ERRORS IN POINTS OF FACT AND LAW

A Music Industry worker, Mr. McGranaghan, one of many workers in the Music Industry who are labelled, by group and class, as self-employed by Music Industry Employers, the Revenue Commissioners and the Department of Social Protection, wrote to the Scope Section and asked for a decision on his Insurability of Employment (Employed or Self-Employed).

On 18th November 2020, following an extensive investigation by the Department of Social Protection, a Scope Section decision determined that Music Industry worker had been working under a contract of service for MEPC Music Ltd from 1 January 2014 and was therefore insurably employed at the PRSI Class A rate where earnings exceeded €38 per week. The decision was made in accordance with Section 300 (2) of the Social Welfare Consolidation Act 2005.

The decision of the Scope Section Deciding Officer was that Mr. McGranaghan was an employee (Exhibit 38):

> *'The Employment of Mr. McGranaghan by MEPC Music Ltd from 1st January 2014 to date is insurable under Social Welfare Acts at PRSI Class A* (Employee)'

Mr. McGranaghan had been bogus self-employed for 6 years.

The Scope Section Deciding Officer was particularly thorough in delivering his reasons for determining, according to case law and precedents handed down from the Courts, that Mr. McGranaghan was, and should always have been, an employee:

> *'According to the information in the Investigator's report, Mr. McGranaghan works as a fiddle player with the Michael English band. Michael English is the lead singer and musical director of the band. He is also the company secretary and majority shareholder in MEPC Music ltd. Matthew McGranaghan contacted Michael English in 2013 to let him know of his interest in becoming part of Michael English's new band. After a meeting between them, Matthew was offered the job. His rate of pay was €250 per gig, increasing to €280 from April 2019. Payment for the first couple of years was made by cheque and was then made by EFT. He is paid to be a fiddle player with the band (he also plays acoustic guitar in songs of a genre where a fiddle would not be used such as rock 'n roll).*
>
> *The band delivers a lot of its work in the Country and Irish scene, mainly playing at dances throughout Ireland, as well as in the UK, Spain and Portugal. The band also does theatre concerts, church concerts and festivals in Ireland and the UK. Most of the work Matthew McGranaghan does with the band is at dances. The duration of these dances is two hours. Doors to the venues normally open two hours before the band starts playing. This means that the band have to be there before the doors open to set up and do sound checks.*
>
> *The only equipment that Matthew McGranaghan carries to gigs is his fiddle. The rest of his equipment and all other band equipment is carried in the band's truck and set up by a crew. Matthew supplies his own instruments and equipment to do the job: a fiddle, an acoustic guitar, 2 turning pedals, I octave pedal, a wireless in-ear monitor system and various leads to the value of €1,200 - €1,500).*

The start and finish times of the dances can vary but they are usually between 10.30pm and 12.30am or 11pm and 1am. Matthew has to drive himself to wherever the gig is taking place (he enquired about fuel costs/travel expenses being reimbursed but received no reply). For theatres and concerts the show usually begins at 8pm, or 7.30pm in the UK. He would have to be at the venue and ready to do a sound check at 5pm. This would generally take 10 minutes but may take an hour if the band was instructed to rehearse something. In respect of performances in Ireland Matthew supplies his own car and covers his own costs in driving to all the gigs (fuel, insurance, tax, tolls, AA Rescue and maintenance). When the band tours in the UK usually for 20 nights a year, Transport is supplied in the UK. Transport is also supplied to get to the UK by ferry or plane. Air travel is also supplied for other trips outside of Ireland. Accommodation is provided on all travel outside of Ireland. In Ireland, accommodation is supplied by MEPC Music Ltd when necessary, for example, for consecutive gigs in same part of country.

Matthew McGranaghan said that as a fiddle player with 30 years' experience he doesn't always require direction from someone else. The skill set in the band's genre requires musicians to be able to improvise and play from memory, as distinct from an orchestra, where sheet music is available, and the performer must play what is in front of them. He stated he would also be given recordings of songs and would have to learn them and be able to reproduce the part of the tune played by the fiddle from what he had heard. He said he would have certain freedom to play what was suitable. If it wasn't suitable, the musical director Michael English would instruct him what to play. Ultimately, the decision lay with the musical director. Michael English would supply him with cord charts/sheet music or recordings of songs that he would have to learn material from. At rehearsals Matthew would be instructed what and where to play in a particular song. Sometimes he would be told which verse to come in on the fiddle and it would be left to him to play what was appropriate for the style of song.

Michael English/MEPC Ltd would take all the bookings for all the performances and the schedule of performance dates would then be communicated to the musicians in the band. Michael English/MEPC decided what gigs to take, when to take them, and when the band holidays would be. Generally, the musicians were allocated 8-10 days in January and the same in September each year. Matthew is not required to provide public liability insurance. He cannot gain or lose financially from the performance of the work. He states that between 1/1/14 and 15/3/20 he only ever took 2 nights off from playing in the band for personal reasons, one with 48 hours' notice and one with several months' notice. It was not his responsibility to find a replacement. It would be up to the band to find a replacement if he were unable to perform. He stated that asking for too many nights off could lead to him being seen as unreliable or him being replaced. From the information supplied to the Inspector, it appears that Matthew McGranaghan has been the band's resident fiddle player since 2014.

Matthew said on nights off playing with the band he sometimes stood in with another band when they needed a fiddle player, or on his days off he sometimes does some recording work in a studio. However, due to the workload with the Michael English band, which is approximately 220 gigs/days per year, he only did a limited amount of

extra work for others and he also turned down work in order to have some free personal time. He stated that he wouldn't be able to perform as a musician for another band at the same time he was working for the Michael English band.

The work is carried out all over Ireland/Northern Ireland at dances held in hotels, large lounges and marquees. In the summer months the band would perform mostly at festivals throughout the country, on a gig-rig mobile festival stage or in marquees. They also do concerts in theatres, hotel function rooms and churches. In the UK, the band performs mainly in theatres. When they perform in the UK, flights to the UK, travel and accommodation is arranged by Michael English/MEPC. When the band performs in Spain and Portugal, they do so as part of Paul Claffey Tours holidays. Flights and accommodation are arranged by Paul Claffey Tours. Paul Claffey is a director of MEPC Music Ltd. The band plays 6 gigs in a 7 day period or 9 in a 10 day period. The gigs vary between 45 minutes and 2 hours including one outdoor poolside gig. The band also plays on a cruise ship each year on a week long cruise for a US promotions company. During his free time on the cruise he was able to perform with bands if they requested a fiddle player. This was usually done to pass the time and the other bands would pay $50 - $100 off his on-board bill on the ship. He was able to perform with other bands/artists on the cruise ship, provided it wasn't at the same time as shows for MEPC. Due to the amount of time he works for the Michael English band/MECP, throughout the year, Matthew McGranaghan didn't have much time to work with other bands, but did so occasionally, as mentioned earlier. Any earnings from such freelance work is included in his own self-assessment tax returns.

According to the INS1 form completed by Matthew McGranaghan he got the job by approaching Michael English, the lead singer. He worked variable hours, he is subject to direction, control and dismissal. He is not free to take up similar work the same time with another business or company. He supplies labour only. He supplies his own instruments, leads and pedals. The P.A. and lighting are supplied by the company. The work is carried out at various locations in Ireland, the UK, Europe and North America. This is decided by the company. He had a say in negotiation his rate of pay. The company supplies transport. Mr McGranaghan is not required to provide public liability insurance. He could not gain or lose from the performance of the business. He has to render personal service and cannot hire an assistant. He can send a substitute. The company would pay the substitute.

The INS1 form completed by Michael English agrees with the information** in Mr McGranaghan's **INS1 except for saying that Mr McGranaghan did not have to render personal service and that he would pay any substitute.

Matthew McGranaghan provided further information stating that in February 2019 he raised the possibility of being an employee of the band. He was told that MEPC Music Ltd had no obligation to offer him employment, He was advised by Paul Claffey, a director of MEPC Music Ltd, that he would be better off to create a limited company and use it as a vehicle to invoice MEPC, rather than continue as an independent contractor. Mr Claffey stated that such an agreement could be used as a mechanism to legitimately maximize payments from MEPC, tax free. Mr Claffey also suggested that MEPC might be able to make an additional payment towards annual

accountancy fees incurred by Mr McGranaghan through this arrangement. Mr McGranaghan did not form a limited company.

I asked Matthew McGranaghan to clarify the travel arrangements for when the band travelled abroad. He said for UK tours, the truck and some of the crew would travel on their own generally the day beforehand. I asked if the band always travelled together and if each member made their own arrangements. He said the band would travel sometimes from different airports (depends which airport was closest etc.) or all together if a ferry was used. MEPC organised the times and costs of any flights/ferry travel. Sometimes, the entire band and crew would all fly together depending on the gig and whether the truck had to travel and be used.

Michael English provided further information stating that he has worked at various shows/venues since 2104 where he did not require the services of Matthew McGranaghan in his band. He said Matthew McGranaghan is free to decide if a particular show or fee does not suit him. When this happens Michael English would organize a replacement. Michael gives an example of the Matthew declining to perform on an episode of The Late Late Show as he though the fee offered was not sufficient. However, he did perform with the band later that night at a gig in Mullingar. Matthew McGranaghan is free to perform shows with other bands/entertainers whilst also working with Michael English's band.

I have considered the conditions of employment and I am more persuaded by the information supplied by Matthew McGranaghan. I find he satisfies the control test as he was under the instruction of the musical director and he had no say in determining the job specifications, he performed as part of a band of musicians, performing a set list of tunes. He had some discretion as to how he played, but if it was not deemed suitable, the musical director would instruct him what to play. The musical director had the final say. Matthew could be told which verse of a song to play in and was routinely given recordings of songs to learn so he could play them at gigs. He supplied labour and his own instruments. He has no say in determining his own hours of work. He has no say in sourcing the employment. Michael English/MEPC would take all the bookings for all the performances and the musicians in the band would be told of the schedule of performance dates. He satisfies the exclusivity test as although he occasionally played with other bands in his time off, because of his commitments to the Michael English band, he did not have the time to work elsewhere. I am satisfied that working with Michael English was his main employment, given the amount of work he did with him, and that he would give priority to the work with him.

Considering factors such as mutuality of obligation and integration, he was offered almost continual work from the company for 6 years. I am aware of one example where he declined an offer of work from them because he was not satisfied with the fee offered but the same example says he worked with the band at a second gig that same night. He was reluctant to ask for too much time off as he thought this would mean he would be seen as unreliable and possibly be replaced. His holidays were decided by the company. The band members were allocated 8-10 days in January and the same in September. When the band performed outside Ireland, travel (by

air/sea) and accommodation was arranged and paid for by the company in the UK and by Paul Claffey Tours when they toured mainland Europe. Mr McGranaghan could not take holidays at his own discretion and did not have to pay for his own air/sea travel or accommodation with regard to performances with the band.

Matthew McGranaghan worked hours determined by the times of the gigs. His work was dictated by MEPC as regards content. He is directed by MEPC as to what work is done, how the work is done (his skill and experience not withstanding), and when the work is done. The work is carried out on premises booked by MEPC. In effect MEPC decided where the work was done. Travel expenses and accommodation for overseas engagements are covered by MEPC.

I am satisfied that, on the balance of information, he is employed under a contract of service. PRSI class A applies to the employment.

In essence, the decision of the Scope Section Deciding Officer brought Mr. McGranaghan insurability of employment in line with band members of the RTE Orchestra who are all 'Contract of Service' employees. Similar cases throughout Europe and beyond have all ruled that band members in such circumstances are employees.

The employer was given 21 days to appeal the Scope Section Deciding Officer's decision:

> ***'If you are not satisfied with this decision you may appeal in writing to the Chief Appeals Officer, D'Olier House, D'Olier Street, Dublin 2, telephone 1890 747434. You must lodge your appeal within 21 days of the date of this letter, clearly stating the grounds of your appeal'***

On 9th December 2020, the employer appealed the Scope Section decision to the Chief Appeals Officer. 17 'Grounds for Appeal' (Exhibit 39) are listed as follows:

1. ***The Deciding Officer did not have regard for the reality of the situation regarding the music industry as it is in Ireland. This situation has become more precarious with the current health restrictions.***
2. ***The applicant made his application to SCOPE in the knowledge that he had approached me seeking work on the basis that he would invoice me for the nights that we worked. I also state that the applicant has had the opportunity and has availed of the opportunity to perform with other musicians and bands. The fact that he chose to perform his services primarily with me is not sufficient to establish that he is an employee.***
3. ***The applicant could and did chose not to perform on occasion.***
4. ***There is no evidence that MEPC Music Limited did or would have found the applicant unreliable or would have replaced him if he requested too many nights off. It was his choice.***
5. ***The control test referred to does not make allowance for the fact that all musicians playing together must take instruction from a band leader or play the music at the required tempo or rhythm.***

6. ***It is long established custom and practice that musicians working with bands travel with the band and do not have to supply their own transport to distant gigs.***
7. ***The applicant did by his own information provide services to different people and bands.***
8. ***There is no evidence that the applicant had to turn down any work from other people requiring his services.***
9. ***It is also long-established custom and practice that musicians have their accommodation covered by the band, in this case MEPC Music Limited. This practice is not indicative of a master and servant situation.***
10. ***There is no indication of whether the applicant did make the relevant returns to Revenue as a self-employed person.***
11. ***It is denied that MEPC Music Limited was ever in a position to dismiss the applicant as the applicant was always in control of what work he provided and when he provided it.***
12. ***The applicant could send a substitute and MEPC would pay that substitute. It was often the case that MEPC Music Limited would look for a replacement for musicians at short notice due to many different reasons outside the control of MEPC Music Limited.***
13. ***It is submitted that the decision is erroneous and is a mistake in law and on that facts did not take account of those facts and additional that were referred to in the information supplied by MEPC Music Limited.***
14. ***The exclusivity test cannot be satisfied if the appellant supplies services to other bands. This is a mistaken belief.***
15. ***There was no obligation on MEPC Music Limited to provide services to the applicant and similarly there was no obligation on the applicant to provide services on MEPC Music Limited behalf. There is no mutuality of obligation and integration.***
16. ***Holidays are a matter for MEPC Music Limited and its staff and did not and do not apply to the applicant as he was free to decline the offer to provide services. The lack of bookings for a period is not defined as holidays and MEPC Music Limited would have continued in business despite not having bookings.***
17. ***The applicant could take his holidays anytime and has not demonstrated any examples of when he was unable to take his holidays. In any event that is a matter for the applicant and MEPC Music Limited denies that it was responsible for the applicant's alleged forbearance of his holidays.***

Upon receipt of the employer's 'Grounds for Appeal', the Chief Appeals Officer, under Article 10 if the Social Welfare (Appeals) Regulations 1988, wrote to the Scope Section,

forwarded the 'Grounds for Appeal', and requested a statement from the Deciding Officer to show to what extent the facts and contentions advanced by the Appellant are accepted or rejected.

Also in his letter to the Scope Section, the Chief Appeals Officer, under Section 301 (1) of the Social Welfare Consolidation Act 2005, asks the Deciding Officer if he wishes to revise his Decision in light of new facts or evidence. The Deciding Officer in the Scope Section DID NOT revise his decision in light of the Employer's 'Grounds for Appeal'.

On 2nd December 2021, Minister Heather Humphreys wrote to the Oireachtas Procedures Committee (Exhibit 17) and stated that some Appeals in the Social Welfare Appeals Office:

> ***'May be determined based on a sample of cases'***

On 25th April 2022, Mr. McGranaghan wrote to the Social Welfare Appeals Office and requested:

> *"I have been made aware of test/sample cases used by the Social Welfare Appeals Office in determining insurability of employment. In a letter from the Minister for Social Protection dated 2nd December 2021 (Exhibit 17), to the clerk of the Dáil Committee on Parliamentary Privileges and Oversight, it is stated that some appeals 'may be determined based on a sample of cases'. I would like to request a copy of these test cases please"*

On 28th April 2022, notification of an 'Oral Hearing' on 24th May 2002 issued by letter from the Social Welfare Appeals Office. In the letter, Mr. McGranaghan is "requested to attend" by the Appeals Officer.

On 5th May 2022, Mr. McGranaghan emailed the SWAO to say that he was still seeking details of sample cases and he noted that he was now 'requested' to attend the hearing.

On 16th May 2022, the Social Welfare Appeals Office replied to Mr. McGranaghan. In this reply (Exhibit 41) it states:

> ***'Query in relation to "test/sample" cases***
>
> ***Your email refers to a letter of 2 December 2021 from the Minister for Social Protection to the Clerk to the Dail Committee on Parliamentary Privileges and Oversight and, in respect of some appeals, quotes that they "…may be determined based on a sample of cases".***
>
> ***The full text of the relevant paragraph in that correspondence is as follows:***
>
> ***'The answer to the Parliamentary Question is a response to a question concerning the number of individual cases heard by the social welfare appeals office relating to the insurability class of persons. It details the number of cases determined each year from 2012 to 2020 and to June 2021 and sets out how the use of so-called 'Test Cases' in the 1990s were not used to determine the employment status of all workers in a particular sector but to identify criteria for use when assessing each case on an individual basis and how these criteria then formed the basis for the Code of Practice for the***

Determination of Employment or Self-Employment Status of individuals agreed with trade unions and employers. It also sets out how every individual making an appeal is afforded the opportunity to have their own individual case determined but that, in rare cases and very limited circumstances, and only where agreed by the individual, some appeals involving a number of workers engaged by the same employers, may be determined based on a sample of cases. The answer does not name or refer to Mr. McMahon'

A sample case approach has not been taken by the Social Welfare Appeals Office during the tenure of the current Chief Appeals Officer which commenced in 2015 in any case of an appeal where the classification of a worker as an employee or self-employed is the issue under appeal. All such appeals are determined on a case by case basis on the particular facts of each appeal.

FACTS

i. The statement:

'how the use of so-called 'Test Cases' in the 1990s were not used to determine the employment status of all workers in a particular sector'

is a false statement. A 'Test Case' was created on 12th June 1995, by the Social Welfare Appeals Office, for the express purpose of making all couriers 'Not Employees'. This 'Test Case' was used to create a 'Special Tax Agreement' with courier employers to allow them to evade their statutory obligations. This 'Special Tax Agreement' operated from 6th April 1997 until 31st December 2018 and couriers are still classified as self-employed by group/class based on the 'Owner/Driver' model of self-employment, which was created, without a legislative basis, by the Revenue Commissioner and the Department of Social Welfare by using an unlawful Social Welfare Appeals Office 'Test Case'. Evidence of further test cases has been confirmed by Taoiseach Leo Varadkar, former Finance Minister Donohoe and Education Minister Foley. It was confirmed by the Ombudsman in 2002 that the Department of Social Welfare used a 'test case', created by the Social Welfare Appeals Office, and by the C&AG in 2002 that a 'Special Tax Agreement' was in use for the entire sector of courier employers. This 1995 'Test Case' is not a 'So-Called' test case. It is undeniably a test case.

ii. The statement:

'but to identify criteria for use when assessing each case on an individual basis'

is a false statement. The 'Criteria' referred to are 'Ownership & maintenance of a personal vehicle', 'Being paid in an A-typical way', & the 'Existence of a Contract'. None of these 'Criteria' are contained in the Code of Practice, but are specifically precluded by the Code of Practice, and have been repeatedly rejected as 'Indicators of Self-Employment' by the Higher Courts. These 'Criteria' are not used to assess each

case on an individual basis. These 'Criteria' are used to label a group/class of employees as self-employed. Once a worker 'Fits' these unlawful criteria, they are excluded from having all other lawful precedents on 'Contract of Service' applied to the reality of their employment. The continued use of these unlawful 'criteria' deliberately excludes groups/classes of workers from having their cases heard on an individual basis according to the legal precedents and rulings hand down from the courts. These 'Criteria' are not legal 'Criteria', they are unlawful 'Criteria' created by civil servants with no constitutional authority to create precedential 'Criteria'. Only the Oireachtas has the power to make law (criteria). The only function of the Social Welfare Appeals Office and the Department of Social Protection is to apply the legal precedents handed down by the courts, the SWAO has no authority to 'create' criteria.

iii. The statement:

> ***'these criteria then formed the basis for the Code of Practice' for the Determination of Employment or Self-Employment Status of individuals agreed with trade unions and employers'***

is a false statement. These 'Criteria' which are not 'Reflected in the Voluntary Code of Practice and have been roundly rejected by the Higher Courts as indicators of Self-Employment, did not form the basis for the Code of Practice. The Irish Congress of Trade Unions has vehemently denied any involvement whatsoever in the classifications of couriers as self-employed.

