Mr McMahon to undertake other work in view of extent of monitoring by Company

- ownership of motor-cycle does not make Mr McMahon self-employed.

3 Reference is also made to decision of Supreme Court in Denny case.

3 Reference is also made to decision of Supreme Court in Denny case.

4 Reference is made to an error in issuing of Appeals Officer's decision. (This was purely a clerical error in notifying the decision and it was subsequently rectified with an appropriate apology).

The position is that an appeal was made under the provisions of Section 257 of the Social Welfare (Consolidation) Act, 1993 against the decision of the Deciding Officer and, arising from this, the question then became a matter for determination by an Appeals Officer. That Section also provides that the Appeals Officer may decide the question as if it were being decided for the first time.

The report of the Appeals Officer following the oral hearing shows that he properly addressed the question before him for determination and that he gave full consideration to all of the evidence - including the matters referred to above arising from the Deciding Officer's submission - and the legal arguments made.

Whilst acknowledging that there were some features of the engagement which are consistent with a contract of service, the Appeals Officer found that on balance the engagement was more in keeping with a contract for services and he decided accordingly.

From my review of the papers and the points now raised, it does not seem to me that the decision of the Appeals Officer is erroneous by reason of some mistake having been made in relation to the law or the facts as to warrant revision under Section 263 of the 1993 Consolidation Act.

[redacted]
Chief Appeals Officer

24 July 2001