That the Trade Union movement had no involvement with the 1995 test case and the 1997 Special Tax Agreement is confirmed in a letter (Exhibit 36) dated November 1999 from Mr. Chris Hudson Organising Officer, Communication Workers Union to the Private Secretary of the Minister for Labour, Trade and Consumer Affairs Mr. Tom Kitt TD. In this letter to Minister Kitt, Mr. Hudson states:

> *'Dear Mr. Hughes,*
>
> *Please could you convey to the Minister for Labour, Trade and Consumer Affairs, Mr. Tom Kitt T.D., my disappointment that he cannot meet my request for a meeting to discuss the issue of Motorbike Couriers.*
>
> *I am well aware of the organisation of Working Time act 1997 and also the definition of employees. What I had hoped to inform the Minister of was that many people, in particular Motorbike Couriers, are against their will being classified as self-employed. However, in many cases they are paid what can only be described as a weekly wage.*
>
> *Whilst Revenue and Social Welfare have for the reasons of tax purposes and Social Welfare payment classified Motorbike Couriers as self-employed, they do not see this as prejudicing any future determination on the nature of employment of Couriers'*
>
> *'Again, I would appreciate if you would reiterate my disappointment to the Minister as the intention of the meeting was to inform him of the concerns of Motorbike Couriers and to seek an explanation of the present situation as it is'*

Important Fact As is evidenced in Mr. Hudson's letter to Minister Kitt in 1999, the Department of Social Protection classified couriers as 'Not Employee' PAYE Class S PRSI classification to prevent couriers qualifying for Social Welfare 'Payment'. It is also a fact that as bogus self-employed employees, unemployed couriers were not counted on the unemployment register.

iv. The Statement:

'in rare cases and very limited circumstances, and only where agreed by the individual, some appeals involving a number of workers engaged by the same employers, may be determined based on a sample of cases'

is a false statement.

a) ***'based on a sample of cases'***. The true factual position is that between 1993 and 9th January 2019, what are now referred to by the Minister as 'Sample Cases' were in fact and in evidence 'Test Cases'. Between January 2019 and April 2019, a decision was taken by the Department of Social Protection and the Social Welfare Appeals Office to discontinue the use of the term 'Test Case' and to substitute the term 'Sample Case'. They also decided to apply the term 'Sample Case' retrospectively to cases which were and are, 'Test Cases'. Minister Regina Doherty described the process formerly known as 'Test Cases', currently claimed to be 'Sample Cases', to the Irish Times on 25th March 2019:

'The Minister is also looking at legislation to permit deciding officers to make determinations on the employment status of groups or classes of workers who are engaged or operate on identical terms and conditions. At present both employers and workers have to agree to such class decisions, and these can be subject to separate individual appeals'

Regardless of whether the Minister calls these precedential cases 'Sample' or 'Test' cases the true factual position is that these are 'class decisions' 'on the employment status of groups or classes of workers. It is also the true factual position that no legislation exists to allow 'class decisions' that 'class decisions' are not 'reflected' in the 'Code of Practice', that 'Class Decisions' 'to make determinations on the employment status of groups or classes of workers' 'can be subject to separate individual appeals' but because of the unique criteria created for these 'Class Decisions', every separate individual appeal is doomed to failure once the unique criteria are applied. As no legislation exists to allow 'group or class decisions', no legislation exists to allow appeals of the 'class decisions' on the 'determinations on the employment status of groups or classes of workers'

FACT The Social Welfare Appeals Office creates 'Test Cases' involving groups and classes of workers engaged by the same employers, one employer or across an entire sector, determined based on 'Test Cases' which are applied to all workers in the Group or Class working for a group of employers an individual employer or by entire Sector. The Department accepts

and encourages these 'Test Cases' and the Revenue Commissioners agree Special Tax Agreements based on these 'Test Cases'. And all of this is not just outside of the law, class actions are strictly precluded in the Higher Courts and the precedents handed down from the Higher Courts in the area of Employment Status.

b) ***'and only where agreed by the individual'***. The true factual position is that one 'Individual', even several 'individuals' cannot agree to act outside of the law to label all workers present and future, as self-employed based on that one individual's individual circumstances. It is also the true factual position that neither the Department nor the Social Welfare Appeals Office can inveigle another person to act outside of the law. To do so is an offence under Social Welfare law. It is also the true factual position that the 1995 'Test Case' and subsequent 'Special Tax Agreement' for courier employers, had no input whatsoever from couriers. Couriers were given 2 choices, they could be 'Not Employees' under the PAYE system or 'Not Employees' under self-assessment. That workers do not 'Appeal' the unlawful 'Group/Class' decisions, which they have no idea exist, is taken by successive Ministers of Social Protection to imply 'Consent' on the part of workers. 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 Appeals Officers to make determinations on the employment status of groups or classes of workers, which there is not and this is why Secretary General McKeon misled the Public Accounts Committee. The Department is liable for skipping of proper process & individual consideration via unlawful blanket decisions by the Social Welfare Appeals Office which must be set aside.

vi. The Statement:

'A sample case approach has not been taken by the Social Welfare Appeals Office during the tenure of the current Chief Appeals Officer which commenced in 2015 in any case of an appeal where the classification of a worker as an employee or self-employed is the issue under appeal'

is a false statement. The true factual position is that Mr. McGranaghan asked specifically for the sample/test cases referred to by Minister Humphreys in her letter to the Dail Committee on Parliamentary Privileges and Oversight which states:

'some appeals involving a number of workers engaged by the same employers, may be determined based on a sample of cases'

Mr. McGranaghan did not ask if there had been sample/test cases during the tenure of the Current Chief Appeals Officer nor does the reply that there has been no approach of sample/test cases during the tenure of the current Chief Appeals Officer address that Minister Humphreys told the Dail Committee on Parliamentary Privileges and Oversight that there are Precedential 'Sample' cases containing unique criteria which may impact on Mr. McGranaghan . It is also a fact that because Mr. McGranaghan

has been reclassified pre-dating the tenure of the current Chief Appeals Officer that precedential sample/test cases from before 2015 are relevant to Mr. McGranaghan .

It is also a fact that a TEST CASE approach has been taken by the Social Welfare Appeals Office during the tenure of the current Chief Appeals Officer. In 2016, an Appeals Officer stated that he was going to use 16 individual cases of bricklayers and labourers, which were under appeal by JJ Rhatigan, as ONE 'Test Case'. The workers were not asked if they agreed to be a 'Test Case', they were told they were going to be. On seeking expert advice, several of the construction workers wrote to the Social Welfare Appeals Office at the time and strongly protested against the decision of the Appeals Officer to use the 16 individual appeals of their Scope Section decisions, that they were employees, as ONE 'Test Case'. A section of the construction workers' letters state:

> *'Individual Cases*
>
> *There appears to be an attempt on the part of the Social Welfare Appeals Office to deal with all 14 decisions and appeals as one case with all to be heard and decided upon in one hearing. I strongly protest this approach, decisions are based on established facts, not assumptions and as such there is no basis for categorisations purely by occupation. Each case must be assessed on its own merits in accordance with the general precedents of Irish law. Operations which seem to be the same may differ in the actual terms and conditions in any given case.*
>
> *Test Cases*
>
> *Further to the issue of individual cases, the Appeals Officer voiced an intent to use these cases as 'test cases'. I do not wish to be considered as a 'test case'. Although it is correct to recognise that my case has wideranging implications for the building trade, it is incorrect for the Social Welfare Appeals Office to use it as a test case. Considering that each case must be assessed on its own merit, it is highly questionable that the SWAO has the authority to adjudicate on the employment status of persons who have not been assessed on their own merit by SCOPE or the SWAO. In essence, to use these cases as 'test cases' would be to pass judgement on workers who have not been afforded an opportunity to represent themselves or to have representations made on their behalf. The only matter before the SWAO is an appeal of the specific SCOPE decision that I was found to be an employee of JJ Rhatigan, it is impossible to see how considerations other than this very specific case fall within the legal powers of the Social Welfare Appeals Office'*

That an Appeals Officer took the approach of 'Test Cases' (Not 'Sample Case') during the tenure of the current Chief Appeals Officer was confirmed by the current Chief Appeals Officer herself in the Oireachtas SW Committee on 5th December 2019 under questioning by Senators Alice Mary Higgins & Gerard Nash:

'Of the figures I just provided, one appeal had four people attached and another had three. I am aware of a case prior to 2018 to which 16 workers in a specific category were attached'

'I am only aware of one case where there were 16 workers with the same issue and they were unhappy'

'The case that the Senator referred to was a 2016 case involving 16 workers. When it is the exact same appeal contention across 20 or 30 people, it can be an efficient way of dealing with the issue'

FACT As was confirmed by Ministers Doherty & Humphreys, insurability of employment 'class' decisions on group and class of workers, are being created by the Social Welfare Appeals Office and are being used by the Department of Social Protection. That this malpractice has been ongoing for 30 years has a material effect on all workers, particularly on those whose Scope Section Decisions have been appealed to the Social Welfare Appeals Office. Mr. McGranaghan was denied access to these precedential class decisions. That this 'Erroneous Information' was also sent to the Employer's legal representative. is a matter of great concern.

On 18th May 2022, Mr. McGranaghan emailed the SWAO repeating the request for details of the aforementioned sample/test cases. He also requested that the question should be referred to the Circuit Court in accordance with section 307(1) of the Social Welfare Consolidation Act 2005 on the basis that the existing procedures are inadequate for the effective processing of the appeal. Mr. McGranaghan pointed out that the appeals process is a quasi-judicial forum but that the process must adhere to the principles of fair procedure and natural justice.

On 23rd May 2022, Mr. McGranaghan advised that he would not be in attendance at the oral hearing given the circumstances outlined in his correspondence of 18th May.

On 24th May 2002, an 'Oral Hearing' in the Social Welfare Appeals Office commenced.

Facts about 'Oral Hearings':

1. While appellants can request an oral hearing, there is no absolute right to an oral hearing and a request for an oral hearing will not be necessarily granted in all cases.
2. The decision whether to allow an oral hearing is at the sole discretion of the appeals officer. The Appeals Office does not have written procedures for appeals officers outlining when an oral hearing should be held.
3. Where the Appeals Officer is of the opinion that the appeal can be determined on the basis of the documentary evidence and without the need for an oral hearing, she or he may determine the appeal summarily (Article 13).
4. In practice, in forming an opinion as to whether an appeal can properly be determined without an oral hearing an Appeals Officer will have regard to:

   the overall nature of the appeal and the question to be determined,

   any request that has been made for an oral hearing,

whether there are unresolved conflicts in the documentary evidence presented by the parties as to any matter essential to the determination of the appeal,

whether there are any disputes as to the facts or differing professional opinions.

This is not an exhaustive list and as Appeals Officer may determine an appeal on a summary basis it is important that all the documentary evidence and grounds relied on are submitted with the notice of appeal.

5. Where the Appeals Officer considers that an oral hearing is required to determine the question at issue, she or he will arrange for an oral hearing of the appeal (Article 14).

6. The Appeals Office has stated that, in practice, an oral hearing is held in situations where there is a conflict of evidence or a judgement to be made, or where there are multiple parties involved (e.g., insurability of employment).

7. The question before the Appeals Officer for determination is the same question as was before the Deciding Officer/Designated Person who made the initial decision. The Appeals Officer is not confined to the grounds on which the initial decision was based and she or he may consider the question as if it were being determined for the first time (Section 311).

8. Appeals officers consider cases on a de novo basis rather than determining whether a deciding officer's decision is or is not correct.

9. The Appeals Officer will begin the hearing by introducing him/herself and all other persons present. She or he will also indicate if there are other persons whom it is intended to call to give evidence in the course of the hearing. The Appeals Officer will then outline the Deciding Officer's decision against which the appeal is being made, the grounds of the appeal and the Department's response to these grounds. Evidence will be taken from any witnesses.

10. At the hearing the appellant is afforded every opportunity to set out his or her case and to question any evidence offered by witnesses. Alternatively, his or her representative, should she or he have one, may do this on his or her behalf.

11. Following his or her consideration of the appeal, including evidence adduced at the oral hearing, the Appeals Officer will normally be in a position to make a decision within 2/3 weeks of the hearing.

That Appeals are heard on a ‘de novo’ basis was confirmed on 24th May 2022 by Minister Humphreys in reply to a PQ from Deputy Gannon. In this reply, Minister Humphreys states:

> ***“The time taken to process an appeal reflects a number of factors including that the appeals process is a quasi-judicial process with Appeals Officers being required to decide all appeals on a ‘de novo’ basis***”

An account of what transpired at this ‘Oral Hearing’ is contained in paragraph 8 of Exhibit 43, which states:

> ***'The Oral hearing opened on 24 May 2022. MEPC, the appellant company, was represented by: Mr Derek Ryan BL, Mr Paul Claffey, Mr Michael English and Ms Bernie Greally. The worker and notice party, Mr McGranaghan, did not attend as advised. The communication from Mr McGranaghan was revealed to the appellant company and after understandable deliberation*, MEPC *concluded that the request for a referral under section 307(1) of the Social Welfare Consolidation Act 2005 would have to be answered by the Chief Appeals Officer and the hearing adjourned'***

Further evidence contained in paragraph 11, Exhibit 43, states that representatives of the Minister, the 'Respondent' to the 'Appellant', were not invited to the 'Oral Hearing' on 24th May 2022, as follows:

> ***"The hearing was told that the*** (Department of Social Protection) ***officials had not been requested to attend"***

In the case of an appeal against the decision of a Deciding Officer/Designated Person, the Chief Appeals Officer is obliged to notify the Minister of the appeal. Under Article 14 of the Social Welfare (Appeals) Regulations, 1998, the Appeals Officer is obliged to notify the respondent of the date and place of the appeal hearing.

Despite the obligation on the Appeals officer in Article 14 of the Social Welfare (Appeals) Regulations, 1998, the Appeals Officer accepts and concedes that he took it upon himself not to invite the respondent as follows

> "***The hearing was told that the*** (Department of Social Protection) ***officials had not been requested to attend***"

No reasonable person could accept the Appeals Officer's decision to ignore his obligation to notify the respondent.

FACTS

- On 24th May 2022, a private meeting took place between the Appeals Officer and the Employer Appellant.
- The 'Notice Party' had been requested to attend by the Appeals Officer but had declined to attend following the failure of the Social Welfare Appeals Office to comply with his request for details of 'Sample/Test' Cases.
- The 'Respondent' to the Appeal is the Minister for Social Protection. Neither the Minister nor representatives of the Minister, were requested to attend at this meeting by the Appeals Officer.
- At this meeting, the only matters discussed were two requests from the 'Notice Party' (Mr. McGranaghan). The two requests were:

    1. **"I have been made aware of test/sample cases used by the Social Welfare Appeals Office in determining insurability of employment. In a letter from the Minister for Social Protection**

dated 2nd December 2021 (Exhibit 17), to the clerk of the Dáil Committee on Parliamentary Privileges and Oversight, it is stated that some appeals 'may be determined based on a sample of cases'. I would like to request a copy of these test cases please"

2. **Upon failure to comply with the Notice Party's request for Sample/Test Cases, a further request from the Notice Party that the Appeal should be referred to the Circuit Court in accordance with section 307(1) of the Social Welfare Consolidation Act 2005 on the basis that the existing procedures are inadequate for the effective processing of the appeal.**

- That 'Sample/Test' Cases exist was stated on 2nd December 2021 by Minister Humphreys in her letter (Exhibit 17) to the Dail Committee on Parliamentary Privileges and Oversight. It was this statement by the Minister which gave rise to the Notice Party's request. In her letter to the Committee, Minister Humphreys states:

  'some appeals involving a number of workers engaged by the same employers, may be determined based on a sample of cases'

- That 'Sample/Test' Cases exist was confirmed by the Social Welfare Appeals Office on:

  9th of January 2019 (Exhibit 8) in which the SWAO states:

  'On occasion over the years an approach of having 'Test Cases' has been taken or considered by the Social Welfare Appeals Office'

  5th of April 2019, the Social Welfare Appeals Office wrote:

  "On a very few occasions over the years the approach of having sample cases has been taken by the Appeals Office'

  5th December 2019, at the Oireachtas Social Welfare Committee, the Chief Appeals Officer stated:

  'I have occasionally, and usually where a number of workers engaged by the same employer are concerned and have individually submitted an appeal, been asked to make decisions on a sample number of cases'

- That 'Sample Cases' and 'Test Cases' are not two distinct issues was confirmed on 5th December 2019 at the Oireachtas Social Welfare Committee by Mr. Tim Duggan, Assistant Secretary in charge of Pensions, PRSI & International Polices with the Department of Social Protection. Mr. Duggan stated:

  "We do not use that phrase (Test Case) ***anymore. Essentially these were sample cases at the time"***

- That the Social Welfare Appeals Office creates 'Test Cases' and that the Department of Social Protection accepts and uses these 'Test Cases' for the purpose of the wholesale classification of workers in the Courier Employer sector, namely, saying that all Couriers are self-employed because one courier is, was accepted and conceded by the Social Welfare Appeals Office, the Department of Social Welfare and the Minister for Social Welfare in February 2002 and this FACT is contained in an official Report from the Ombudsman dated February 2002.

- That 'Sample Cases' and 'Test Cases' are not two distinct issues, and further that no legislation exits to allow the use of 'Test/Sample' cases, was confirmed by Minister Regina Doherty on 25th March 2019 and was published in the Irish Times. The Minister stated that ***'Deciding Officers'*** of the Department of Social Protection were making '***Class Decisions***' ***'on the employment status of groups or classes of workers***' and that no legislation exists to allow such ***'Class Decisions'***.

- The 'Issue' in contention at this private meeting between the Appeals Officer and the Appellant Employer on 24th May 2022, was the response of the Social Welfare Appeals Office to the Notice Party's request for 'Sample/Test' Cases, which was:

  > ***'A sample case approach has not been taken by the Social Welfare Appeals Office during the tenure of the current Chief Appeals Officer which commenced in 2015'***

  and whether that 'response' from the Social Welfare Appeals Office justified the Notice Party's subsequent request to the Social Welfare Appeals Office that the Appeal should be referred to the Circuit Court in accordance with section 307(1) of the Social Welfare Consolidation Act 2005 following the failure of the Social Welfare Appeals Office to comply with the Notice Party's request for 'Sample/Test Cases'.

- At this meeting, the Employer Company concluded that the Notice Party's request for a referral to the Circuit Court under section 307(1) of the Social Welfare Consolidation Act 2005 would have to be answered by the Chief Appeals Officer.

- The meeting adjourned.

- Mr. McGranaghan did not ask if there had been sample/test cases during the tenure of the Current Chief Appeals Officer nor does the reply that there has been no approach of sample/test cases during the tenure of the current Chief Appeals Officer address that Minister Humphreys told the Dail Committee on Parliamentary Privileges and Oversight that there are Precedential 'Sample' cases. It is also a fact that because Mr. McGranaghan had been misclassified pre-dating the tenure of the current Chief Appeals Officer that precedential sample/test cases from before 2015 are relevant to Mr. McGranaghan .

- A TEST CASE approach has been taken by the Social Welfare Appeals Office during the tenure of the current Chief Appeals Officer. In 2016, an Appeals Officer stated that he was going to use 16 individual cases of bricklayers and labourers, which were under appeal by JJ Rhatigan, as ONE 'Test Case'. That this approach of test cases in 2016 occurred was confirmed by the Chief Appeals Officer to the Joint Oireachtas SW Committee on 5th December 2019.

- The Social Protection Minister is the 'Respondent', nobody was at this meeting representing the 'Respondent'. Only the employer and the Appeals Officer were present. It was Minister Humphreys who stated that 'Sample Cases' are used. As the 'Respondent' to the 'Appellant Employer', it is inconceivable that the Minister or her representatives were not asked to appear at this private meeting which was convened because the Minister's statement was directly contradicted by the Social Welfare Appeals Office.

- As the 'Respondent' was not present at this private meeting, the purpose for 'requesting' that the Notice Party attend remains unclear. The Notice Party could not 'Clarify' the refusal of the Appeals Office to comply with the request of the Notice Party for the 'Sample Cases' confirmed to exist by Minister Humphreys.

- As the 'Respondent' was not present at this private meeting, the purpose for 'requesting' the Employer Appellant to attend remains unclear. The Employer Appellant could not 'Clarify' the refusal of the Appeals Office to comply with the Notice Party's request for the 'Sample Cases' confirmed to exist by Minister Humphreys.

- In Exhibit 35, it further states:

  "The hearing was told that the (Department of Social Protection) ***officials had not been requested to attend … as the then prevailing departmental policy had been not to attend hearings, but that policy had recently changed"***

  ## FACTS

  i. Between 1995 and 2019, it was demonstrably the policy of the Department of Social Protection for Scope Section Deciding Officers and Social Welfare Inspectors to attend at 'Oral Hearings' of Social Welfare Appeals Office Appeals of the decisions and investigations they were involved in as representatives of the 'Respondent', the Minister for Social Protection.

  ii. The Minister for Social Protection is the 'Respondent'. It is inconceivable that after 2019, the 'Policy' of the 'Respondent' to an appeal was not to attend at an appeal.

iii. The Minister for Social Protection, as the 'Respondent', was not asked by the Social Welfare Appeals Office to attend at this 'Oral Hearing'. At no time has the Minister confirmed that it was Department policy for the Minister, as respondent, not to be represented at appeals between 2019 and 2022.

- It was not 'appropriate' that this private meeting took place. It was not appropriate to seek the Employer Appellant's opinion on an issue that could only be addressed by the Minister or her representatives and the Chief Appeals Officer.

- The absence of the Minister or her representatives as the 'Respondent' at this meeting, confirms that this was not actually an 'Oral Hearing', it was a private meeting between the Appeals Officer and the Appellant Employer. Without the presence of the 'Respondent', nothing at this meeting is relevant to the Appeal of the Deciding Officer's decision.

On an unknown date after 24th May 2022, a decision by the Chief Appeals Officer is recorded in Exhibit 43 as follows:

> ***'The Chief Appeals Officer did not consider that it was appropriate to refer the case to the Circuit Court under the provisions of 307 of the act'***

On 14th July 2022, the SWAO wrote to Music Industry worker and (Employer) Ltd outlining the timeline of the appeal process thus far. In that correspondence the SWAO incorrectly quoted the correspondence from the 16 May 2022 which has been clarified above. The SWAO also agreed with Mr. McGranaghan 18th May 2022 assertion that the *"appeals process is a quasi-judicial forum"* and goes as far as to say that Music Industry worker *"rightly pointed out"* that fact.

On 19th October 2022, an email was sent from the Social Welfare Appeals Office to Mr. McGranaghan . In this email it states:

> ***'I acknowledge*** (Mr. McGranaghan 's) ***stated reasons for withdrawing from the appeals process but I am still urging him to participate. In the 1995 Social Welfare Appeals Office's annual report, which is referenced in his correspondence to the Committee on Public Accounts, there is a synopsis of a motor-cycle couriers case at pages 24&25. That case was decided on the facts of that case after an oral hearing where the appeals officer found the following critical features of self-employment: the absence of control; substitution; freedom to refuse a job; flexibility of the hours of availability. While these are still relevant considerations, a previous appeals officer's decision is not binding or precedent setting and has no relevance to this appeal relating to*** (Mr. McGranaghan 's) ***employment status'***

FACTS

i. The 1995 Social Welfare Appeals Office's annual report contains a synopsis of a motorcycle, bicycle, and van couriers 'Test Case' at pages 24&25. That it is a 'Test Case' and the Social Welfare Appeals Office created 'Test Case' and that the Department of Social Protection accepts and uses this 'Test Case' for

the purpose of the wholesale classification of workers in the Courier Employer sector, namely, saying that all Couriers are self-employed because one courier is, was accepted and conceded by the Social Welfare Appeals Office, the Department of Social Welfare and the Minister for Social Welfare in February 2002 and this FACT is contained in an official Report from the Ombudsman dated February 2002.

ii. The Appeals Officer's statement that the Appeals Officer in the 1995 'Courier' 'Test Case' found critical features of self-employment for couriers to be deemed as self-employed are:

- the absence of control
- substitution
- freedom to refuse a job
- flexibility of the hours of availability'

is a FALSE STATEMENT. The critical features of self-employment for couriers to be deemed as self-employed, by group and class, found the by the Appeals Officer in the 1995 'Courier' 'Test Case' are:

- Provided his own vehicle and equipment
- Was responsible for all expenses including tax, maintenance, insurance etc and
- Payment was made on the basis of rate per job plus mileage allowance

iii. The Appeals Officer's statement:

'While these are still relevant considerations'

Is a FALSE STATEMENT. The considerations:

- the absence of control
- substitution
- freedom to refuse a job
- flexibility of the hours of availability'

ARE NOT the considerations which determine the employment status of all couriers by group and class. As was confirmed by the Ombudsman in 2002 and again by the Revenue Chairperson in 2021 to the Public Accounts Committee, all couriers are labelled as self-employed by group and class based on the considerations:

- Provided his own vehicle and equipment

- Was responsible for all expenses including tax, maintenance, insurance etc and
- Payment was made on the basis of rate per job plus mileage allowance

No other considerations apply for couriers. The Revenue Chairperson, the Social Protection Minister, the Chief Appeals Officer and the Secretary General of the Department have all stated that they believe the 'Criteria/Considerations' from the 1995 'Test Case' are reflected in the 'Code of Practice'. The 1995 'Test Case' 'Criteria/Considerations' are not reflected in the 'Code of Practice' but it is significant that the Revenue Chairperson, the Social Protection Minister, the Chief Appeals Officer and the Secretary General of the Department believe that they are and that one must look 'FIRST' to the 'Code of Practice', a point the Revenue Chairperson has been adamant on. Because the Revenue Chairperson, the Social Protection Minister, the Chief Appeals Officer and the Secretary General of the Department insist on looking to the 'Code of Practice' before considering the Case Law and precedents handed down by the Courts, their only 'Criteria/Considerations' are:

- Do you own your own vehicle?
- Are you paid in an A-typical way?

These two 'Criteria/Considerations' are used to prevent individual couriers from successfully challenging their employment status in the Social Welfare Appeals Office. Couriers are not informed that they are self-employed by group and class because of a 1995 'Test Case'. Couriers have not been asked if they 'Agree' to a Special Arrangement between the Department of Social Protection, the Revenue Commissioners and Courier Employers to label them as 'Self-employed' by group and class for which no legislation exists.

Couriers are unaware that in the Social Welfare Appeals Office, once it has been established that the courier owns his/her own vehicle and is paid in an A-typical way, the courier is automatically deemed to be self-employed.

Couriers are unaware that everything after that point in a Social Welfare Appeals Office appeal hearing is theatre and will not in any way impact on the pre-determined group/class decision that they will be found to be self-employed.

iv. The Appeals Officer's statement:

> ***'a previous appeals officer's decision is not binding or precedent setting'***

is a FALSE STATEMENT. The 1995 'Test Case' is both 'Binding' and 'Precedent Setting'. That is the very purpose of a 'Test Case'.

v. The Appeals Officer's statement that previous 'Sample/Test' cases have:

'no relevance to this appeal relating to (Mr. McGranaghan 's) ***employment status'***

is a FALSE STATEMENT.

- **The FACT, that since at least 1993, the Department of Social Welfare and the Social Welfare Appeals Office have been creating and using 'Class Decisions' 'on the employment status of groups or classes of workers' and that no legislation exists to allow such 'Class Decisions', most definitely has relevance to Mr. McGranaghan who is labelled as self-employed by group and class.**
- **The Fact, that from 1993 – 9th January 2019, the Department, Ministers and the Social Welfare Appeals Office accepted and conceded to the use of 'Test Cases' but that since 9th January 2019, the Department, Ministers and the Social Welfare Appeals Officer have been denying the use of 'Test Cases', most definitely has relevance to Mr. McGranaghan who is labelled as self-employed by group and class.**
- **It is not the position of the Appeals Officer to decide that previous 'Test Cases', for which no legislation exists, have no relevance to the Music Industry worker. 'Relevance' can only be determined upon examination of the previous 'Test Cases' by Mr. McGranaghan and the Appellant Employer who have every right to sight of previous 'Test Cases' in order to make or defend their position.**

On 1st November 2022, the 'Private Meeting/Oral Hearing' RESUMED. Mr. McGranaghan was not present due to the continuing refusal of the Social Welfare Appeals Office to comply with his request for sight of previous 'Test Cases' and the failure of the Chief Appeals Officer to refer the appeal to the Circuit Court. The Appellant Employer Company was represented by the same people as it was on 24th May 2022.

The Scope Section Deciding Officer and the Social Welfare Inspector who investigated the case were invited by the Appeals Officer on this occasion. The Appeals Officer has stated that it was not the policy for the 'Respondent', the Minister for Social Protection, to be represented at 'Oral Appeals' between the period of 2019 and 2022 and that his invite to the 'Respondent' was as a result of a policy change at some time in 2022.

At no time has the Minister confirmed that it was Department policy for the Minister, as respondent, not to be represented at appeals between 2019 and 2022. At no time has the Minister confirmed that policy changed in 2019 and then changed back again in 2022. It would be a serious matter of concern if the 'Respondent' has not responded to appeals between 2019 and 2022.

On 20th January 2023, an appeal decision (Exhibit 43) issued from the Social Welfare Appeals Office in the Appeal against the Scope Section Deciding Officer's decision that Mr. McGranaghan was an employee. The Social Welfare Appeals Office Appeals Officer

overturned the decision of the Scope Section Deciding Officer. In the Appeal decision of the Social Welfare Appeals Office, it states:

> ***'I attempted to assuage the*** (Music Industry worker's) ***concerns but was unable to provide him with the test cases he is seeking. While test cases may have been used in the past, they have been used in very limited and specific circumstances and are certainly not relied upon as precedents'***

FACTS

- 3 years and 46 days after the Chief Appeals Officer told the Joint Oireachtas Committee on Family Affairs and Social Protection Committee that:

  > ***'our office does not use test cases'***

  the Appeals Officer in Exhibit 43 admits:

  > ***'While test cases may have been used in the past'***

- 'Test Cases' were not only used in the past, 'Test Cases', the precedents arising from them and the overriding precedent that the Social Welfare Appeals Office and the Department of Social Protection can make group/class insurability of employment 'class' decisions on workers, without legislation to do so, are still being created and used presently.

- ***'they*** (Test Cases) ***have been used in very limited and specific circumstances'*** is a false statement. The evidence shows that 'Test Cases' and the precedents they create, are used across a wide variety of employment situations, by sector, by employer and by groups of employers.

- ***'are certainly not relied upon as precedents'*** is a false statement. The 1995 'Test Case' created precedents in the form of 'Criteria', created an entire self-employed class of worker known as 'Owner/Driver' and is used as a precedent by the Social Welfare Appeals Office and the Department of Social Protection to allow them to continue to misclassify group/classes of workers as self-employed in other sectors such as construction.

- ***'was unable to provide him with the test cases he is seeking'*** is a false statement. On 19th October 2022, the Appeals Officer clearly identified that:

  > ***'In the 1995 Social Welfare Appeals Office's annual report, which is referenced in his correspondence to the Committee on Public Accounts, there is a synopsis of a motor-cycle couriers case at pages 24&25'***

  That this 'case' was a 'Test Case' was accepted and conceded by the Minister and the Department in 2002 and that FACT is recorded in the Ombudsman's report of February 2002. The Appeals Officer WAS ABLE to provide this 'Test Case' to Mr. McGranaghan but chose not to.

  The Appeals Officer could have supplied Mr. McGranaghan with the 'Test Cases' which gave rise to:

- Actors in RTÉ being labelled as 'self-employed' by Social Protection, Revenue and RTÉ, despite tax and employee's PRSI and RTE employer's PRSI being deducted, at source from RTE, through the PAYE system.
- 'Employees' in the Construction Sector being labelled as self-employed through the use of the eRCT system and despite the Social Welfare Appeals Office confirming in 2017 that Construction workers were misclassified as self-employed by use of eRCT, no action has been taken to prevent this misclassification.
- Up to 600 workers in RTÉ being misclassified by group and class.
- Mental Health Cllrs being misclassified as self-employed by group and class.
- Music Industry workers being misclassified as self-employed by group and class.

The Appeals Officer could have supplied Mr. McGranaghan with every copy of the SWAO Annual Report since 1993 as the SWAO Annual report contains 'Test Cases' which are not identified in the SWAO Annual Report as 'Test Cases', but, according to the Ombudsman in 2002, any or all of these 'case studies' in the SWAO Annual Report can be 'Test Cases' if the Department of Social Protection so decides.

This is not an exhaustive list of where the Appeals Officer could have provided Mr. McGranaghan with 'Test Cases'. The motorcycle courier appeal in 2000 was used as a precedent in the 2001 bicycle Scope Decision, which in turn is the precedent used today for workers who deliver post, parcels, pizzas etc. by bicycle.

- ***'I attempted to assuage the*** (Music Industry worker's) ***concerns'*** is a false statement. Although within in his power to do so, the Appeals Officer DID NOT attempt to assuage Mr. McGranaghan concern about the existence and use of test cases.

FACTS

1. The Appeals Officer refused to comply with Mr. McGranaghan request for 'Test/Sample' cases on 25th April 2022.
2. The Appeals Officer refused to comply with Mr. McGranaghan request for 'Test/Sample' cases on 5th May 2022.
3. The Appeals Officer refused to comply with Mr. McGranaghan request for 'Test/Sample' cases on 16th May 2022.
4. The Appeals Officer refused to comply with Mr. McGranaghan request for 'Test/Sample' cases on 18th May 2022.
5. On 24th May 2002, the Appeals Officer had a private meeting with the Employer Appellant and did 'assuage' any concerns the employer

appellant had in regard to the issue of 'Test Cases' raised by Mr. McGranaghan.

6. It is untrue to say that the Appeals Officer was 'Unable' to supply test cases to Mr. McGranaghan, the true factual position is that the Appeals Officer was unwilling to admit to the use of Test Cases and therefor was unwilling to supply test cases to Mr. McGranaghan.

7. AT ALL TIMES, Mr. McGranaghan was fully entitled to sight of all previous test cases. That the Appeals Officer refused to supply or even admit to the use of 'Test Cases' guaranteed that Mr. McGranaghan could not get a fair Appeal Hearing in or from the Social Welfare Appeals Office.

8. AT ALL TIMES, it was essential for Mr. McGranaghan to have sight of test cases in order for Mr. McGranaghan to have access to the same 'Test Cases' and 'Precedents' used by the Social Welfare Appeals Office and the Department.

9. AT ALL TIMES, the Appeals Officer and the Social Welfare Appeals Office engaged with unacceptable bias against Mr. McGranaghan and bias toward the Appellant Employer.

In the appeal decision (Exhibit 43) which issued from the Social Welfare Appeals Office on 20th January 2023, it further states:

> ***'In the absence of the notice party worker, and in fairness to him, I did not conduct the hearing on a de novo basis'***

The statement ***'In the absence of the notice party worker, and in fairness to him'*** is a false statement.

- The Notice Party was absent due to the unfair decisions of the Appeals Officer not to comply with the Notice Party's requests for 'Test Cases'.
- That an Oral Hearing proceeded without 'Test Cases' being supplied was unfair in the extreme to the Notice Party.
- That an Oral Hearing proceeded without the acknowledgement of the use of 'Test Cases' by the Social Welfare Appeals Office was unfair in the extreme to the Notice Party.
- It was not the ***'Fairness'*** of the Appeals Officer which forced the Appeals Officer not to hear the appeal 'De novo', it was the refusal of the Notice Party to attend. An Appeals Officer may, by giving notice in writing, require a person to attend an oral hearing and to produce any relevant documents. A person failing to comply with such a notice is guilty of an offence and, on summary conviction, may be fined up to €1,500 (Section 314). This provision has been availed of to require witnesses to attend to give evidence on the question being determined. This happened with courier 'Notice Party' in 2000 and with the 16 Construction worker 'Notice Parties' in 2016.

It was given in evidence to both the Public Accounts Committee and the Social Protection Committee that worker 'Notice Parties' were being forced to attend at Social Welfare Appeals Office appeals, under threat of fine, with no legal representation, where the Social Welfare Appeals Office then used secret 'Test Cases' to overturn Scope Section decisions.

Mr. McGranaghan's Scope Section decision, was a 'high profile' case. Mr. Mc Granaghan was fully prepared (and expected) to contest a Section 314 order to appear at the Social Welfare Appeals Office to the Courts on the basis that the Appeals Officer had failed to comply with Mr. McGranaghan's request for sight of 'Sample/Test Cases'.

Mr. McGranaghan fully expected the Appeals Officer to follow the procedures laid out in the SW Consolidation Act and that he would have sight of test/sample cases, by order of the Court, before an appeal commenced.

The Appeals Officer could not accept any new evidence in an 'Oral Hearing' from the Employer Appellant without the 'Notice Party' present to answer to any new evidence adduced.

The Appeals Officer failed to issue a Section 314 to Mr. McGranaghan and that is why the Appeals Officer was forced to attach a NOT 'de novo' label to the Appeal after the appeal was heard de novo.

The Appeals Officer failed to issue a Section 314 order to Mr. McGranaghan not out of 'fairness', but instead, to prevent the issue of the use of Sample/Test cases coming before the Courts.

In the appeal decision (Exhibit 43) which issued from the Social Welfare Appeals Office on 20th January 2023, the Appeals Officer further states:

'***I did not conduct the hearing on a de novo basis'***

FACTS

- In all of the cases referred to in this evidence, the appeal of Mr. McGranaghan's Scope Section decision that he was an employee, is the only Social Welfare Appeals Office appeal which was NOT HEARD 'De Novo'.
- As a 'Not De novo' appeal hearing, the Appeals Officer is confined to the grounds on which the decision of the deciding officer was based and cannot accept any further evidence, in particular, any evidence adduced at the 'Oral Hearing'. What that means is that it's Scope Section v Social Welfare Appeals Office. No new evidence, all that exists is the Scope Section decision and the written 'Grounds for Appeal' given by the Employer Appellant.
- Both the Scope Section Deciding Officer and the Social Welfare Appeals Office have looked at the same evidence and the exact same grounds for appeal. The Scope Section did not review its decision in light of the Grounds for Appeal. The Social Welfare Appeals Office, looking at the exact same

evidence and exact same grounds for appeal, decided to overturn the Scope Section Deciding Officer's decision.

- Both the Scope Section and the Social Welfare Appeals Office are offices of the Department of Social Protection, manned by Social Protection employees who serve at the pleasure of the Minister and can serve elsewhere in the Department at the discretion of the Minister.
- The only question is could the Appeal's Officer reasonably overturn the Scope Section Deciding Officer's decision with no new evidence and confined to the grounds on which the decision of the deciding officer was based.
- Clearly, two offices of the Department of Social Protection are making different determinations based on the exact same evidence. Only one of them can be correct.
- As this appeal decision was not de novo, and is a dispute between two offices of the Department of Social Protection on the applicable legislation, neither of which is a legal authority, it is now incumbent on the Minister to seek a judicial review in order to rectify what she herself calls a matter of:

'***Public importance, public interest and significant public concern'***

It is unfair in the extreme that Mr. McGranaghan should be forced to the High Court to 'settle' a dispute between two offices of the Department of Social Protection on the correct application of the statutory provisions in Social Welfare legislation as well as the legal principles set down in relevant caselaw, when both offices are in dispute over the exact same evidence because the case was not heard de novo and both offices claim to be applying the same statutory provisions in the Social Welfare legislation as well as the same legal principles set down in relevant case law.

It has been given in evidence to both the Public Accounts Committee and the Oireachtas Social Protection Committee that the Appeals Office will overturn any decision which threatens a pre-existing 'Test Case' and that the worker will be forced to the High Court. This time, because the appeal decision is not de novo, the obligation to seek a judicial review lies squarely with the Minister.

The Appeals Officer's Decision

1. **The Appeals Officer gave his decision:**

'*The Chief Appeals Officer has asked me to write to you about your Insurability appeal, and to tell you that the Appeals Officer's decision is as follows:*

Decision of Appeals Officer:

"The appeal by MEPC Music Limited is allowed."'

Point of Fact:

- This was not an 'Appeal', this was a Not 'De novo' review of the Scope Section Deciding Officer's decision.

2. **The Appeals Officer set out the issue which was before the Appeals Office:**

‘*Question at Issue:*

The question at issue is whether the worker, Matthew McGranaghan, has been working for the appellant company, MEPC Music Ltd., under a contract of service or under a contract for services during the period from 1 January 2014 to 26 August 2021 when Mr. McGranaghan claims he had effectively been fired. The issue arose when the worker sought a determination on his employment status on 8 May 2020. Mr. McGranaghan in an email of 28 September 2021, advised that MEPC would only require his services in a self-employed capacity’

Points of Fact:

- The statement by the Appeals Officer that the question at issue covers the period from 1st January 2014 until 26 August 2021 is factually incorrect.
- The question at issue from 1st January 2014 until the date of Mr. McGranaghan’s dismissal on the 22nd September 2021.
- The Appeals Officer is factually incorrect that an email of 28th September 2021 was a ***‘Question at Issue’*** before the Appeals Officer.
- The Scope Section decision was issued on 19 November 2020; the email of 28th September 2021 is after the Scope Section decision, and after the Grounds of Appeals were issued. It is ‘De novo’ evidence.
- Mr. McGranaghan did not write to the Scope Section, nor the Social Welfare Appeals Office on 28th September 2021 nor did he share the aforementioned email with either office.
- The true factual position is that the email in question was not known to the Appeals Officer at the time of the “not de novo” de novo Oral Appeal Hearing on the 1st November 2022.
- The true factual position is that the email in question was forwarded as part of another email by MEPC Music Ltd to the Social Welfare Appeals Office on the 4th November 2022, three days after the “not de novo” de novo Oral Appeal Hearing.
- The true factual position is the contents of the 4th November 2022 email submitted by MEPC Music Ltd to the Social Welfare Appeals Office as “further evidence”, three days after the “not de novo” de novo Oral Appeal Hearing took place, raises several issues of extreme concern.
- The 4th November 2022 email and its entire contents from MEPC Music Ltd to the Social Welfare Appeals Office show that:
    - The statement by the Appeals Officer that Mr. Mcgranaghan ***“advised that MEPC would only require his services in a self-employed capacity”*** is a false statement.

- Mr. McGranaghan did not 'advise' ***"that MEPC would only require his services in a self-employed capacity"***.
- A third party, namely Ms. Erika Ryan, an employee of a separate entity namely County Mayo Radio Limited (Midwest Radio) was sent Mr. McGranaghan's Amended Tax Credit Certificate containing personal and sensitive information by MEPC Music Ltd.
- This third party, Ms. Erika Ryan, claims to have used Mr. McGranaghan's personal information to then call the Revenue Commissioners and query his tax credits.
- This third party, Ms. Erika Ryan, then accuses Mr. McGranaghan in an email to MEPC Music Ltd, of personally amending his own Revenue details in order to obtain Tax Credits.
- MEPC Music Ltd included a copy of Mr. McGranaghan's Amended Tax Credit Certificate to the Social Welfare Appeals Office which the Appeals Officer completely ignores for the purposes of this "not de novo" de novo Oral Appeal Hearing.
- The Appeals Officer not only ignores Mr. McGranaghan's Amended Tax Credit Certificate but also conceals the fact that he has knowledge of it for the purposes of this "not de novo" de novo Oral Appeal Hearing.
- On the 3rd of November 2022, two days after the "not de novo" de novo Oral Appeal Hearing, the Social Welfare Appeals Office emailed MEPC Music Ltd and shared, without Mr. McGranaghan's authorisation and to a third party, Mr. McGranaghan's PRSI history and status with MEPC Music Ltd.
- The PRSI history and status of Mr. McGranaghan which was shared by the Social Welfare Appeals Office to MECP Music Ltd on the 3rd November 2022 contained more information than had originally been supplied by Mr. McGranaghan in his INS1 Form, in the Scope section investigation, or in any subsequent correspondence by Mr. McGranaghan to the Social Welfare Appeals Office after MEPC Music Ltd lodged their Grounds for Appeal.
- MEPC Music Ltd confirm that Mr. McGranaghan had ***"over 200 services rendered"*** with MEPC Music Ltd in 2019.
- MEPC Music Ltd confirm that a third party, Ms. Erika Ryan, contacted "Revenue's Employers Helpline" on the 29th September 2021.
- MEPC Music Ltd then accuse Mr. McGranaghan of updating his own details via his own personal My Revenue ID.

- All of the above was submitted as "further evidence" THREE days after the "not de novo" de novo Oral Appeal Hearing took place on the 1st November 2022.

- The true factual position is that not only is the email of the 28th September 2021 de novo evidence, the fact that the Appeals Officer was not aware of it until three days after the "not de novo" de novo Oral Appeal Hearing took place makes it double de novo evidence.

- The true factual position is that on 30th March 2021, the Revenue Commissioners amended Mr. McGranaghan's Tax Credit Certificate in line with the decision of the Deciding Officer from Scope section without any request for Mr. McGranaghan.

- Revenue Commissioners take their lead from the Department of Social Protection in matters of tax relating to a person's PRSI status. This was confirmed in January 2019 by the Revenue Chairman to Deputy Paul Murphy in the Oireachtas Finance Committee. This was later confirmed in writing by the Minister for Finance in a Parliamentary Question in 2022.

- The true factual position is that Mr. McGranaghan's tax and PRSI status for the years he was mislabelled as self-employed by MEPC Music Ltd is a consequence of both bogus self-employment and being mislabelled by employers in order to avoid PRSI obligations.

- The true factual position is that the Appeals Officer not only accepted de novo evidence, but de novo evidence submitted three days after the "not de novo" de novo Oral Appeal Hearing and 'cherry-picked' anything in support of MEPC Music Ltd, no matter how improper, and ignored any evidence in support of Mr. McGranaghan or in support of the decision by the Deciding Officer, and committed those in writing within this Appeal Decision.

- The true factual position is that the Appeals Officer ignored the evidence of Mr. McGranaghan's Amended Tax Credit Certificate from the Revenue Commissioners.

- The true factual position is that the Appeals Officer concealed the fact he knew about the evidence of Mr. McGranaghan's Amended Tax Credit Certificate from the Revenue Commissioners.

- The true factual position is that MEPC Music Ltd concealed the fact of Mr. McGranaghan's Amended Tax Credit Certificate from the Revenue Commissioners from the "not de novo" de novo Oral Appeal Hearing.

- The true factual position is that MEPC Music Ltd attempted to use Mr. McGranaghan's Amended Tax Credit Certificate from the Revenue Commissioners as a weapon to make scurrilous and unfounded allegations of wrongdoing by Mr. McGranaghan which were primarily relayed as hearsay evidence by a third party, Ms Erika Ryan, an employee for a separate

company who should not have had access to or been given personal and sensitive information belonging to and about Mr. McGranaghan.

- The true factual position that Ms Erika Ryan is identified as a "third party" is corroborated by the Social Welfare Appeals Office in a Freedom of Information request numbered 2023-20620, in which redactions pertaining to Ms. Erika Ryan occurred because information was "relating to a third party."
- The true factual position is that MEPC Music Ltd confirmed the identity of the third party, Ms. Erika Ryan, in the email dated 4th November 2022.
- These accusations against Mr. McGranaghan's good name and character have also been submitted as evidence in a written legal document by MEPC Music Ltd to the Workplace Relations Commission.
- Ms. Erika Ryan attended an online WRC hearing on the 20th October 2022 and was identified by MEPC Music Ltd's legal representative as an employee of MEPC Ltd. Ms. Erika Ryan did not appear on camera and not identify herself during this online hearing and left the remote hearing after about 15 minutes.
- The contents of the email dated 4th November 2022, and the contents within that email, is prima facie evidence that an offence may have been committed under Section 251 of the Social Welfare Consolidation Act 2005.

3. **In 'Point 1' of the Appeals Officer's decision, he states:**

'The worker, Mr. McGranaghan, is a well-known and accomplished musician. He had been performing in the band (trading as MEPC Music Ltd) backing popular singer, Michael English, from September 2013 to lockdown in March 2020. On 8 May 2020, Mr. McGranaghan sought a determination on his working status and this Department's Scope Section undertook an investigation. Scope determined that the worker had been working under a contract of service and was therefore insurable at PRSI Class A. MEPC appealed that decision'

Point of Fact:

- This was not an 'Appeal', this was a **Not** 'De novo' review of the Scope Section Deciding Officer's decision.

4. **In 'Point 3' of the Appeals Officer's decision, he states:**

'The Deciding Officer (DO) noted that the worker works mainly as a fiddler and sometimes acoustic guitarist with the Michael English band. Mr. English is the lead singer and musical director and is the company secretary and majority shareholder with MEPC Music Limited. The DO further noted that Mr. McGranaghan had joined the band after having approached Mr. English in 2013 and expressing an interest in joining his band. According to the worker, it was agreed that he would be paid €250 per gig, increased to €280 from April 2019. The DO took note of invoices which had been submitted by the worker for payment by cheque and latterly EFT. The DO also

noted that, while the band mostly performs in Ireland, they also tour UK, Spain and Portugal. The DO found that the worker supplies his own instruments and minor equipment such as wireless in-ear monitor and that no travel expenses are paid in respect of gigs in Ireland but transport and accommodation is provided by the company when the band is performing outside Ireland or when playing consecutive nights at a remote venue. Scope acknowledged that a musician with 30 years' experience would not always require direction and would have freedom to improvise. Scope noted that Mr.English, as the musical director, selected the set list and arrangements. The appellant company also booked the venues. The DO noted that holidays were taken in January and September each year and the worker provided no insurance cover. With regard to substitution, Scope reported that this rarely had happened and it was not the worker's responsibility to get a replacement. The DO took account of the fact that the worker sometimes stood in with other bands and also did session work in the recording studio but that this was limited and most of his work came from MEPC'

Points of Fact:

- Mr. McGranaghan was offered the job by MEPC Music Ltd at a rate decided by MEPC Music Ltd. Mr. McGranaghan wrote to Michael English on 14 November 2013 and informed Michael English of his current situation with the UK company he worked for.
- Mr. McGranaghan did not request or demand a rate.
- Transport and accommodation are provided by MEPC when the band is performing inside and outside of Ireland playing consecutive nights at remote venues or where it is impossible to return home, such as on a cruise ship.
- That transport and accommodation are paid for by MEPC when Mr. McGranaghan was 'IN' work, i.e., for MEPC's business purposes, is entirely consistent with Contract of Employment conditions.
- Regardless of the matrix used by MEPC, Mr. McGranaghan worked a full week, every week, was paid what amounted to a weekly wage which was paid by the week, usually on a Friday, for work he was paid for in advance by MEPC and which he was obligated to do personally for MEPC.
- Invoices were not submitted for payment.
- Payment was made weekly, usually on a Friday.
- Payment was made by MEPC to Mr. McGranaghan in advance.
- Invoices were only submitted after payment.
- That MEPC paid Mr. McGranaghan in advance for work MEPC expected him to do personally, as the resident fiddle player for the band, is entirely consistent with a mutuality of obligation.

- Mr. McGranaghan received his weekly wage by cheque on a Friday, for the work that he was expected to do on that Friday and in the following days up to and including the following Thursday, throughout 2014, 2015, 2016 and until December 2017 when MEPC Music Ltd switched payment to ETF.

- Mr. McGranaghan received his weekly wage by ETF on a Friday morning, for the work that he was expected to do on that Friday and in the following days up to and including the following Thursday, from December 2017 and throughout 2018, 2019 and until March 2020.

5. **In 'Point 4' of the Appeals Officer's decision, he states:**

'In its appeal submission, MEPC Limited assumed that the question would be dealt with by oral hearing and reserved the right to submit further evidence. The company argued that Scope did not have regard for the reality of the precarious nature of the music industry in Ireland'

Points of Fact:

- An Oral Hearing is entirely at discretion of Appeals Officer, an 'assumption' does not grant a 'right of appeal'. Appellants are advised that 'Grounds for Appeal' must be complete and that all the documentary evidence and grounds relied on are submitted with the notice of appeal.

- No further evidence could be adduced. This was a Not 'De novo' process.

- The Appeals Officer failed to inform those present that no new evidence could be adducted.

- The Appeals Officer was obligated to inform those present that the 'Oral Hearing' was not a 'De novo' appeal. He failed to do so.

- The alleged precarious nature of the music industry, from which MEPC Directors Michael English and Paul Claffey profit handsomely, is not a matter for the Deciding Officer, only whether the worker fits the legal criteria for 'Contract of Service' or 'Contract for Service' is a matter for the Deciding Officer.

6. **In 'Point 5' of the Appeals Officer's decision**, the Appeals Officer fully recognised the authority of the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] Supreme Court case which states that:

"each case must be considered in light of its particular facts and circumstances"

7. **In 'Point 7' of the Appeals Officer's decision, the Appeals Officer states:**

'On 18 May, Mr. McGranaghan first signalled his reluctance to continue in the process and applied to have the case referred to the Circuit Court under the provisions of section 307(1) of the Social Welfare Consolidation Act 2005.

Mr. McGranaghan advised that he would not be attending the oral hearing but the notification was received too late to cancel the hearing. Mr. McGranaghan had engaged in the appeal process up to this, even confirming his availably for the oral hearing as late as his email of 14 April 2022'

Points of Fact:

- The notification was not received too late to cancel the hearing. It was only after Mr. McGranaghan requested sight of the Sample Cases Minister Humphreys referred to, that the Social Welfare Appeals Office decided to schedule an 'Oral Hearing' without requesting the Minister as 'Respondent' or her representatives to attend.

  On 2nd December 2021, Minister Heather Humphreys wrote to the Oireachtas Procedures Committee and stated that some Appeals in the Social Welfare Appeals Office:

  'May be determined based on a sample of cases'

  This information did not become publicly available until April 2022.

  On 25th April 2022, Mr. McGranaghan wrote to the Social Welfare Appeals Office and requested sight of 'Test/Sample' cases used by the Social Welfare Appeals Office.

  On 28th April 2022, notification of an 'Oral Hearing' on 24th May 2002 issued by letter from the Social Welfare Appeals Office. In the letter, Mr. McGranaghan is *"requested to attend"* by the Appeals Officer.

  On 5th May 2022, Mr. McGranaghan emailed the SWAO to say that he was still seeking details of sample cases and he noted that he was now 'requested' to attend the hearing.

  On 16th May 2022, the Social Welfare Appeals Office replied to Mr. McGranaghan. The Social Welfare Appeals Office denied in full, the Minister's claim that 'Sample Cases' were used.

- The 'Oral Hearing' on 24th May 2022 was a private meeting between the Appeals Officer and the Appellant Employer. The 'Respondent' was not invited to attend by the Appeals Officer.

- The only issues discussed at the private meeting on 24th May 2022 were Mr. McGranaghan's request for 'Test/Sample' cases and his subsequent request to have the appeal referred to the Circuit Court. These were not matters for discussion at a private meeting with the employer appellant nor at a commenced 'Oral Hearing'. These were matters for decision before an 'Oral Hearing' commenced and with the Minister or her representatives present.

- That 'Sample/Test' Cases exist was stated on 2nd December 2021 by Minister Humphreys in her letter (Exhibit 17) to the Dail Committee on Parliamentary Privileges and Oversight. It was this statement by the Minister which gave rise

to the Notice Party's request. In her letter to the Committee, Minister Humphreys states:

> ***'some appeals involving a number of workers engaged by the same employers, may be determined based on a sample of cases'***

- That 'Sample/Test' Cases exist was confirmed by the Social Welfare Appeals Office on 9th of January 2019 (Exhibit 8) in which the SWAO states:

> ***'On occasion over the years an approach of having 'Test Cases' has been taken or considered by the Social Welfare Appeals Office'***

- On 5th of April 2019, the Social Welfare Appeals Office wrote:

> ***"On a very few occasions over the years the approach of having sample cases has been taken by the Appeals Office'***

- 5th December 2019, at the Oireachtas Social Welfare Committee, the Chief Appeals Officer stated:

> ***'I have occasionally, and usually where a number of workers engaged by the same employer are concerned and have individually submitted an appeal, been asked to make decisions on a sample number of cases'***

- That 'Sample Cases' and 'Test Cases' are not two distinct issues was confirmed on 5th December 2019 at the Oireachtas Social Welfare Committee by Mr. Tim Duggan, Assistant Secretary in charge of Pensions, PRSI & International Polices with the Department of Social Protection. Mr. Duggan stated:

> ***"We do not use that phrase*** (Test Case) ***anymore. Essentially these were sample cases at the time"***

- That the Social Welfare Appeals Office creates 'Test Cases' and that the Department of Social Protection accepts and uses these 'Test Cases' for the purpose of the wholesale classification of workers in the Courier Employer sector, namely, saying that all Couriers are self-employed because one courier is, was accepted and conceded by the Social Welfare Appeals Office, the Department of Social Welfare and the Minister for Social Welfare in February 2002 and this FACT is contained in an official Report from the Ombudsman dated February 2002.

- That 'Sample Cases' and 'Test Cases' are not two distinct issues, and further that no legislation exits to allow the use of 'Test/Sample' cases, was confirmed by Minister Regina Doherty on 25th March 2019 and was published in the Irish Times. The Minister stated that 'Deciding Officers' of the Department of Social Protection were making 'Class Decisions' 'on the employment status of groups or classes of workers' and that no legislation exists to allow such 'Class Decisions'.

- The 'Issue' in contention at this private meeting between the Appeals Officer and the Appellant Employer on 24th May 2022, was the response of the Social Welfare Appeals Office to the Notice Party's request for 'Sample/Test' Cases, which was:

  'A sample case approach has not been taken by the Social Welfare Appeals Office during the tenure of the current Chief Appeals Officer which commenced in 2015'

  and whether that 'response' from the Social Welfare Appeals Office justified the Notice Party's subsequent request to the Social Welfare Appeals Office that the Appeal should be referred to the Circuit Court in accordance with section 307(1) of the Social Welfare Consolidation Act 2005 following the failure of the Social Welfare Appeals Office to comply with the Notice Party's request for 'Sample/Test Cases'.

- At this meeting, the Employer Company concluded that the Notice Party's request for a referral to the Circuit Court under section 307(1) of the Social Welfare Consolidation Act 2005 would have to be answered by the Chief Appeals Officer.

- Mr. McGranaghan did not ask if there had been sample/test cases during the tenure of the Current Chief Appeals Officer nor does the reply that there has been no approach of sample/test cases during the tenure of the current Chief Appeals Officer address that Minister Humphreys told the Dail Committee on Parliamentary Privileges and Oversight that there are Precedential 'Sample' cases.

- It is also a fact that because Mr. McGranaghan had been misclassified pre-dating the tenure of the current Chief Appeals Officer that precedential sample/test cases from before 2015 are relevant to Mr. McGranaghan.

- A TEST CASE approach has been taken by the Social Welfare Appeals Office during the tenure of the current Chief Appeals Officer. In 2016, an Appeals Officer stated that he was going to use 16 individual cases of bricklayers and labourers, which were under appeal by JJ Rhatigan, as ONE 'Test Case'. That this approach of test cases in 2016 occurred was confirmed by the Chief Appeals Officer to the Joint Oireachtas SW Committee on 5th December 2019.

- The Social Protection Minister is the 'Respondent', nobody was at this meeting representing the 'Respondent'. Only the employer and the Appeals Officer were present. It was Minister Humphreys who stated that 'Sample Cases' are used. As the 'Respondent' to the 'Appellant Employer', it is inconceivable that the Minister or her representatives were not asked to appear at this private meeting which was convened because the Minister's statement was directly contradicted by the Social Welfare Appeals Office.

- As the 'Respondent' was not present at this private meeting, the purpose for 'requesting' that the Notice Party attend remains unclear. The Notice Party could not 'Clarify' the refusal of the Appeals Office to comply with the request of the Notice Party for the 'Sample Cases' confirmed to exist by Minister Humphreys.

- As the 'Respondent' was not present at this private meeting, the purpose for 'requesting' the Employer Appellant to attend remains unclear. The Employer Appellant could not 'Clarify' the refusal of the Appeals Office to comply with the Notice Party's request for the 'Sample Cases' confirmed to exist by Minister Humphreys.

- It was not 'appropriate' that this private meeting took place. It was not appropriate to seek the Employer Appellant's opinion on an issue which could only be addressed by the Minister or her representatives.

- It was not appropriate that the Appeals Officer decided not to invite the Respondent or her representatives.

8. In 'Point 8' of the Appeals Officer's decision, the Appeals Officer states:

'The oral hearing opened on 24 May 2022. MEPC, the appellant company, was represented by: Mr. Derek Ryan BL, Mr. Paul Claffey, Mr. Michael English and Ms Bernie Greally. The worker and notice party, Mr. McGranaghan, did not attend as he had advised. The communication from Mr. McGranaghan was revealed to the appellant company and after understandable deliberation, MEPC concluded that the request for a referral under section 307(1) of the Social Welfare Consolidation Act 2005 would have to be answered by the Chief Appeals Officer and the hearing adjourned. The Chief Appeals Officer did not consider that .it was appropriate to refer this case to the Circuit Court under the provisions of section 307 of the Act. Reconvened Oral Hearing of 1 November 2022'

Points of Fact:

- On 24th May 2022, a private meeting took place between the Appeals Officer and the Employer Appellant.

- The 'Notice Party' had been requested to attend by the Appeals Officer but had declined to attend following the failure of the Social Welfare Appeals Office to comply with his request for details of 'Sample/Test' Cases.

- The 'Respondent' to the Appeal is the Minister for Social Protection. Neither the Minister nor representatives of the Minister, were requested to attend at this meeting by the Appeals Officer.

- At this meeting, the only matters discussed were two requests from the 'Notice Party' (Mr. McGranaghan).

- It was not 'appropriate' that this private meeting took place. It was not appropriate to seek the Employer Appellant's opinion on an issue that could only be addressed by the Minister or her representatives.
- It was not appropriate that the Appeals Officer decided not to invite the Respondent or her representatives.
- The Social Welfare Appeals Office operates independently of the Minister and the Department, as such, the reasons cited by the Appeals Officer on behalf of the Respondent for his failure to invite the Respondent or her representatives, are without foundation without verification from the Respondent.

9. In 'Point 9' of the Appeals Officer's decision, the Appeals Officer states:

'On 19 October 2022, Mr. McGranaghan was urged to participate in the oral hearing and was advised as follows:

> *I acknowledge Mr. McGranaghan's stated reasons for withdrawing from the appeals process but I am still urging him to participate. In the 1995 Social Welfare Appeals Office's annual report, which is referenced in his correspondence to the Committee on Public Accounts, there is a synopsis of a motor-cycle couriers' case at pages 24&25. That case was decided on the facts of that case after an oral hearing where the appeals officer found the following critical features of self-employment: the absence of control; substitution; freedom to refuse a job; flexibility of the hours of availability'*

Points of Fact:

- The Appeals Officer clearly identified that:

> ***'In the 1995 Social Welfare Appeals Office's annual report, which is referenced in his correspondence to the Committee on Public Accounts, there is a synopsis of a motor-cycle couriers case at pages 24&25'***

That this 'case' was a 'Test Case' was accepted and conceded by the Minister and the Department in 2002.

The 1995 Social Welfare Appeals Office's annual report contains a synopsis of a motorcycle, bicycle, and van couriers **'Test Case'** at pages 24&25. That it is a 'Test Case' and the Social Welfare Appeals Office created a 'Test Case' and that the Department of Social Protection accepts and uses this 'Test Case' for the purpose of the wholesale classification of workers in the Courier Employer sector, namely, saying that all Couriers are self-employed because one courier is, was accepted and conceded by the Social Welfare Appeals Office, the Department of Social Welfare and the Minister for Social Welfare in February 2002 and this FACT is contained in an official Report from the Ombudsman dated February 2002 .

- The Appeals Officer was able to provide this 'Test Case' to Mr. McGranaghan but chose not to.

- The Appeals Officer's statement that the Appeals Officer in the 1995 'Courier' 'Test Case' found critical features of self-employment for couriers to be deemed as self-employed are:

  the absence of control

  substitution

  freedom to refuse a job

  flexibility of the hours of availability'

  is a FALSE STATEMENT.

  The critical features of self-employment for couriers to be deemed as self-employed, by group and class, found the by the Appeals Officer in the 1995 'Courier' 'Test Case' are:

  - ***Provided his own vehicle and equipment***
  - ***Was responsible for all expenses including tax, maintenance, insurance etc and***
  - ***Payment was made on the basis of rate per job plus mileage allowance***

- ***'the absence of control, substitution, freedom to refuse a job, flexibility of the hours of availability'*** ARE NOT the considerations which determine the employment status of all couriers by group and class. As was confirmed by the Ombudsman in 2002 and again by the Revenue Chairperson in 2021 to the Public Accounts Committee, all couriers are labelled as self-employed by group and class based on the considerations:

  Provided his own vehicle and equipment

  Was responsible for all expenses including tax, maintenance, insurance etc and

  Payment was made on the basis of rate per job plus mileage allowance

- No other considerations apply for couriers. The Revenue Chairperson, the Social Protection Minister, the Chief Appeals Officer and the Secretary General of the Department have all stated that they believe the 'Criteria/Considerations' from the 1995 'Test Case' are reflected in the 'Code of Practice'.

- The 1995 'Test Case' 'Criteria/Considerations' are not reflected in the 'Code of Practice' but it is significant that the Revenue Chairperson, the Social Protection Minister, the Chief Appeals Officer and the Secretary General of the Department believe that they are and that one must look 'FIRST' to the 'Code of Practice', a point the Revenue Chairperson has been adamant on. Because the Revenue Chairperson, the Social Protection Minister, the Chief

Appeals Officer and the Secretary General of the Department insist on looking to the 'Code of Practice' before considering the Case Law and precedents handed down by the Courts, their only 'Criteria/Considerations' are:

Do you own your own vehicle?

Are you paid in an A-typical way?

- These two 'Criteria/Considerations' are used to prevent individual couriers from successfully challenging their employment status in the Social Welfare Appeals Office. Couriers are not informed that they are self-employed by group and class because of a 1995 'Test Case'.
- Couriers have not been asked if they 'Agree' to a Special Arrangement between the Department of Social Protection, the Revenue Commissioners and Courier Employers to label them as 'Self-employed' by group and class for which no legislation exists.
- Couriers are unaware that in the Social Welfare Appeals Office, once it has been established that the courier owns his/her own vehicle and is paid in an A-typical way, the courier is automatically deemed to be self-employed.
- Couriers are unaware that everything after that point in a Social Welfare Appeals Office appeal hearing is theatre and will not in any way impact on the pre-determined group/class decision that they will be found to be self-employed.
- The FACT, that since at least 1993, the Department of Social Welfare and the Social Welfare Appeals Office have been creating and using 'Class Decisions' 'on the employment status of groups or classes of workers' and that no legislation exists to allow such 'Class Decisions', most definitely has relevance to Mr. McGranaghan who is labelled as self-employed by group and class.
- The Fact, that from 1993 – 9th January 2019, the Department, Ministers and the Social Welfare Appeals Office accepted and conceded to the use of 'Test Cases' but that since 9th January 2019, the Department, Ministers and the Social Welfare Appeals Officer have been denying the use of 'Test Cases', most definitely has relevance to Mr. McGranaghan who is labelled as self-employed by group and class.
- It is not the position of the Appeals Officer to decide that previous 'Test Cases', for which no legislation exists, have no relevance to the Music Industry worker. 'Relevance' can only be determined upon examination of the previous 'Test Cases' by Mr. McGranaghan and the Appellant Employer who have every right to sight of previous 'Test Cases' in order to make or defend their position.

10. In 'Point 10' of the Appeals Officer's decision, the Appeals Officer states:

'It is unusual that a party who has partaken in the process should withdraw from the appeals process in advance of an oral hearing. I attempted to assuage Mr. McGranaghan's concerns but was unable to provide him with the test cases he is seeking. While test cases may have been used in the past, they have been used in very specific and limited circumstances and are certainly not relied upon as precedents. Mr. McGranaghan was informed of the case law and guidelines which would be relied upon. In the absence of the notice party worker and in fairness to him, I did not conduct the hearing on a de novo basis'

Points of Fact:

- ***'I attempted to assuage the Mr. McGranaghan's concerns'*** is a false statement. Although within in his power to do so, the Appeals Officer DID NOT attempt to assuage Mr. McGranaghan concern about the existence and use of test cases.
- The Appeals Officer refused to comply with Mr. McGranaghan request for 'Test/Sample' cases on 25th April 2022.
- The Appeals Officer refused to comply with Mr. McGranaghan request for 'Test/Sample' cases on 5th May 2022.
- The Appeals Officer refused to comply with Mr. McGranaghan request for 'Test/Sample' cases on 16th May 2022.
- The Appeals Officer refused to comply with Mr. McGranaghan request for 'Test/Sample' cases on 18th May 2022.
- On 24th May 2002, the Appeals Officer had a private meeting with the Employer Appellant and did 'assuage' any concerns the employer appellant had in regard to the issue of 'Test Cases' raised by Mr. McGranaghan.
- It is untrue to say that the Appeals Officer was 'Unable' to supply test cases to Mr. McGranaghan, the true factual position is that the Appeals Officer was unwilling to admit to the use of Test Cases and therefor was unwilling to supply test cases to Mr. McGranaghan.
- AT ALL TIMES, Mr. McGranaghan was fully entitled to sight of all previous test cases. That the Appeals Officer refused to supply or even admit to the use of 'Test Cases' guaranteed that Mr. McGranaghan could not get a fair Appeal Hearing in or from the Social Welfare Appeals Office.
- AT ALL TIMES, it was essential for Mr. McGranaghan to have sight of test cases in order for Mr. McGranaghan to have access to the same 'Test Cases' and 'Precedents' used by the Social Welfare Appeals Office and the Department.
- AT ALL TIMES, the Appeals Officer and the Social Welfare Appeals Office engaged with unacceptable bias against Mr. McGranaghan and bias toward the Appellant Employer.

- The Appeals Officer clearly identified that:

  'In the 1995 Social Welfare Appeals Office's annual report, which is referenced in his correspondence to the Committee on Public Accounts, there is a synopsis of a motor-cycle couriers case at pages 24&25'

  That this 'case' was a 'Test Case' was accepted and conceded by the Minister and the Department in 2002 and that FACT is recorded in the Ombudsman's report of February 2002.

- The 1995 Social Welfare Appeals Office's annual report contains a synopsis of a motorcycle, bicycle, and van couriers 'Test Case' at pages 24&25. That it is a 'Test Case' and the Social Welfare Appeals Office created a 'Test Case' and that the Department of Social Protection accepts and uses this 'Test Case' for the purpose of the wholesale classification of workers in the Courier Employer sector, namely, saying that all Couriers are self-employed because one courier is, was accepted and conceded by the Social Welfare Appeals Office, the Department of Social Welfare and the Minister for Social Welfare in February 2002 and this FACT is contained in an official Report from the Ombudsman dated February 2002.

- The Appeals Officer WAS ABLE to provide this 'Test Case' to Mr. McGranaghan but chose not to.

- The Appeals Officer did not attempt to assuage Mr. McGranaghan's concerns.

- That the Appeals Officer did assuage the appellant employer's concerns despite the undeniable use of test cases, is a matter for the appellant employer.

- 3 years and 46 days after the Chief Appeals Officer told the Joint Oireachtas Committee on Family Affairs and Social Protection Committee that:

  'our office does not use test cases'

  the Appeals Officer admits:

  'While test cases may have been used in the past'

- 'Test Cases' were not only used in the past, 'Test Cases', the precedents arising from them and the overriding precedent that the Social Welfare Appeals Office and the Department of Social Protection can make group/class insurability of employment 'class' decisions on workers, without legislation to do so, are still being created and used presently.

- ***'they*** (Test Cases) ***have been used in very limited and specific circumstances'*** is a false statement. The evidence shows that 'Test Cases' and the precedents they create, are used across a wide variety of employment situations, by sector, by employer and by groups of employers.

- ***'are certainly not relied upon as precedents'*** is a false statement. The 1995 'Test Case' created precedents in the form of 'Criteria', created an entire self-employed class of worker known as 'Owner/Driver' and is used as a precedent by the Social Welfare Appeals Office and the Department of Social Protection to allow them to continue to misclassify group/classes of workers as self-employed in other sectors such as construction.

- ***'I did not conduct the hearing on a de novo basis'*** is a false statement. The email of 28th September 2021 claimed by the Appeals Officer as a '***Question at Issue'*** in Oral Hearing/Appeal is 'De novo' evidence. The Scope Section decision was issued on 19 November 2020, the email of 28th September 2021 is after the Scope Section decision issued. It is 'De novo' evidence.

11. In 'Point 11' of the Appeals Officer's decision, the Appeals Officer states:

'The oral hearing reconvened on 1 November 2022: MEPC was again represented by Mr. Derek Ryan BL, Mr. Paul Claffey, Mr. Michael English and Ms Bernie Greally. Mr. McGranaghan did not attend as he had advised. The Department was represented by Brenda Moran and Cathy Duffy from Scope Section and Tom Fagan Social Welfare Inspector. The hearing was told that the officials had not, been requested to attend the previous hearing as the then prevailing departmental policy, had been not to attend hearings but that policy had recently changed'

Points of Fact:

- The Appeals Officer has stated that it was not the policy for the 'Respondent', the Minister for Social Protection, to be represented at 'Oral Appeals' between the period of 2019 and 2022 and that his invite to the 'Respondent' was as a result of a policy change at some time in 2022. At no time has the Minister confirmed that it was Department policy for the Minister, as respondent, not to be represented at appeals between 2019 and 2022.

- The Social Welfare Appeals Office operates independently of the Minister and the Department. An alleged change in Departmental policy does not justify that the Appeals Officer failed to invite the respondent to the appeal to an Oral Hearing of that appeal. This is a matter of serious concern.

- At no time has the Minister confirmed that policy changed in 2019 and then changed back again in 2022. It would be a serious matter of concern if the 'Respondent' has not responded to appeals between 2019 and 2022.

- The Social Protection Minister is the 'Respondent', nobody was at the previous Oral Hearing representing the 'Respondent'. Only the employer and the Appeals Officer were present. It was Minister Humphreys who stated that 'Sample Cases' are used. As the 'Respondent' to the 'Appellant Employer', it is inconceivable that the Minister or her representatives were not asked to appear at the Oral Hearing on 24th May 2022 which was convened because the Minister's statement was directly contradicted by the Social Welfare Appeals Office.

- As the 'Respondent' was not present at this private meeting, the purpose for 'requesting' that the Notice Party attend remains unclear. The Notice Party could not 'Clarify' the refusal of the Appeals Office to comply with the request of the Notice Party for the 'Sample Cases' confirmed to exist by Minister Humphreys.

- As the 'Respondent' was not present at this private meeting, the purpose for 'requesting' the Employer Appellant to attend remains unclear. The Employer Appellant could not 'Clarify' the refusal of the Appeals Office to comply with the Notice Party's request for the 'Sample Cases' confirmed to exist by Minister Humphreys.

- At this meeting, the only matters discussed were two requests from the 'Notice Party' (Mr. McGranaghan).

- It was not 'appropriate' that this private meeting took place. It was not appropriate to seek the Employer Appellant's opinion on an issue that could only be addressed by the Minister or her representatives.

- It was not appropriate that the Appeals Officer decided not to invite the Respondent or her representatives.

- The Social Welfare Appeals Office operates independently of the Minister and the Department, as such, the reasons cited by the Appeals Officer on behalf of the Respondent for his failure to invite the Respondent or her representatives, are without foundation without verification from the Respondent.

12. In 'Point 12' of the Appeals Officer's decision, the Appeals Officer states:

'Mr.Ryan, for the appellant company, began by rejecting the Deciding Officer's application of the mutuality of obligation and exclusivity tests when finding that: Mr. Mc Granaghan was offered almost continual work by the company for 6 years and that there was just one example of him declining work because of the fee offered'

Points of Fact:

- It is factually incorrect to say that Mr. McGranaghan declined work.

- On two occasions between January 2014 and March 2020 Mr. McGranaghan sought and received permission from MEPC Director Michael English to take time off work for family reasons.

- Self-employed persons do not have to seek permission for time off work.

- That Mr. McGranaghan sought permission to take time off work is entirely consistent with a Contract of Service.

- That Mr. English accepted and conceded that the right of 'Permission' to allow Mr. McGranaghan time off work lay exclusively with Mr. English, is entirely consistent with a Contract of Service.

- Mr. McGranaghan was not required to find a substitute. This is entirely consistent with a Contract of Service.
- On the two occasions, over a period of 6 years, when Mr. McGranaghan was given permission to take time off work by Mr. English. MEPC sourced, secured and paid for the substitute. This is entirely consistent with a Contract of Service.
- At no time did Mr. McGranaghan request time off work to offer his services concurrently to others.
- At no time did Mr. English give Mr. McGranaghan permission to take time off work to offer his services concurrently to others.
- At no time did Mr. McGranaghan take time off work with MEPC Music Ltd to offer his services concurrently to others.
- It is factually incorrect to say that Mr. McGranaghan declined work because of the fee offered.
- Mr. McGranaghan was not paid on the basis of rate per job (fee). Mr. McGranaghan was, at all times, an ordinary employee of MEPC Music Ltd paid by the week.
- That MEPC Music Ltd paid Mr. McGranaghan in an A-Typical way is not an indicator of Contract for Service.
- How MEPC Music Ltd chose to pay Mr. McGranahan is entirely a matter for MEPC Music Ltd.
- Mr. McGranahan had no input into the A-Typical way MEPC Music Ltd chose to pay Mr. McGranahan.
- The 'Power of Payment' lies with the payer not with the payee.
- All of the musicians in the employment of MEPC Music Ltd are paid the same way. Mr. McGranaghan was not in a position to dictate terms, terms were dictated by MEPC Music Ltd.
- Invoices were not submitted for payment.
- Payment was made weekly, usually on a Friday.
- Payment was made by MEPC to Mr. McGranaghan in advance.
- Invoices were only submitted after payment as was instructed by MEPC Music Ltd.
- Regardless of the matrix used by MEPC, Mr. McGranaghan worked a full week, every week, was paid what amounted to a weekly wage which was paid by the week, usually on a Friday, for work he was paid for in advance by MEPC and which he was obligated to do personally for MEPC.

- That MEPC paid Mr. McGranaghan in advance for work MEPC expected him to do personally, as the resident fiddle player for the band, is entirely consistent with a mutuality of obligation.
- That the employer decides employment status without input from the worker is identical to the courier employer 'Special Tax Agreement', the construction employer 'eRCT' agreement, the employer's 'administrative agreement' to label all Home Tutors as self-employed, the RTE deal to treat all actors as self-employed and other examples also exist.
- MEPC Music Ltd have given only one example of where MEPC Music Ltd alleges that Mr. McGranaghan declined work allegedly because of the fee offered.
    - The alleged incident referred to occurred on 7th February 2020.
    - Mr. McGranaghan was already at work with MEPC Music Ltd in Mullingar.
    - Mr. McGranaghan was fulfilling his duty of obligation to MEPC Ltd by already being in Mullingar fulfilling his duties for MEPC Music Ltd as rostered by MEPC Music Ltd.
    - Mr. McGranaghan was offered extra work to appear on the Late Late show on the 7th of February 2020 by Michael English.
    - Mr. McGranaghan would not be playing an instrument at the Late Late Show, Mr. McGranaghan was informed that he would be required to 'Mime' playing an instrument at the Late Late Show.
    - Mr. McGranaghan performed multiple duties for MEPC Music Ltd such as learning new songs/material for Michael English, transcribing notation, creating chord charts, performing for other artists at variety concerts, learning the other artists' songs and material in advance, performing for support artists for MEPC Music Ltd, learning the support artists' songs and material in advance, working in promotional videos for the band, performing for other artists on the instructions of MEPC Music Ltd and paid for paid by MEPC Music Ltd. At times Mr. McGranaghan even drove the minibus which carried the band members for MEPC Music Ltd. This is not an exhaustive list of Mr. McGranahan's duties for MEPC Music Ltd.
    - Mime was not one of the duties Mr. McGranaghan had been required to perform previously by MEPC Music Ltd.
    - Mr. McGranaghan is a musician, not a mime artist.
    - Mr. McGranaghan was offered 'Overtime', extra work i.e. 'Miming' which was not part of his normal duties with MEPC Music Ltd.

- This extra overtime involved a roundtrip from Mullingar to Dublin when, upon return to Mullingar, Mr. McGranaghan was expected to perform live as part of his normal duties for MEPC Music Ltd on the same night.
- Mr. McGranaghan was offered an extra payment on top of his normal weekly wage for this overtime by Mr. English. This payment was €150.
- This extra payment, for extra overtime, was far less than Mr. McGranaghan was paid for his normal duties with MEPC Music Ltd.
- As is the absolute right of every Contract of Service employee, Mr. McGranaghan declined to do overtime. This is entirely consistent with a Contract of Service.
- As is the absolute right of every Contract of Service employee, Mr. McGranaghan declined to do overtime at a lesser rate than 'Standard' time. This is entirely consistent with a Contract of Service.
- On 6th February 2020 at 14:53, Mr. McGranaghan received a text message from Michael English which stated:

  "I'll just get another guitar player. See you in Mullingar"
- Mr. English did provide a substitute, selected and paid for by MEPC Music Ltd.
- The substitute mimed playing a guitar on the Late Late show.
- It was accepted and conceded by Michael English at this time that it was MEPC's sole responsibility to provide and pay for substitutes. This is entirely consistent with a Contract of Service.

13. In 'Point 13' of the Appeals Officer's decision, the Appeals Officer states:

'The barrister asserted that the Deciding Officer (DO) had not had regard for the reality of the music industry in Ireland and that Mr. McGranaghan had sought work from MEPC and had performed with other artists when he had not been working with MEPC'

Points of Fact:

- It is factually incorrect to say that Mr. McGranaghan 'had sought work from' MEPC. Mr. McGranaghan 'had sought a job with' MEPC Music Ltd.
- In October 2013 Mr. McGranaghan learned that Paul Claffey and Michael English were in business together, with Paul Claffey in the role as manager, and that Michael English was going back full-time on the road to perform at dances and theatres.
- In general, jobs are rarely if ever advertised in the music industry and mostly the word filters through the band and musicians' network by word of mouth.

- None of the jobs for Michael English's band were advertised.
- Mr. McGranaghan did not know Paul Claffey or Michael English personally.
- Mr. McGranaghan asked a colleague of his in the entertainment industry who knew Paul Claffey personally, to pass on his number to Paul Claffey and let him know that Mr. McGranaghan was interested in the job.
- As a result of this, Michael English sent Mr. McGranaghan a text message on 7 November 2013 at 8:12 pm attaching his email address.
- A meeting took place between Mr. McGranaghan and Mr. English on 13th November 2013.
- Mr. McGranaghan was asked by Michael English what terms Mr. McGranaghan was looking for and asked Mr. McGranaghan to supply a CV.
- It is highly unusual to supply a CV as a self-employed person.
- On 27th November 2013, Michael English phoned Mr. McGranaghan and offered Mr. McGranaghan a job at a rate decided by MEPC Music Ltd.
- Mr. McGranaghan was offered a job with MEPC Ltd as the resident fiddle player with the band.
- That Mr. McGranaghan had performed with other artists when he had not been working with MEPC is factually incorrect.
- Mr. McGranaghan performed with other artists as part of his normal duties with MEPC.
- Mr. McGranaghan (and all band members) were also expected to accompany other singers and artists on occasions. This could range from one extra artist a night up to as many as 8 or 10.
- Mr. McGranaghan was expected to learn the other artists songs, rehearse with them on the day of the concert/performance, and accompany them, before then doing his normal duties with Michael English. These type of concerts/events can be generally divided into three categories:
    - Promoter stages a concert with multiple guest artists/singers, where Michael English is the headline act. Michael English's band are expected to perform for Michael English and also the guest artists/singers. Mr. McGranaghan was employed directly by MEPC Music Ltd for these events and paid by MEPC Music Ltd. Mr. McGranaghan had to learn the songs provided by the guest singers, rehearse on the day of the concert, accompany the guest singers on the night of the concert, and then do his normal duties performing for Michael English.
    - MEPC Music Ltd organised tours (Concert Tours in UK and Ireland). These tours featured Michael English and his band as the main act,

generally performing in the second half of the concert. The first half of the concert consisted of normally one guest/support act/artist, but on occasion would have been two separate acts. Mr. McGranaghan was employed directly by MEPC Music Ltd for these events and paid by MEPC Music Ltd. Mr. McGranaghan had to learn the songs provided by the guest singer(s), rehearse on the day of the concert (or opening days of the tour), accompany the guest singers on the night of the concert, and then do his normal duties performing for Michael English.

In 2016, 2017 & 2018 Brendan Shine was usually the guest performer and support act for most of these tours.

In 2019 singer Owen Mac was the support act for the 2019 Irish Concert Tour in October/November 2019.

Travel and accommodation were provided by MEPC Music Ltd for the UK tours.

- Tours in Spain and Portugal. These tours featured Michael English and his band as one of several acts, but as one of three acts that had or were bands (the others being Mike Denver and his band, and The Conquerors). The Conquerors were the main 'house band' for all of the guest singers who were appearing but without their own bands. Michael English's band mostly accompanied Michael English. Mike Denver's band mostly accompanied Mike Denver. In addition to this, all band members were expected to lend a hand and help accompany the other guest singers at their performances for no additional payment. In fact, it wasn't unusual that particular musicians were nominated to accompany acts.

- Mr. McGranaghan was employed directly by MEPC Music Ltd for these events and paid by MEPC Music Ltd.

- It is during these three scenarios described above, and while Mr. McGranaghan was the resident fiddle-player in Michael English's band, that he played along with artists such as Brendan Shine and Dominic Kirwan, at the behest and paid for by MEPC Music Ltd.

- It is true to say that Mr. McGranaghan played with other musicians in his free time when he wasn't fulfilling his obligations as an employee for MEPC Music Ltd on very rare occasions due to his obligations with and for MEPC Music Ltd.

  Mr. McGranaghan performed at Áras an Uachtaráin by special invite of President McAleese, which he did in a voluntary capacity with a group, Kintra.

  Mr. McGranaghan had been the co-creator and musical director of this cross-community, cross-border group which brought Catholics and Protestants,

Nationalists and Unionists, together in a music and dance show which highlighted their common culture.

It was for this work that Mr. McGranaghan and Kintra were recognised by President McAleese, and indeed Mr. McGranaghan and the group were also recognised by the Speaker of the Northern Ireland Assembly, and Milwaukee Irish Fest for their contribution to peace and cross-community work.

Mr. McGranaghan did this work for free in his own free time.

- It is true to say that Mr. McGranaghan played with other musicians in his free time when he wasn't fulfilling his obligations as an employee for MEPC Music Ltd on very rare occasions due to his obligations with and for MEPC Music Ltd and when he wasn't working for free. It is open to every employee to do the same and it is not considered relevant to their employment status with their main employer.

14. In 'Point 14' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan argued that Mr. McGranaghan could have and did choose not to work for MEPC and had admitted this in his form INSI declaration. Mr. Ryan went on to say that musicians take instruction and direction from the band leader but that this was different to the control that an employer exercised over an employee'

Points of Fact:

- It is factually incorrect to say that '***Mr. McGranaghan could have and did choose not to work for MEPC and had admitted this in his form INSI declaration***'
- The reality of the situation shows that on two occasions between January 2014 and March 2020 Mr. McGranaghan sought and received permission from MEPC Director Michael English to take time off work for family reasons.
- Self-employed persons do not have to seek permission for time off work.
- That Mr. McGranaghan sought permission to take time off work is entirely consistent with a Contract of Service.
- That Mr. English accepted and conceded that the right of 'Permission' to allow Mr. McGranaghan time off work lay exclusively with Mr. English, is entirely consistent with a Contract of Service.
- Mr. McGranaghan was not required to find a substitute. This is entirely consistent with a Contract of Service.
- On the two occasions, over a period of 6 years, when Mr. McGranaghan was given permission to take time off work by Mr. English. MEPC sourced, secured and paid for the substitute. This is entirely consistent with a Contract of Service.

- At no time did Mr. McGranaghan request time off work to offer his services concurrently to others.
- At no time did Mr. English give Mr. McGranaghan permission to take time off work to offer his services concurrently to others.
- At no time did Mr. McGranaghan take time off work with MEPC Music Ltd to offer his services concurrently to others.
- The reality of the situation, based on the evidence provided by both parties, is that Mr. McGranaghan was a diligent and dependable employee who only ever took time off twice in 6 years, on both occasions due to family reasons. This is entirely consistent with a Contract of Service employee with an exemplary attendance record.
- Mr. McGranaghan was, at all times, under the control and direction of MEPC Director Michael English as to where, when, how, and what work is done. Mr. English, MEPC Director, assumed full authority to instruct Mr. Mc Granaghan on what to wear, what to learn, what to play, how to play, to how much Mr. McGranaghan was paid. This is entirely consistent with a Contract of Service.
- Control is control, Mr. English was a director of the business Mr. McGranaghan was an employee of the business. Mr. McGranaghan was under the control of MEPC Music Ltd.

15. In 'Point 15' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC's barrister said that it was custom and practice that members of the band travelled together when performing abroad. He said that this differed from domestic gigs. He pointed out that Mr. McGranaghan had not been paid travel expenses when performing in Ireland but conceded that, on occasion, accommodation was provided when the band was playing successive nights at a remote location'

Points of Fact:

- It is factually incorrect to say that there was a difference between travel expenses for domestic work and work abroad.
- Transport and accommodation were provided by MEPC when the band was performing inside and outside of Ireland playing consecutive nights at remote venues or where it was impossible to return home, such as on a cruise ship.
- That transport and accommodation were paid for by MEPC when Mr. McGranaghan was 'IN' work, i.e., for MEPC's business purposes, is entirely consistent with Contract of Employment conditions.

16. In 'Point 16' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan said that it is not disputed that worker had played over 200 gigs a year but pointed out that the worker was paid on the basis of the invoices that he submitted'

Points of Fact:

- Invoices were not submitted for payment.
- Payment was made weekly, usually on a Friday.
- Payment was made by MEPC to Mr. McGranaghan in advance.
- Invoices were only submitted after payment as was instructed by MEPC Music Ltd.
- Regardless of the matrix used by MEPC, Mr. McGranaghan worked a full week, every week, was paid what amounted to a weekly wage which was paid by the week, usually on a Friday, for work he was paid for in advance by MEPC and which he was obligated to do personally for MEPC.
- That MEPC paid Mr. McGranaghan in advance for work MEPC expected him to do personally, as the resident fiddle player for the band, is entirely consistent with a mutuality of obligation.
- Mr. McGranaghan received his weekly wage by cheque on a Friday, in advance of his week's work, throughout 2014, 2015, 2016 and until December 2017 when MEPC Music Ltd switched payment to ETF.
- Mr. McGranaghan received his weekly wage by ETF on a Friday morning, in advance of his week's work, from December 2017 and throughout 2018, 2019 and until March 2020.
- It is factually incorrect to state that Mr. McGranaghan was paid 'Per Gig'. Mr. McGranaghan performed multiple duties for MEPC Music Ltd such as learning new songs/material for Michael English, transcribing notation, creating chord charts, performing for other artists at variety concerts, learning the other artists' songs and material in advance, performing for support artists for MEPC Music Ltd, learning the support artists' songs and material in advance, working in promotional videos for the band, performing for other artists on the instructions of MEPC Music Ltd and paid for paid by MEPC Music Ltd. At times Mr. McGranaghan even drove the minibus which carried the band members for MEPC Music Ltd. This is not an exhaustive list of Mr. McGranahan's duties for MEPC Music Ltd.

17. In 'Point 17' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan questioned whether Mr. McGranaghan had registered for VAT and whether he had made other declarations as to his working status for PUP and re-start grants'

Points of Fact:

- The *'Question at Issue'* before the Appeals Office is Mr. McGranaghan's employment status for PRSI purposes. Issues relating to Mr. McGranaghan's tax status are not a *'Question at Issue'* for the Appeals Officer.

- Scope clarified that the full outstanding potential non-compliance with PRSI obligations would fall to the appellant company. It also follows that Mr. McGranaghan's tax status is a consequence of being labelled as self-employed and that any potential non-compliance with Revenue Obligations would also fall to the appellant employer.

18. In 'Point 18' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan for the appellant company referred to an e-mail exchange of 21 February 2019 in which Mr. McGranaghan advised MEPC of the dates when he would not be available'

Points of Fact:

- It is not normal for self-employed person to send emails; they send substitutes if not available.
- The reality of the situation shows that on two occasions between January 2014 and March 2020 Mr. McGranaghan sought and received permission from MEPC Director Michael English to take time off work for family reasons.
- Self-employed persons do not have to seek permission for time off work.
- That Mr. McGranaghan sought permission to take time off work is entirely consistent with a Contract of Service.
- That Mr. English accepted and conceded that the right of 'Permission' to allow Mr. McGranaghan time off work lay exclusively with Mr. English, is entirely consistent with a Contract of Service.
- Mr. McGranaghan was not required to find a substitute. This is entirely consistent with a Contract of Service.
- On the two occasions, over a period of 6 years, when Mr. McGranaghan was given permission to take time off work by Mr. English. MEPC sourced, secured and paid for the substitute. This is entirely consistent with a Contract of Service.
- At no time did Mr. McGranaghan request time off work to offer his services concurrently to others.
- At no time did Mr. English give Mr. McGranaghan permission to take time off work to offer his services concurrently to others.
- At no time did Mr. McGranaghan take time off work with MEPC Music Ltd to offer his services concurrently to others.
- The reality of the situation, based on the evidence provided by both parties, is that Mr. McGranaghan was a diligent and dependable employee who only ever took time off twice in 6 years, on both occasions due to family reasons. This is entirely consistent with a Contract of Service employee with an exemplary attendance record.

- Mr. McGranaghan was, at all times, under the control and direction of MEPC Director Michael English as to where, when, how, and what work is done. Mr. English, MEPC Director, assumed full authority to instruct Mr. Mc Granaghan on what to wear, what to learn, what to play, how to play, to how much Mr. McGranaghan was paid. This is entirely consistent with a Contract of Service.

19. In 'Point 19' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC's barrister submitted that substitution was a feature of the working relationship and that Mr. McGranaghan could have sent a substitute on the dates that he was not available to perform. Mr. Ryan submitted that the exclusivity test cannot be satisfied and mutuality of obligation cannot exist in circumstances where the worker is able to dictate his availability and choosing not to work on occasion'

Points of Fact:

- The statement that '***substitution was a feature of Mr. McGranaghan's working relationship'*** is a false statement.
- On the two occasions, over a period of 6 years, when Mr. McGranaghan was given permission to take time off work by Mr. English. MEPC sourced, secured and paid for the substitute. This is entirely consistent with a Contract of Service.
- The Scope Section Deciding Officer's decision states:

  'He has to render personal service and cannot hire an assistant. He can send a substitute. The company would pay the substitute'

  This is entirely consistent with a Contract of Service.
- The INS1 form completed by (MEPC Music Ltd) agrees with the information in Mr. McGranaghan's INS1 except for saying that Mr. McGranaghan did not have to render personal service and that he would pay any substitute. With regard to substitution, Scope reported that this rarely had happened and it was not the worker's responsibility to get a replacement. This is entirely consistent with a Contract of Service.
- At 'Point 64' of the Appeals Officer's appeal decision, the Appeals Officer states:

  'While substitution did arise on rare occasions, it was not a common feature and the worker did provide personal service'

  This is entirely consistent with a Contract of Service.
- The statement that '***Mr. McGranaghan could have sent a substitute on the dates that he was not available to perform'*** is a false statement.
- On the 2 occasions when Mr. McGranaghan was unable to work due to family reasons, a substitute was sought and paid for by MEPC Music Ltd. Mr.

McGranaghan had no involvement in the selection or payment of a substitute. This is entirely consistent with a Contract of Service.

- ***'Could have'*** is speculative. Only the reality of the situation is a question of issue for the Appeals Officer. The reality of the situation is that Mr. McGranaghan did not choose or pay a substitute for the 2 instances in 6 years where Mr. McGranaghan requested and given permission to take time off work. This is entirely consistent with a Contract of Service.

- ***'Could have'*** is speculative. Only the reality of the situation is a question of issue for the Appeals Officer. The reality of the situation is that MEPC Music Ltd. sought and paid for a substitute for the 2 instances in 6 years where Mr. McGranaghan requested and given permission to take time off work. This is entirely consistent with a Contract of Employment.

- The use of the word ***"could"*** is important in this statement. Mr. McGranaghan did not send a substitute on the two occasions he sought and was granted permission to take time off work. That is the 'Reality of the Situation'.

- The statement that ***'the exclusivity test cannot be satisfied and mutuality of obligation cannot exist in circumstances where the worker is able to dictate his availability and choosing not to work on occasion'*** is a false statement.

- Mr. McGranaghan did not *"dictate"* his availability. In 'Point 51' of the Appeals Officer's decision, the Appeals Officer states:

> ***'Also in Karshan, is her dissenting judgement, Whelan J concluded that the real question was whether the fact that either side could choose not to fulfil individual contracts and, the extent to which if at all, that occurred in practice without any possibility of sanction is material. In Karshan, rosters had been put in place based upon the availability of the delivery drivers and the anticipated need of the company. That is very different from this case where the appellant company had committed to play at venues months in advance and was only able to do so by being able to rely on its musicians. There could have been little ad hoc about who played in the band as the music had to be selected and rehearsed in advance.***

It is accepted and conceded by the Appeals Officer in 'Point 51' that Mr. McGranaghan operated under a mutuality of obligation to MEPC Music Ltd and was obligated to render personal service.

- It is accepted and conceded by the Appeals Officer in 'Point 56' that a mutuality of obligation does exist as follows:

> ***'Having regard to the worker's role as an integral member of the band, the band's advance commitment to perform at venues, the band's offer of work and the worker's confirmation of his availability, I find that mutuality of obligation existed'***

- The statement *'**mutuality of obligation cannot exist in circumstances where the worker is able to dictate his availability and choosing not to work on occasion'*** is a false statement.
- At no time did Mr. McGranaghan 'Chose not to work'.
- On two occasions between January 2014 and March 2020 Mr. McGranaghan sought and received permission from MEPC Director Michael English to take time off work for family reasons. This is entirely consistent with Contract of Service.
- That Mr. English accepted and conceded that the right of 'Permission' to allow Mr. McGranaghan time off work lay exclusively with Mr. English, is entirely consistent with a Contract of Service.
- At no time did Mr. McGranaghan request time off work to offer his services concurrently to others.
- At no time did Mr. English give Mr. McGranaghan permission to take time off work to offer his services concurrently to others.
- At no time did Mr. McGranaghan take time off work with MEPC Music Ltd to offer his services concurrently to others.
- The reality of the situation, based on the evidence provided by both parties, is that Mr. McGranaghan was a diligent and dependable employee who only requested took time off twice in 6 years, on both occasions due to family reasons. This is entirely consistent with a Contract of Service employee with an exemplary attendance record.
- Mr. McGranaghan was, at all times, under the control and direction of MEPC Director Michael English as to where, when, how, and what work is done. Mr. English, MEPC Director, assumed full authority to instruct Mr. Mc Granaghan on what to wear, what to learn, what to play, how to play, to how much Mr. McGranaghan was paid and whether Mr. McGranaghan could have time off work. This is entirely consistent with a Contract of Service.

20. In 'Point 20' of the Appeals Officer's decision, the Appeals Officer states:

> *'Mr. Ryan went on to say that what have been referred to as holidays were in fact periods of shallow bookings and this did not equate to the musicians being on holidays. He added that MEPC had other enterprise interests could operate during those periods without a band and using recordings'*

Points of Fact:

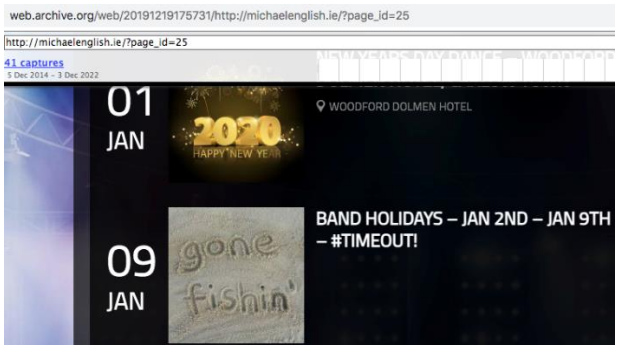
- The statement that '***what have been referred to as holidays were in fact periods of shallow bookings and this did not equate to the musicians being on holidays'*** is a false statement.
- The Scope Section Deciding Officer stated:

'MEPC Music Ltd would take all the bookings for all the performances and the schedule of performance dates would then be communicated to the musicians in the band. MEPC Music Ltd decided what gigs to take, when to take them, and when the band holidays would be. Generally, the musicians were allocated 8-10 days in January and the same in September each year.

His holidays were decided by the company. The band members were allocated 8-10 days in January and the same in September.

Mr. McGranaghan could not take holidays at his own discretion'

- The true factual position is that these so-called ***'periods of shallow bookings'*** were referred to by MEPC Music Ltd as ***"band holidays"*** on social media, in person to Mr. McGranaghan and the other band members by Michael English, in the emails containing the list of dates, and on the MEPC Music Ltd website such as this example:



21. In 'Point 21' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC said that it was custom and practice in the industry that replacement musicians had to stand-in in the event of double bookings etc. MEPC submitted that it had had no problem with substitution once the replacement was a suitably proficient'

Points of Fact:

- The situation of a double booking is not relevant to Mr. McGranaghan as it never happened. Mr. McGranaghan never refused his services to MEPC Music Ltd in favour of other work.
- On two occasions between January 2014 and March 2020 Mr. McGranaghan sought and received permission from MEPC Director Michael English to take time off work for family reasons. This is entirely consistent with Contract of Service.
- That Mr. English accepted and conceded that the right of 'Permission' to allow Mr. McGranaghan time off work lay exclusively with Mr. English, is entirely consistent with a Contract of Service.

- On the two occasions, over a period of 6 years, when Mr. McGranaghan was given permission to take time off work by Mr. English, MEPC sourced, secured and paid for the substitute. This is entirely consistent with a Contract of Service.

22. In 'Point 22' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan stated that the gig economy has been a feature of the country's economy from music industry to food delivery even extending into the legal profession. Referring to the recent Karshan case, Mr. Ryan submitted that the Court of Appeal had reaffirmed that where mutuality of obligation did not exist, there can be no contract of service. He argued that there was no written agreement in this case so there had been no requirement for Mr. McGranaghan to make himself available for work for the company. He said that the company had suggested the introduction of a written contract but this had not been acceptable to the workers'

Points of Fact:

- Mr. McGranaghan did not work in the 'Gig Economy'. Mr. McGranaghan was not paid exclusively 'Per Gig'.
- Mr. McGranaghan performed multiple duties for MEPC Music Ltd such as learning new songs/material for MEPC Music Ltd, transcribing notation, creating chord charts, performing for other artists at variety concerts, learning the other artists' songs and material in advance, performing for support artists for MEPC Music Ltd, learning the support artists' songs and material in advance, working in promotional videos for the band, performing for other artists on the instructions of MEPC Music Ltd and paid for paid by MEPC Music Ltd. At times Mr. McGranaghan even drove the minibus which carried the band members for MEPC Music Ltd. This is not an exhaustive list of Mr. McGranahan's duties for MEPC Music Ltd.
- Mr. McGranaghan was not paid on the basis of rate per job (fee). Mr. McGranaghan was, at all times, an ordinary employee of MEPC Music Ltd paid by the week.
- That MEPC Music Ltd paid Mr. McGranaghan in an A-Typical way is not an indicator of Contract for Service.
- How MEPC Music Ltd chose to pay Mr. McGranahan is entirely a matter for MEPC Music Ltd.
- Mr. McGranahan had no input into the A-Typical way MEPC Music Ltd chose to pay Mr. McGranahan.
- In 'Point 51' of the Appeals Officer's decision, the Appeals Officer accepts and concedes that live performances are only one of the duties Mr. McGranaghan was required to perform for MEPC music Ltd. In 'Point 51, the Appeals Officer states:

'There could have been little ad hoc about who played in the band as the music had to be selected and rehearsed in advance'

- The statement ***'He argued that there was no written agreement in this case so there had been no requirement for Mr. McGranaghan to make himself available for work for the company'*** is factually incorrect.

- In 'Point 5' of the Appeals Officer's decision, the Appeals Officer fully recognised the authority of the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] Supreme Court case which states that:

  "each case must be considered in light of its particular facts and circumstances"

  The precedent regarding written contracts set in the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] Supreme Court case obligates decision makers to examine the facts and realities of the situation on the ground i.e. to look at and beyond the written contract to arrive at the totality of the relationship.

  A written contract is of little value in coming to a conclusion as to the work status of the person engaged.

  This Supreme Court precedent is reflected in the Code of Practice for determining employment status which states:

  '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 existence or absence of a contract is not a determinative factor in employment status. Decision makers are obligated to look past a contract to the reality of situation.

- The claim that because no written agreement exists in this case there had been no requirement for Mr. McGranaghan to make himself available for work for the company, is a fantastical and false claim with no basis in fact or law. Mr. McGranaghan could just as easily make a fantastical and false claim that because no written agreement exists in this case, there had been a requirement for Mr. McGranaghan to make himself available for work. Neither claim has any factual or evidential basis.

- MEPC Music Limited Director, Paul Claffey, suggested introducing a written contract to Mr. McGranaghan at a meeting in MidWest Radio with Michael English in October 2014. This was ten months after the band members had started working for MEPC. Mr. McGranaghan rejected the contract on the basis that it was a contract for self-employment. Mr. McGranaghan is unaware

if other band members were asked their opinion or presented with the contract for their views.

23. In 'Point 23' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan pointed out that there had been no sanction for non-attendance or non-availability and this had been noted in the decision by the Deciding Officer'

Points of Fact:

- The reality of the situation, based on the evidence provided by both parties, is that Mr. McGranaghan was a diligent and dependable employee who only ever took time off work twice in 6 years, on both occasions due to family reasons after seeking and being granted permission to take time of work from MEPC Music Ltd. This is entirely consistent with a Contract of Service employee with an exemplary attendance record.
- 2 absences from work over a 6-year period, is not, nor cannot be construed as a 'Disciplinary Matter'.
- 2 absences from work over a 6-year period is an exemplary record for any worker and one that any employer would celebrate, not discipline.

24. In 'Point 24' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan submitted that the worker had signed up for work but had not been contracted to do the work and, similar to Karshan, the worker had been offered a list of dates and he responded by signaling his availability. Mr. Ryan said that there had been no exploration of this issue in the Scope decision and he further submitted that the worker had not been obliged to do the work and there had been no consequences for the worker refusing to do the work'

Points of Fact:

- The statement ***'there had been no consequences for the worker refusing to do the work'*** is a false statement.
- Mr. McGranaghan never refused to do the work. The reality of the situation, based on the evidence provided by both parties, is that Mr. McGranaghan was a diligent and dependable employee who only ever took time off twice in 6 years, on both occasions due to family reasons after seeking and being granted permission to take time of work from MEPC Music Ltd. This is entirely consistent with a Contract of Service employee with an exemplary attendance record.
- 2 absences from work over a 6-year period, is not, nor cannot be construed as a 'Disciplinary Matter'.
- 2 absences from work over a 6-year period is an exemplary record for any worker and one that any employer would celebrate, not discipline.

- The only time Mr. McGranaghan ever expressed his availability was when he accepted the job offer from MEPC Director Michael English in 2013.
- At no time after Mr McGranaghan accepted the job offer from Mr. English, did Mr. McGranaghan ever feel the need to 'signal his availability'.
- At no time after Mr. McGranaghan accepted the job offer from Michael English, did MEPC Music Ltd. request or require Mr. McGranaghan to signal his availability.
- At all times Mr. McGranaghan was fully available to MEPC Music Ltd.
- At all times MEPC Music Ltd expected Mr. McGranaghan to be available without signalling his ongoing availability.

25. In 'Point 25' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan said that control was not a determining factor. He said that Mr. McGranaghan had played with other bands and had worked as a studio musician'

Points of Fact:

- It is factually incorrect to state that control was not a determining factor.
- Control is always a determining factor in questions of insurability of employment and is one of the 'Tests' used in determination of insurability of employment.
- At all times, Mr. McGranaghan was under the control and direction of MEPC Ltd.
- Mr. McGranaghan did not offer his services concurrently to others.
- Mr. McGranaghan worked 48/49 weeks a year for MEPC Music Ltd.
- MEPC Music Ltd was Mr. McGranaghan's employer.
- That in his own time, when not required to be at work for MEPC Music Ltd, Mr. McGranaghan occasionally (Maximum 9 days a year) played music unpaid for charity or the peace process, or sometimes for a small reimbursement, does not, nor cannot, justify a label of 'Contract for Service' being placed on Mr. McGranaghan by his employer MEPC Music Ltd.
- Mr. McGranaghan is no different to any other employee in being able to do extra work in his own time. Teachers give grinds, Nurses in the HSE can do extra agency work and still remain fulltime employees, indeed, many full-time employees of the State do extra work, even run businesses, in their own free time. It does not impact on their employment status with their employer.
- What Mr. McGranaghan does in his own free time, when he is not working for MEPC Ltd, is entirely up to Mr. McGranaghan and cannot have a bearing on the Appeals Officer's decision.

- No evidence has been presented that Mr. McGranaghan has ever offered his services concurrently to others nor that Mr. McGranaghan was in business of his own account while at work with MEPC Music Ltd.

26. In 'Point 26' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan told the hearing that when working on ships/cruises, the worker had only committed to performing for a 2-hour gig per night during the week-long trip. Outside of this, he had opportunities to perform with other musicians and bands on the cruise'

Points of Fact:

- MEPC Music Ltd accepts and concedes that Mr. McGranaghan was paid by MEPC Ltd while working on cruises for MEPC Music Ltd.
- MEPC Music Ltd accepts and concedes that cruises lasted a week.
- MEPC booked performances for the band on two nights aboard the cruise ship. One night in concert - 2 x45 minute slots. The second night at a dance which was a 2-hour performance.
- The times of performances were booked by MEPC Music Ltd.
- It is accepted and conceded by MEPC Music Ltd that Mr. McGranaghan was not responsible for bookings or scheduling.
- It is accepted and conceded by MEPC Music Ltd that bookings and schedules are the sole responsibility of MEPC Music Ltd.
- Mr. McGranaghan did not make any commitment other than his initial commitment to take the job he was offered by MEPC Music Ltd in 2013.
- Mr McGranaghan was informed by MEPC Music Ltd that these were the performance times, booked and scheduled by MEPC Music Ltd, that Mr. McGranaghan and the rest of the band, were obligated to do on the weeklong cruise.
- Mr. McGranaghan was paid €1,000 in respect of a 7-day cruise and €1,500 for a 10-day cruise by MEPC Music Ltd.
- €1,000 in respect of a 7-day cruise and €1,500 for a 10-day cruise is not 'Paid per Gig'.
- €1,000 in respect of a 7-day cruise and €1,500 for a 10-day cruise, with a requirement from MEPC Music Ltd to perform live for 3.5 hours, is not a 'Gig Rate'.
- €1,000 in respect of a 7-day cruise and €1,500 for a 10-day cruise did not include the costs of Mr. McGranaghan's or the band's accommodation.
- Travel & accommodation on the cruises was provided by MEPC Music Ltd to Mr. McGranaghan and the band.

- Mr. McGranaghan and the band did not pay for accommodation on board cruises.
- That accommodation was provided for Mr. McGranaghan and the band by MEPC Music Ltd when in remote locations playing successive nights in Ireland or on a Cruise Ship, was accepted and conceded by MEPC Music Ltd in 'Point 59' of the Appeals Officer's decision, which states:

  'The hearing heard that, on occasion, accommodation was provided when the band was playing successive nights at a remote location'

- MEPC Music Ltd accepts and concedes that Mr. McGranaghan was paid by MEPC Ltd while working on tours to Spain & Portugal for MEPC Music Ltd.
- MEPC Music Ltd accepts and concedes that Spain & Portugal tours lasted for either 7 or 10 days.
- MEPC booked performances for the band for the Spain & Portugal tours. (Generally, this was 5 nights & 1 afternoon performance on a 7-day tour, and 7/8 nights and 2 afternoon performances on a 10-day tour.)
- Night performances varied from 45 mins to 2 hours and afternoon performances were 90 mins.
- The times of performances were booked by MEPC Music Ltd.
- Most days required sound-checks and rehearsals.
- It is accepted and conceded by MEPC Music Ltd that Mr. McGranaghan was not responsible for bookings or scheduling.
- It is accepted and conceded by MEPC Music Ltd that bookings and schedules are the sole responsibility of MEPC Music Ltd.
- In addition to this, all band members were obligated to carry out additional duties to accompany other guest singers at their performances.
- These duties were carried out under the direction and control of MEPC Music Ltd.
- There was no payment per gig for these duties.
- There was no gig rate for these duties.
- Mr. McGranaghan was paid €1,000 in respect of a 7-day tour and €1,500 for a 10-day tour by MEPC Music Ltd.
- €1,000 in respect of a 7-day tour and €1,500 for a 10-day tour is not 'Paid per Gig'.
- €1,000 in respect of a 7-day tour and €1,500 for a 10-day tour, with a requirement from MEPC Music Ltd to perform live for the instructed periods, is not a 'Gig Rate'.

- €1,000 in respect of a 7-day tour and €1,500 for a 10-day tour did not include the costs of Mr. McGranaghan's or the band's accommodation.
- Mr. McGranaghan was employed directly by MEPC Music Ltd for these tours and paid by MEPC Music Ltd.
- It is during these tours to Spain & Portugal, and while Mr. McGranaghan was the resident fiddle-player in Michael English's band, that he played along with artists such as Brendan Shine and Dominic Kirwan, at the behest of and paid for by MEPC Music Ltd.
- Mr. McGranaghan did not make any commitment other than his initial commitment to take the job he was offered by MEPC Music Ltd in 2013.
- Mr McGranaghan was informed by MEPC Music Ltd that these were the performance times, booked and scheduled by MEPC Music Ltd, that Mr. McGranaghan and the rest of the band, were obligated to do on the 7- or 10-day Spain & Portugal tours.
- Travel, accommodation & subsistence (half board) on the Spain tour was provided by MEPC Music Ltd to Mr. McGranaghan and the band.
- Travel, accommodation & subsistence (bed & breakfast) on the Portugal tour was provided by MEPC Music Ltd to Mr. McGranaghan and the band.
- Mr. McGranaghan and the band did not pay for accommodation on the Spain & Portugal tours.
- That accommodation was provided for Mr. McGranaghan and the band by MEPC Music Ltd when in remote locations playing successive nights in Ireland or in a resort in Spain or Portugal, was accepted and conceded by MEPC Music Ltd in 'Point 59' of the Appeals Officer's decision, which states: ***'The hearing heard that, on occasion, accommodation was provided when the band was playing successive nights at a remote location'***

27. In 'Point 27' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan pointed out that the worker had not been paid travel expenses to gigs in Ireland and any implied contract could only come into being once he turned up to perform'

Points of Fact:

- Travel to and from work is an employee's own private travel. It is not a business journey.
- Employees' travel expenses are only paid when they travel on business journeys. Employees are paid subsistence if employees are working away from their normal place of work. This is entirely consistent with the working conditions of Mr. McGranaghan as described by both parties and is a clear 'Contract of Service' situation.

- The Minister for Public Expenditure and Reform has recently published updated mileage and subsistence rates for the public service, which were effective from 1 September 2022. The Minister for Public Expenditure and Reform is very clear, as are the Revenue Commissioners, that travel to and from work is an employee's own private travel.
- This also applies to hybrid workers such as Mr. McGranaghan for whom live performances are his 'Normal place of work' but much of his work for MEPC Music Ltd was done at home learning, transcribing and practicing for live performances.
- Most workers living in the Western Region, such as Mr. McGranaghan, travel to work by car 69%, and this is higher than the national average of 62.4%.
- High milage is the nature of the music industry. The is no single location in Ireland where Mr. McGranaghan could live that would serve to reduce milage.
- Many employees have commute times of an hour or more, it is quite common.
- Mr. McGranaghan's commutes to work were generally from his own home rural location to another rural location where milage driven was above the national average but still consistent with commute times of normal employees commuting into city centres.
- MEPC Music Ltd accepts and concedes that Mr. McGranaghan was not paid travel expenses which were not associated with MEPC Music Ltd's business requirements.
- Mr. McGranaghan's unpaid commutes to and from work are entirely consistent with every other Contract of Service employee in the country.
- It is factually incorrect to state that ***'any implied contract could only come into being once he turned up to perform'.***
- Mr. McGranaghan was obligated to perform multiple duties for MEPC Music Ltd. Live performance, being only one of those duties.
- Musicians who are employees of business bands, orchestras, pit orchestras etc. are the original hybrid workers for whom live performances are the 'Normal place of work' but much of the work is done at home learning, transcribing and practicing. Subsequently at rehearsals each individual performance is then controlled and directed by the employer until it meets the employer's approval for live performances as a group of musicians, be it band, orchestra, pit orchestra etc. It is not number of people in the group of musicians which determines employment status.
- The implied contract came into being in 2013 when Mr. McGranaghan accepted a job offer from MEPC Music Ltd to be resident fiddle player with the Michael English Band trading as MEPC Music Ltd.

28. In 'Point 28' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan referred to the leading case of Castleisland Cattle Breeding Society where the Supreme Court held that there was nothing unlawful or necessarily ineffective about a company deciding to engage people on an independent contractor basis but the decider must look at how the contract is worked out in practice as mere wording cannot determine its nature'

Point of Fact:

- It is accepted and conceded by MEPC Music Ltd that the 'Decider', in this instance the Appeals Officer, must look at how the contract is worked out in practice as mere wording cannot determine its nature.

29. In 'Point 29' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan argued that the company had no knowledge of Mr. McGranaghan's tax status and whether he had availed and any social welfare or pandemic unemployment payments. MEPC said that Mr. McGranaghan's social media profile identified him as representing the music industry workers. Mr. Ryan stressed that Mr. McGranaghan had been paid on the basis of invoices submitted for contractor services'

Points of Fact:

- The question at issue before the Appeals Officer is Mr. McGranaghan's PRSI status.
- Mr. McGranaghan's entitlements to social welfare payments are entirely a consequence of the self-employed label placed upon Mr. McGranaghan by MEPC Music Ltd.
- Mr. McGranaghan's tax status is entirely a consequence of the self-employed label placed upon Mr. McGranaghan by MEPC Music Ltd.
- Scope clarified that the full outstanding potential non-compliance would fall to the appellant company not Mr. McGranaghan.
- Mr. McGranaghan's social media profile is not a question at issue before the Appeals Officer.
- The statement ***'Mr. McGranaghan had been paid on the basis of invoices submitted for contractor services'*** is a false statement.
- Invoices were not submitted for payment.
- Payment was made weekly, usually on a Friday.
- Payment was made by MEPC to Mr. McGranaghan in advance.
- Invoices were only submitted after payment.
- That MEPC paid Mr. McGranaghan in advance for work MEPC expected him to do personally, as the resident fiddle player for the band, is entirely consistent with a mutuality of obligation.

30. In 'Point 30' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan argued that Mr. McGranaghan's PRSI status was central to this appeal and the potential consequent liability. Scope clarified that the full outstanding potential non-compliance would fall to the appellant company'

Points of Fact:

- It is accepted and conceded by MEPC Music Ltd that the full outstanding potential noncompliance liability for the mislabelling of Mr. McGranaghan as self-employed would fall to the appellant company.
- As is accepted and conceded in evidence by MEPC Music Ltd, Mr. McGranaghan is only one of a number of musicians who work for MEPC Music Ltd and are paid in a similar A-typical way.
- It is a matter of serious concern that at the Social Welfare Appeals Office, as a quasi-judicial tribunal, a 'Not' de novo oral hearing took place, de novo evidence given was not sworn, witnesses with pertinent evidence were not compelled to attend, that the entire process was held in secret, that natural justice was ignored and that a de novo decision was made where a matter of potentially many millions of euros, and the rights of thousands of workers, was decided by overturning a Scope Section decision, all of this done without any legal or judicial oversight.

31. In 'Point 31' of the Appeals Officer's decision, the Appeals Officer states:

'Scope questioned whether the worker had been offered a contract of service or a contract for services when the written agreement was proposed'

Points of Fact:

- A contract was not 'Offered', a contract was discussed.
- The contract discussion took place 10 months after Mr. McGranaghan had been offered and accepted employment with MEPC Music Ltd.
- The contract discussed was a contract for service.
- Mr. McGranaghan did not enter into further discussion about the contract because it was not a contract of service and did not reflect Mr. McGranaghan's employment situation with MEPC Music Ltd.
- Mr. McGranaghan was informed by MEPC Music Ltd that the contract which was briefly discussed was similar to contracts used in Midwest Radio.

32. In 'Point 32' of the Appeals Officer's decision, the Appeals Officer states:

'The hearing heard that a separate company, Paul Claffey Tours Ltd, operated cruises and booked bands to perform on the cruises and more than one band was booked per cruise and which provided the worker with opportunity for additional earnings'

Points of Fact:

- This is de novo evidence.
- The statement **"*Paul Claffey Tours Ltd, operated cruises and booked bands to perform on the cruises*" is a false statement.**
- While Mr. Claffey is a director of both MEPC Ltd and Paul Claffey Tours Ltd, these are separate corporate entities'
- Mr. McGranaghan never engaged with Mr. Claffey as anything other than a Director of MEPC Music Ltd.
- Mr. McGranaghan never worked for Paul Claffey Tours Ltd and Mr. McGranaghan was never paid by Paul Claffey Tours Ltd.
- At all times Mr. McGranaghan worked for MEPC Music Ltd.
- At all times Mr. McGranaghan was paid by MEPC Music Ltd.
- The cruises in question are annual charter cruises operated and promoted by Gertrude Byrne Promotions in the USA.
- Mr. McGranaghan's records show that he was always paid by MEPC Music Ltd for cruises and Spain/Portugal tours:
    - ***24th May 2016, €1,250 Paid in advance by MEPC Music Ltd for 18th – 22nd May in Ireland & Spain 24th – 31st May.***
    - ***6th Sep 2016, €995 Paid by MEPC Music Ltd for 26th & 27th Aug in Ireland & Mediterranean Cruise 28th Aug – 4th Sep.***
    - ***3rd Oct 2016 €1,160 Paid in advance by MEPC Music Ltd for 29th & 30th Sep and 1st Oct in Ireland & Portugal 2nd – 9th Oct.***
    - ***7th Feb 2017 €1,495 Paid in advance by MEPC Music Ltd for 3rd – 5th Feb in Ireland & Western Caribbean Cruise 9th –19th Feb.***
    - ***22nd May 2017 €1,165 Paid in advance by MEPC Music Ltd for 19th – 21st May in Ireland & Spain 23rd – 30th May.***
    - ***25th Sep 2017 €2,320 Paid in advance by MEPC Music Ltd for 20th – 24th Sept in Ireland, 26th – 30th Sep & 1st Oct in UK, & Portugal 3rd – 10th Oct.***
    - ***13th Feb 2018, €1500 Paid in advance by MEPC Music Ltd for Eastern Caribbean Cruise 15th – 25th Feb.***
    - ***8th June 2018, €1330 Paid in advance by MEPC Music Ltd for 8th & 9th Jun in Ireland & Spain 10th – 19th Jun.***
    - ***1st October 2018, €670 Paid in advance by MEPC Music Ltd for Portugal 2nd – 10th Oct.***
    - ***10th May 2019, €1500 Paid in advance by MEPC Music Ltd for Alaskan Cruise 11th – 20th May.***
    - ***7th Jun 2019, €2060 Paid in advance by MEPC Music Ltd for 7th & 8th Jun in Ireland & Spain 9th – 18th Jun.***
    - ***4th October 2019, €1000 Paid in advance by MEPC Music Ltd for Portugal 30th Sep – 7th Oct.***

- ***24th February 2020, Paid in advance by MEPC Music Ltd for Mexican Cruise 20th Feb – 1st Mar.***

33. In 'Point 33' of the Appeals Officer's decision, the Appeals Officer states:

'The hearing also heard that MEPC had planned a musical for 2020 which was to be performed in 60 to 70 venues and that the band musicians were not required for the musical'

Points of Fact:

- The planned musical in question never actually happened. This is a purely hypothetical point and bears no relevance to the reality of the situation. It has no bearing on the facts of the case.
- Throughout 2019, in the planning stages of the musical, MEPC Music Ltd promised Mr. McGranaghan and the other band members that they would be required as part of their duties to work as the pit orchestra for the proposed musical.
- The proposed musical was not staged as Covid-19 restrictions were introduced.
- The proposed musical had 16 confirmed shows in 11 different venues in Ireland in the first 7 months of 2020.
- In order to contextualise this claim or performing a commercial musical in an additional 60 venues in the final 5 months of 2020, Sir Andrew Lloyd Webber's company "The Really Useful Group" had been scheduled to perform a UK & Ireland tour of "The Phantom of the Opera" over a 14-month period starting in late February 2020 and was to be performed in 8 venues, one of which was in Ireland.
- In 2019, Blood Brothers, the third longest-running musical production in West End history, toured Ireland for 24 performances in 2 venues.

34. In 'Point 34' of the Appeals Officer's decision, the Appeals Officer states:

'The appellant company reminded the hearing that Mr. McGranaghan had admitted doing studio work and work with others. Mr. Ryan referred to Mr. McGranaghan's media profile where he pointedly omits any reference to MEPC'

Points of Fact:

- Activities outside Mr. McGranaghan's obligations to MEPC Music Ltd were on such a small scale as to be regarded as purely marginal and ancillary.
- Mr. McGranaghan, on limited occasions, worked with other bands/artists when he wasn't obligated to perform his duties with MEPC Music Ltd. MEPC Music Ltd could not exert authority over Mr. McGranaghan in his spare time. Many professionals in many professions can engage in private work outside of

their employment, such as accountants, teachers etc. Mr. McGranaghan had very limited opportunities outside of his obligations to MEPC Music Ltd.

- Mr. McGranaghan's media profile was prevalent during the recent pandemic as the spokesperson for the Music & Entertainment Association of Ireland (a voluntary role).
- Mr. McGranaghan references Brendan Shine, Dominic Kirwan and Philomena Begley in his social media profile, all of whom he played with as part of his duties with MEPC Music Ltd which was paid for by MEPC Music Ltd. Mr. McGranaghan does refer to MEPC Music Ltd in naming the artists he has worked with as an employee of MEPC Music Ltd.
- Nowhere on MEPC Director Michael English's Twitter profile is MEPC Music Ltd referred to.

35. In 'Point 35' of the Appeals Officer's decision, the Appeals Officer states:

'Scope referred to the number of yearly gigs which MEPC had engaged Mr. McGranaghan and argued that, even at the admitted 200 gigs a year, this was still a substantial level of commitment'

Points of Fact:

- The statement **"*at the admitted 200 gigs a year*"** is factually incorrect.
- From 2015 until 2019 inclusive Mr. McGranaghan was engaged by MEPC Music Ltd for an average of 217.6 days per year.

36. In 'Point 36' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC said that not every gig is profitable and cited putting on a 6th gig on a Scotland tour which was at a smaller venue yet the band members got paid for the gig. Even though the booking had not been viable, it was desirable fill the tour with gigs'

Points of Fact:

- It is accepted and conceded by MEPC Music Ltd that not every live performance is profitable.
- It is accepted and conceded by MEPC Music Ltd that Mr. McGranaghan and other band members were paid by MEPC Music Ltd despite any financial loss incurred by MEPC Music Ltd.
- Mr. McGranaghan was not required to have any insurance to cover any such loss.
- Mr. McGranaghan was not required to have any Public Liability Insurance.
- Mr. McGranaghan was not exposed to any financial loss.

- Mr. McGranaghan could not profit from sound management nor lose from poor management whilst fulfilling his duties for MEPC Music Ltd.

37. In 'Point 37' of the Appeals Officer's decision, the Appeals Officer states:

'Scope argued that that the evidence was that Mr. McGranaghan had been working for a body as opposed to being in business on his own accord and while it was accepted that he had done work for other bodies, the question at issue was his work with MEPC'

Point of Fact:

- The question at issue is Mr. McGranaghan's work with MEPC Music Ltd.
- Activities outside Mr. McGranaghan's obligations to MEPC Music Ltd were on such a small scale as to be regarded as purely marginal and ancillary.

38. In 'Point 38' of the Appeals Officer's decision, the Appeals Officer states:

'Scope said that the evidence was that Mr. McGranaghan had been paid a fixed rate per gig and had not therefore been exposed to financial risk and was paid the agreed rate whatever the takings for the booking. Mr. Ryan's response was that the Deciding Officer had not taken this into consideration in arriving at his decision'

Points of Fact:

- It is factually incorrect to say that Mr. McGranaghan had **been "paid a fixed rate per gig"** Refer to point 26.
- Mr. McGranaghan worked a full week every week at a rate set by MEPC Music Ltd.
- Mr. McGranaghan was not in business of his own account and operated under the instruction and direction of MEPC Music Ltd on a contract of service basis.
- Mr. McGranaghan was therefore not exposed to financial risk and was paid the agreed wage by MEPC Music Ltd regardless of takings for bookings at live performances scheduled by MEPC Music Ltd.
- The absence of financial risk for Mr. McGranaghan, as accepted and conceded by MEPC Music Ltd, shows that the Deciding Officer did indeed take this into consideration when arriving at his decision.

39. In 'Point 39' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC's BL rejected the assertion that Mr. McGranaghan was seen as part of MEPC's band and argued that the worker had been identified as a fiddle player rather than the band's fiddle player'

Point of Fact:

- Out of approximately 1,200 performances over 6 years by MEPC Music Ltd's band, as the band's resident fiddle player Mr. McGranaghan was absent on two occasions with prior approval from MEPC Music Ltd for the absences.

40. In 'Point 40' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC asserted that Mr. McGranaghan had only raised the issue of his working status in May 2020 and the appellant company denied that the issue had been raised at any time during 2019. Mr. English produced an exchange of texts from May 2020 which appeared to be amicable'

Points of Fact:

- This is de novo evidence.
- Mr. McGranaghan was not present to answer to this de novo evidence.
- In his initial Scope submission, Mr. McGranaghan provided evidence of raising the issue of becoming an employee on 5th & 8th February 2019.

41. **In 'Point 41' of the Appeals Officer's decision, the Appeals Officer states**:

'MEPC said that it did employ employees and conceded that one of its musicians was employed by them but differentiated him on the basis that he did additional work in addition to being a musician such as being engaged in music selection and production. The company further explained that it employed a driver who also worked as a roadie and sold merchandise'

Points of Fact:

- It is accepted and conceded by MEPC Music Ltd that one of its musicians is employed by them.
- Mr. McGranaghan was obligated to perform multiple duties with MEPC Music Ltd which also included driving the minibus for the band members.
- The statement by MEPC Music Ltd that

> "*it did employ employees and conceded that one of its musicians was employed by them but differentiated him on the basis that he did additional work in addition to being a musician such as being engaged in music selection and production. The company further explained that it employed a driver who also worked as a roadie and sold merchandise"*

contradicts written evidence given in a submission dated 12th August 2021 wherein MEPC Music Ltd state,

> *"It is agreed that there is a different arrangement with the drummer as he is also employed as a drive of the vehicle that brings MEPC Limited equipment to the various locations nationwide. His role, and another*

person who assists him are as employees and their duties include setting up the stage equipment."

42. In 'Point 42' of the Appeals Officer's decision, the Appeals Officer states:

'Mutuality of obligation is the sine qua non of a contract of service. The appellant company argued that Mr. McGranaghan could have and did choose not to work for MEPC and had admitted this in his form INSI declaration. It was not disputed that the worker had consistently played with MEPC's band and that that commitment extended to a considerable over 200 gigs in a year. This number includes the cruise work for Paul Claffey Tours Limited. While Mr. Claffey is both a director of both MEPC Ltd and Paul Claffey Tours Ltd, these are separate corporate entities'

Points of Fact:

- The statement **"*that Mr. McGranaghan could have and did choose not to work for MEPC and had admitted this in his form INSI declaration*"** is a false statement.
- The reality of the situation shows that on two occasions between January 2014 and March 2020 Mr. McGranaghan sought and received permission from MEPC Director Michael English to take time off work for family reasons.
- On the two occasions, over a period of 6 years, when Mr. McGranaghan was given permission to take time off work by Mr. English. MEPC sourced, secured and paid for the substitute. This is entirely consistent with a Contract of Service.
- It is accepted and conceded by MEPC Music Ltd that Mr. McGranaghan **"*had consistently played with MEPC's band and that that commitment extended to a considerable over 200 gigs in a year,*"** (48/49 weeks per year).
- The statement **"*This number includes the cruise work for Paul Claffey Tours Limited*"** is factually incorrect.
- It is accepted and conceded by MEPC Music Ltd that Mr. McGranaghan was at all times under the control and direction of MEPC Music Ltd for the 48/49 weeks of the year Mr. McGranaghan was obligated to perform his duties for MEPC Music Ltd.
- It is accepted and conceded by MEPC Music Ltd that Mr. McGranaghan was at all times paid by MEPC Music Ltd for the 48/49 weeks of the year that Mr. McGranaghan was obliged to work for MEPC Music Ltd.
- It is accepted and conceded by MEPC Music Ltd that Mr. Claffey is a director of MEPC Music Ltd.
- Mr. McGranaghan never engaged with Mr. Claffey as anything other than a Director of MEPC Music Ltd.

43. In 'Point 43' of the Appeals Officer's decision, the Appeals Officer states:

'Despite the level of commitment, Mr. McGranaghan did not work under a written contract and in the absence of a written agreement, the actual working relationship must be ascertained by examining how the parties had conducted themselves and whether an implied contract existed. Mr. Ryan for MEPC said that the worker had signed up for work but had not been contracted to do the work and, similar to Karshan, the worker had been offered a list of dates and he responded by signaling his availability. Mr.Ryan argued that there had been no exploration of this issue in the Scope decision and he submitted that the worker had not been obliged to do the work and there had been no consequences for the worker refusing the work'

Points of Fact:

- It is factually incorrect to say that **"*the worker had signed up for work but had not been contracted to do the work.*"**
- It is accepted and conceded by MEPC Music Ltd that Mr. McGranaghan was at all times paid by MEPC Music Ltd for the 48/49 weeks of the year that Mr. McGranaghan was obliged to work for MEPC Music Ltd.
- The only time Mr. McGranaghan ever expressed his availability was when he accepted the job offer from MEPC Director Michael English in 2013.
- At no time after Mr McGranaghan accepted the job offer from Mr. English, did Mr. McGranaghan ever feel the need to 'signal his availability'.
- At no time after Mr. McGranaghan accepted the job offer from Michael English, did MEPC Music Ltd. request or require Mr. McGranaghan to signal his availability.
- At all times Mr. McGranaghan was fully available to MEPC Music Ltd.
- At all times MEPC Music Ltd expected Mr. McGranaghan to be available without signalling his ongoing availability.
- The reality of the situation, based on the evidence provided by both parties, is that Mr. McGranaghan was a diligent and dependable employee who only ever took time off twice in 6 years, on both occasions due to family reasons. This is entirely consistent with a Contract of Service employee with an exemplary attendance record.
- The statement by the Appeals Officer ***'in the absence of a written agreement, the actual working relationship must be ascertained by examining how the parties had conducted themselves and whether an implied contract existed'*** is a false statement and seriously undermines the entire Social Welfare Appeals Office approach in the area of insurability of employment.
- The existence or absence of a contract is not a determinative factor in employment status. Decision makers are obligated to look past a contract to the reality of situation.

- A written contract is of little value in coming to a conclusion as to the work status of the person engaged.

- In 'Point 6' of the Appeals Officer's decision, the Appeals Officer fully recognised the authority of the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] Supreme Court case which states that:

  "each case must be considered in light of its particular facts and circumstances"

- The precedent regarding written contracts set in the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] Supreme Court case obligates decision makers to examine the facts and realities of the situation on the ground i.e., to look at and beyond the written contract to arrive at the totality of the relationship.

- The precedent that a decider must always look beyond a written or implied contract and actually examine the 'Reality of the Situation' is confirmed by MEPC Music Ltd at 'Point 28' where MEPC Music Ltd states:

  'the decider must look at how the contract is worked out in practice as mere wording cannot determine its nature'

- This Supreme Court precedent is reflected in the Code of Practice for determining employment status which states:

  '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 Appeals Officer's statement that it is in the absence of a written agreement that the actual reality of the working relationship must be ascertained, is profoundly different to the approach taken by Scope Section and runs contrary to precedents handed down by the higher courts. This is a matter of great concern for all appeals of Scope Section decisions.

44. In 'Point 47' of the Appeals Officer's decision, the Appeals Officer states:

'The worker, Mr. McGranaghan, has declared (Q19(c) of his INSI) that he had been free to send a substitute. Mr. Ryan for the appellant company referred to an e-mail of 21 February 2019, from Mr. McGranaghan to MEPC, in which he had identified dates when he would not be available. The band members were issued in advance with forthcoming gig dates/bookings and I note that Mr. McGranaghan had on occasion sought the bookings details from MEPC and had undertaken to provide this schedule/updates to the other band members as an email of 5 January 2016 shows. On 9 April 2017, Mr. McGranaghan had sought details of bookings up to the end of September that year'

Points of Fact:

- The statement ***'Mr. McGranaghan, has declared (Q19(c) of his INSI) that he had been free to send a substitute'*** is factually incorrect.

- On 31 August 2020, Mr. Tom Fagan, Social Welfare Inspector, stated in that report:

> ***"In IP's response to q19(c), he stated that he can send a substitute, however IP subsequently clarified that the onus was not on him to send a substitute if he was unable to perform with band at a scheduled gig, that it would be up to the band to find a replacement."***

- It was accepted and conceded by Mr. Tom Fagan SWI, and recorded in Mr. Fagan SWI's report that substitution was solely the responsibility of MEPC Music Ltd.

- On two occasions from January 2014 until March 2020 Mr. McGranaghan did not perform in his usual capacity for MEPC Music Ltd at his own request or reason and with MEPC Music Ltd's authority/knowledge. One occasion Mr. McGranaghan asked for the night off at short notice to deal with a family medical situation, the second time in 2019, he requested the night off and provided several months' notice. On both occasions MEPC sourced, secured and paid for the replacement.

- The statement ***'Mr. McGranaghan had sought details of bookings up to the end of September that year'*** is entirely correct. Like many thousands of 'Contract of Service' employees with irregular hours, Mr. McGranaghan routinely checked the roster of work scheduled by MEPC Music Ltd for Mr. McGranaghan and the band.

45. In 'Point 48' of the Appeals Officer's decision, the Appeals Officer states:

> *'In a submission of 26 August 2021, Mr. McGranaghan provided a pdf file showing the list of gigs emailed from 2014 onwards. He argued that the list, emailed weeks or months in advance, indicated a commitment to provide work which imply an understanding of work and availability on an ongoing basis'*

Points of Fact:

- This is de novo evidence from 26 August 2021.

- Despite being de novo evidence, this evidence proves mutuality of obligation.

46. In 'Point 49' of the Appeals Officer's decision, the Appeals Officer states:

> *'In the same submission, Mr. McGranaghan asserted that he had been restricted from working elsewhere and could only do so in circumstances where MEPC did not require his services. In his response to MEPC's appeal submission, Mr. McGranaghan had (in email of 11/01/2021) stated that he had started with the band on 27 November 2013 but had officially commenced with the band from 1 January*

2014. In this email, Mr. McGranaghan also revealed that had taken opportunities to play with other bands but only on nights when he was not working with MEPC'

Points of Fact:

- This is de novo evidence from 11 January 2021.
- Mr. McGranaghan was hired by MEPC Music Ltd on the 27th November 2013 and rehearsals started within a fortnight.
- Mr. McGranaghan was paid continuously by MEPC Music Ltd from when rehearsals began in 2013 until 13th March 2020.
- It is accepted and conceded by MEPC Music Ltd that Mr. McGranaghan **"*had taken opportunities to play with other bands but only on nights when he was not working with MEPC.*"**
- These occasions where Mr McGranaghan did provide his services to other people and bands are on such a small scale and must be regarded as purely marginal and ancillary.

47. In 'Point 50' of the Appeals Officer's decision, the Appeals Officer states:

'At the very least, there had been a commitment by MEPC to provide work and a commitment by Mr. McGranaghan to do the work. MEPC had entered into bookings, presumably contractual, to play at various venues. There were at least 2 to 3 gigs a week and the worker undertook to perform or to advise of dates he was not available; this had been infrequent. I regard this as different from Karshan where Haughton J held that a Contractor 'signs up' but has no obligation to make himself or herself 'available' for work. The working relationship between MEPC and Mr. McGranaghan was more than the promise or prospect of work. The dates, venues and available band members had all to be confirmed in advance. I regard the exchange of emails outlining the forthcoming gigs as a firm offer of work which the worker had largely committed to in advance'

Points of Fact:

- It is accepted and conceded by the Appeals Officer that **"*there had been a commitment by MEPC to provide work.*"**
- It is accepted and conceded by the Appeals Officer that there was **"*a commitment by Mr. McGranaghan to do the work*."**
- The statement **"*there were at least 2 to 3 gigs a week*"** is factually incorrect. There were at least 4 to 5 live performances per week.
- It is accepted and conceded by the Appeals Officer that **"*The working relationship between MEPC and Mr. McGranaghan was more than the promise or prospect of work.*"**

- It is accepted and conceded by the Appeals Officer that the exchange of emails between MEPC Music Ltd and Mr. McGranaghan is a **"*firm offer of work which the worker had largely committed to in advance.*"**
- This is entirely consistent with mutuality of obligation.
- This is entirely consistent with a contract of service.
- It is accepted and conceded by the Appeals Officer that the question at issue before him is very different from the Karshan case.

48. In 'Point 51' of the Appeals Officer's decision, the Appeals Officer states:

'Also in Karshan, is her dissenting judgement, Whelan J concluded that the real question was whether the fact that either side could choose not to fulfil individual contracts and, the extent to which if at all, that occurred in practice without any possibility of sanction is material. In Karshan, rosters had been put in place based upon the availability of the delivery drivers and the anticipated need of the company. That is very different from this case where the appellant company had committed to play at venues months in advance and was only able to do so by being able to rely on its musicians. There could have been little ad hoc about who played in the band as the music had to be selected and rehearsed in advance'

Points of Fact:

- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan's case is **"*very different*"** from the Karshan case as MEPC Music Ltd **"*had committed to play at venues months in advance and was only able to do so by being able to rely on its musicians.*"**
- It is accepted and conceded by the Appeals Officer that **"*There could have been little ad hoc about who played in the band as the music had to be selected and rehearsed in advance.*"**

49. In 'Point 52' of the Appeals Officer's decision, the Appeals Officer states:

'There is no evidence that Mr. McGranaghan had not been available to perform except on rare occasions which he had indicated in advance. He told the inspector that he had only taken 2 nights off between 2104 and March 2020. He listed just three occasions when he chose not to perform; 13/08/2018, 21/12/2018 and 29/11/2019. In an email from February 2019, Mr. McGranaghan indicated that he would not be available on 22/03/2019, 29/11/2019 and possibly 30/1 1/2019'

Points of Fact:

- It is accepted and conceded by the Appeals Officer that **"*there is no evidence that Mr. McGranaghan had not been available to perform except on rare occasions which he had indicated in advance.*"**
- The reality of the situation, based on the evidence provided by both parties, is that Mr. McGranaghan was a diligent and dependable employee who only ever

took time off twice in 6 years, on both occasions due to family reasons. This is entirely consistent with a Contract of Service employee with an exemplary attendance record.

50. In 'Point 53' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan pointed out that there had been no sanction for non-attendance or non-availability of the worker and this had been noted in the decision by the Deciding Officer. The worker was the band's regular fiddle player and essential to the band's performance. This was again very different from Karshan where the company offered the work to a rota of workers. It is fair to say that Mr. McGranaghan had been expected to perform unless he had signaled his non-availability in advance'

Points of Fact:

- There could be no sanction because 2 nights off work in 6 years is not a disciplinary matter.
- The reality of the situation, based on the evidence provided by both parties, is that Mr. McGranaghan was a diligent and dependable employee who only ever took time off twice in 6 years, on both occasions due to family reasons. This is entirely consistent with a Contract of Service employee with an exemplary attendance record.
- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan was MEPC Music Ltd's **"*regular fiddle player and essential to the band's performance*"**
- It is accepted and conceded by the Appeals Officer that the question at issue is **"*again very different from Karshan where the company offered the work to a rota of workers*"**
- It is accepted and conceded by the Appeals Officer that **"*Mr. McGranaghan had been expected to perform*"** with MEPC Music Ltd unless he had sought and received permission from MEPC Music Ltd to take time off work.

51. In 'Point 54' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan reminded the hearing that the worker had not been paid travel expenses to gigs in Ireland and any implied contract could only come into being once he turned up to perform. I agree with this assertion with the proviso that the implied contract could only have come into effect when the worker began work, in this case, began preparing/rehearsing for the gig'

Points of Fact:

- Travel to and from work is an employee's own private travel. It is not a business journey.
- Employees' travel expenses are only paid when they travel on business journeys. Employees are paid subsistence if employees are working away

from their normal place of work. This is entirely consistent with the working conditions of Mr. McGranaghan as described by both parties and is a clear 'Contract of Service' situation.

- The Minister for Public Expenditure and Reform has recently published updated mileage and subsistence rates for the public service, which were effective from 1 September 2022. The Minister for Public Expenditure and Reform is very clear, as are the Revenue Commissioners, that travel to and from work is an employee's own private travel.
- This also applies to hybrid workers such as Mr. McGranaghan for whom live performances are his 'Normal place of work' but much of his work for MEPC Music Ltd was done at home learning, transcribing and practicing for live performances.
- Most workers living in the Western Region, such as Mr. McGranaghan, travel to work by car 69%, and this is higher than the national average of 62.4%.
- High milage is the nature of the music industry. The is no single location in Ireland where Mr. McGranaghan could live that would serve to reduce milage.
- Many employees have commute times of an hour or more, it is quite common.
- Mr. McGranaghan's commutes to work were generally from his own home rural location to another rural location where milage driven was above the national average but still consistent with commute times of normal employees commuting into city centres.
- MEPC Music Ltd accepts and concedes that Mr. McGranaghan was not paid travel expenses which were not associated with MEPC Music Ltd's business requirements.
- Mr. McGranaghan's unpaid commutes to and from work are entirely consistent with every other Contract of Service employee in the country.
- It is factually incorrect to state that ***'any implied contract could only come into being once he turned up to perform'.***
- Mr. McGranaghan was obligated to perform multiple duties for MEPC Music Ltd. Live performance, being only one of those duties.
- The implied contract came into being in 2013 when Mr. McGranaghan accepted a job offer from MEPC Music Ltd to be resident fiddle player with the Michael English Band trading as MEPC Music Ltd.
- It is accepted and conceded by the Appeals Officer that **"*the implied contract could only have come into effect when the worker began work.*"**
- It is accepted and conceded by the Appeals Officer that the implied contract commenced when the worker began **"*preparing*"** for a live performance.

- Mr. McGranaghan performed multiple duties for MEPC Music Ltd such as learning new songs/material for MEPC Music Ltd, transcribing notation, creating chord charts, performing for other artists at variety concerts, learning the other artists' songs and material in advance, performing for support artists for MEPC Music Ltd, learning the support artists' songs and material in advance, working in promotional videos for the band, performing for other artists on the instructions of MEPC Music Ltd and paid for paid by MEPC Music Ltd. At times Mr. McGranaghan even drove the minibus which carried the band members for MEPC Music Ltd. This is not an exhaustive list of Mr. McGranahan's duties for MEPC Music Ltd.

- Musicians who are employees of business bands, orchestras, pit orchestras etc. are the original hybrid workers for whom live performances are the 'Normal place of work' but much of the work is done at home learning, transcribing and practicing. Subsequently at rehearsals each individual performance is then controlled and directed by the employer until it meets the employer's approval for live performances as a group of musicians, be it band, orchestra, pit orchestra etc. It is not number of people in the group of musicians which determines employment status.

52. In 'Point 55' of the Appeals Officer's decision, the Appeals Officer states:

'The Deciding Officer found that there had been a mutuality of obligation because of the 6 years almost continual offer (and acceptance) of work and where there had been just one example of work being refused. The Deciding Officer did not find any consequences for this refusal. There were other examples of the worker signaling his unavailability but such instances were not common'

Points of Fact:

- It is accepted and conceded by the Deciding Officer that **"*there had been a mutuality of obligation because of the 6 years*"** of the continual mutuality of obligation between MEPC Music Ltd and Mr. McGranaghan.

- The Deciding Officer did not find any consequences because 2 absences from work over a 6-year period, is not, nor cannot be construed as a 'Disciplinary Matter'.

- Out of approximately 1,200 performances over 6 years by MEPC Music Ltd's band, as the band's resident fiddle player Mr. McGranaghan was absent on two occasions with prior approval from MEPC Music Ltd for the absences.

- The reality of the situation shows that on two occasions between January 2014 and March 2020 Mr. McGranaghan sought and received permission from MEPC Director Michael English to take time off work for family reasons.

53. In 'Point 56' of the Appeals Officer's decision, the Appeals Officer states:

'Having regard to the worker's role as an integral member of the band, the band's advance commitment to perform at venues, the band's offer of work and the worker's confirmation of his availability, I find that mutuality of obligation existed'

Points of Fact:

- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan's role was an integral member of the band.
- It is accepted and conceded by the Appeals Officer that a mutuality of obligation existed.

54. In 'Point 58' of the Appeals Officer's decision, the Appeals Officer states:

'Counsel for the appellant company went on to say that musicians take instruction and direction from the band leader but that this was different to the control that an employer exercised over an employee and the element of control is no longer as significant a consideration as it once was. This is the case and while a musician is not instructed how to perform, the type of music, the arrangement, the venue and the date are all in the control of the company and therefore Mr. McGranaghan was working work under the control and direction of MEPC, However, I agree with Mr. Ryan in his assertion that control is not a determining factor and the circumstances recounted here could apply equally to an employee or contractor'

Points of Fact:

- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan worked under the control and direction of MEPC Music Ltd.
- The statement **"*that control is not a determining factor*"** is factually incorrect.
- Control is always a determining factor in questions of insurability of employment and is one of the 'Tests' used in determination of insurability of employment.
- The statement that control is not a determining factor and **"*the circumstances recounted here could apply equally to an employee or contractor*"** is incorrect due to the incompleteness of the statement.
- It is accepted and conceded by the Appeals Officer that the degree of control over how the work is to be performed, is not as significant a factor is not a determining factor, however, the Appeals Officer consistently ignores the fact that Mr. McGranaghan was not in business on his own account as a determining factor. After all, Mr. McGranaghan did not work for the Matt McGranaghan Band trading as MEPC Music Ltd.
- That the Appeals Officer consistently ignores that Mr. McGranaghan was not in business on his own account, is profoundly different to the approach taken by Scope Section and runs contrary to precedents handed down by the higher courts. This is a matter of great concern for all appeals of Scope Section decisions.

55. In 'Point 59' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC accepted that it had been the practice that members of the band travelled together when performing abroad but that they were not paid travel expenses when performing in Ireland. The hearing heard that, on occasion, accommodation was provided when the band was playing successive nights at a remote location'

Points of Fact:

- In this statement MEPC Music Ltd at first denies, then accepts and concedes that accommodation was provided when the band was playing successive nights at a remote location in Ireland.
- In Point 15, despite an initial denial from MEPC Music Ltd, it was accepted and conceded by MEPC Music Ltd that when performing in Ireland accommodation was provided when the band was playing successive nights at a remote location.

56. In 'Point 60' of the Appeals Officer's decision, the Appeals Officer states:

'When performing outside Ireland, the band travelled together and accommodation was provided. I do not regard this as important because it would have been desirable and cost effective to keep the band together while touring. I find that the absence of travel expenses to gigs in Ireland is significant particularly in light of the extensive travel involved. Mr. McGranaghan has stated that he did, on average, 1 ,000 miles a week driving to and from gigs.

Points of Fact:

- The statement by the Appeals Officer that ***'I find that the absence of travel expenses to gigs in Ireland is significant'*** is a factually incorrect 'opinion' of the Appeals Officer which is not legally sustainable.
- Travel to and from work is an employee's own private travel. It is not a business journey.
- Employees' travel expenses are only paid when they travel on business journeys. Employees are paid subsistence if employees are working away from their normal place of work. This is entirely consistent with the working conditions of Mr. McGranaghan as described by both parties and is a clear 'Contract of Service' situation.
- The Minister for Public Expenditure and Reform has recently published updated mileage and subsistence rates for the public service, which were effective from 1 September 2022. The Minister for Public Expenditure and Reform is very clear, as are the Revenue Commissioners, that travel to and from work is an employee's own private travel.
- This also applies to hybrid workers such as Mr. McGranaghan for whom live performances are his 'Normal place of work' but much of his work for MEPC

Music Ltd was done at home learning, transcribing and practicing for live performances.

- Most workers living in the Western Region, such as Mr. McGranaghan, travel to work by car 69%, and this is higher than the national average of 62.4%.
- Mr. McGranaghan's commutes to work were generally from his own home rural location to another rural location where mileage driven was above the national average but still consistent with commute times of normal employees commuting into city centres.
- MEPC Music Ltd accepts and concedes that Mr. McGranaghan was not paid travel expenses which were not associated with MEPC Music Ltd's business requirements.
- Mr. McGranaghan's unpaid commutes to and from work are entirely consistent with every other Contract of Service employee in the country.
- High milage is the nature of the music industry. The is no single location in Ireland where Mr. McGranaghan could live which would serve to reduce milage.
- Nearly 200,000 commuters (199,922), representing almost 11 per cent of all commuters, spent an hour or more commuting to work in 2016, with an average travel time of 74 minutes. Nearly 53,000 workers commuted 90 minutes or more.
- All commuters commute to work. The absence of travel expenses to and from work it is not an indicator of self-employed status and is not at all referred to in the Code of Practice as an indicator of self-employment status.
- The absence of travel expenses to and from work it is an indicator of 'Contract of Service' employment status and for the Appeals Officer to state otherwise has serious implications for all Contract of Service employees.
- The Appeals Officer's statement **that "the absence of travel expenses to work is significant**", is profoundly different to the legislation regarding travel expenses allowed by the Revenue Commissioners.
- The Appeals Officer's statement that **"the absence of travel expenses to work is significant"**, is profoundly different to the approach taken by Scope Section and runs contrary to precedents handed down by the higher courts. This is a matter of great concern for all appeals of Scope Section decisions.
- It is extremely significant that, even though the absence of travel expenses to and from work are not at all considered an indicator of self-employment status in the Code of Practice, by the Revenue Commissioners, or in law, travel expenses and a job rate are the unlawful precedents set in the 1995 'Test Case' which gave rise to the unlegislated for 'Owner/Driver Model' of self-

employed status used since 1997 by Revenue and the Dept. Social Protection, as follows:

> ***'Payment was made on the basis of rate per job plus mileage allowance'***

- The statement by the Appeals Officer ***'When performing outside Ireland, the band travelled together and accommodation was provided. I do not regard this as important because it would have been desirable and cost effective to keep the band together while touring'*** is profoundly different to the approach taken by Scope Section, the Code of Practice, the Courts, and the Revenue Commissioners. This is a matter of great concern for all appeals of Scope Section decisions.

- Matters of what is or is not 'Cost Effective' for MEPC Music Ltd are not issues of question for the Appeals Officer.

- It is 'Cost Effective' for MEPC Music Ltd. to mislabel Mr. McGranaghan as self-employed.

- That savings achieved by MEPC Music Ltd through non-payment of employer's PRSI are 'Cost Effective' for MEPC Music Ltd is not nor cannot be an issue of question for the Appeals Officer.

- That the Appeals Officer is demonstrably not acting as an impartial adjudicator with this statement and is justifying unlawful PRSI evasion as 'Cost Effective', raises serious questions about whom the Appeals Officer is acting as an agent for, because he most certainly is not acting for the State's interest in this matter with such an outrageously biased and de novo conclusion.

- The true factual position is that the provision of subsistence and travel expenses by MEPC Music Ltd for Mr. McGranaghan when working for MEPC Music Ltd on cruises, in Spain/Portugal and in remote locations in Ireland is extremely 'IMPORTANT'. The Appeals Officer's decision to ignore this glaring and indisputable Contract of Service indicator because the Appeals Officer believes it was ***'Cost Effective'*** for MEPC Music Ltd is unsustainable legally, unprofessional in the extreme and shows that Mr. McGranaghan is entirely vindicated in not attending the "not de novo" de novo appeal hearing where it is obvious that the Appeals Officer did not nor would not consider the evidence in a fair and professional manner.

- In January 2019, at an Oireachtas Finance Committee hearing, the Chairperson of the Revenue Commissioners accepted and conceded that the evasion of employer's PRSI was the financial 'Driver' for employers to evade employer's PRSI. **The Appeals Officer cannot ignore clear 'Contract of Service' indicators by considering such indicators as 'Not Important' when they are vital to this case.**

- In 'Point 59' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC accepted that it had been the practice that members of the band traveled together when performing abroad but that they were not paid travel expenses when performing in Ireland. The hearing heard that, on occasion, accommodation was provided when the band was playing successive nights at a remote location'

- It is accepted and conceded by MEPC Music Ltd that accommodation was provided when the band was playing successive nights at a remote location in Ireland.
- That the Appeals Officer has chosen to ignore the irrefutable evidence accepted and conceded by MEPC Music Ltd that Mr. McGranaghan was provided with accommodation when the band was playing successive nights at remote locations in Ireland is a matter of serious concern.
- Mr. McGranaghan was obligated to perform multiple duties for MEPC Music Ltd. Live performance, being only one of those duties.
- Musicians who are employees of business bands, orchestras, pit orchestras etc. are the original hybrid workers for whom live performances are the 'Normal place of work' but much of the work is done at home learning, transcribing and practicing. Subsequently at rehearsals each individual performance is then controlled and directed by the employer until it meets the employer's approval for live performances as a group of musicians, be it band, orchestra, pit orchestra etc. It is not number of people in the group of musicians which determines employment status. This is the nature of employment in the Music Industry.

57. In 'Point 61' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. McGranaghan has recounted spending up to 5 hours traveling to and from gigs. The invoices make no provision for the time spent travelling to and from gigs and Mr. McGranaghan was paid a fixed rate for each gig whether down the road or hundreds of km away. Mr. McGranaghan must have factored this into his negotiations with MEPC but any exploration further is not possible in his absence'

Points of Fact:

- An Appeals Officer may, by giving notice in writing, require a person to attend an oral hearing and to produce any relevant documents. A person failing to comply with such a notice is guilty of an offence and, on summary conviction, may be fined up to €1,500 (Section 314). This provision has been availed of to require witnesses to attend to give evidence on the question being determined. This happened with courier 'Notice Party' in 2000 and with the 16 Construction worker 'Notice Parties' in 2016.
- The statement from the Appeals Officer that **"*Mr. McGranaghan must have factored this into his negotiations*"** is a groundless assumption by the Appeals Officer who had it within his powers to compel Mr. McGranaghan to appear at the oral hearing.

- The Appeals Officer's statement that ***"the absence of travel expenses to work is significant"***, is profoundly different to the legislation regarding travel expenses allowed by the Revenue Commissioners.

- The Appeals Officer's statement that ***"the absence of travel expenses to work is significant"***, is profoundly different to the approach taken by Scope Section and runs contrary to precedents handed down by the higher courts. This is a matter of great concern for all appeals of Scope Section decisions.

- **It is extremely significant that**, even though the absence of travel expenses to work is not at all considered a factor in employment status in the Code of Practice, by the Revenue Commissioners, or in law, travel expenses and a job rate are the unlawful precedents set in the 1995 'Test Case':

  'Payment was made on the basis of rate per job plus mileage allowance'

- **It is extremely significant** that the 'Reality of the Situation' as accepted and conceded by MEPC Music Ltd and Mr. McGranaghan is that Mr. McGranaghan was not paid travel expenses to and from work.

- **It is extremely significant** that the Appeals Officer is ignoring the 'Reality of the Situation' as accepted by both parties.

- **It is extremely significant** that the Appeals Officer is substituting his own 'de novo' opinion as 'evidence' which runs contrary to the reality of the situation as accepted and conceded by both parties.

- It is factually incorrect to say that Mr. McGranaghan had **been "paid a fixed rate per gig"** Refer to point 26.

58. In 'Point 62' of the Appeals Officer's decision, the Appeals Officer states:

*'MEPC's barrister submitted that substitution was a feature of the working relationship and that Mr McGranaghan **could** have sent a substitute on the dates that he was not available to perform. Mr. Ryan submitted that the exclusivity test cannot therefore be satisfied and mutuality of obligation cannot exist where a worker is not required to provide personal service'*

Points of Fact:

- ***'Could have'*** is speculative. Only the reality of the situation is a question of issue for the Appeals Officer. The reality of the situation is that MEPC Music Ltd. sought and paid for a substitute for the 2 instances in 6 years where Mr. McGranaghan requested and was given permission to take time off work. This is entirely consistent with a Contract of Employment.

- The use of the word ***"could"*** is important in this statement. Mr. McGranaghan did not send a substitute on the two occasions he sought and was granted permission to take time off work. That is the 'Reality of the Situation'.

- The statement that ***'the exclusivity test cannot be satisfied and mutuality of obligation cannot exist in circumstances where the worker is able to dictate his availability and choosing not to work on occasion'*** is a false statement.

- Mr. McGranaghan did not "dictate" his availability. In 'Point 51' of the Appeals Officer's decision, the Appeals Officer states:

> ***'Also in Karshan, is her dissenting judgement, Whelan J concluded that the real question was whether the fact that either side could choose not to fulfil individual contracts and, the extent to which if at all, that occurred in practice without any possibility of sanction is material. In Karshan, rosters had been put in place based upon the availability of the delivery drivers and the anticipated need of the company. That is very different from this case where the appellant company had committed to play at venues months in advance and was only able to do so by being able to rely on its musicians. There could have been little ad hoc about who played in the band as the music had to be selected and rehearsed in advance.***

- It is accepted and conceded by the Appeals Officer in 'Point 51' that Mr. McGranaghan operated under a mutuality of obligation to MEPC Music Ltd and was obligated to render personal service.

- It is accepted and conceded by the Appeals Officer in 'Point 56' that a mutuality of obligation does exist as follows:

> ***'Having regard to the worker's role as an integral member of the band, the band's advance commitment to perform at venues, the band's offer of work and the worker's confirmation of his availability, I find that mutuality of obligation existed'***

- The statement ***'mutuality of obligation cannot exist in circumstances where the worker is able to dictate his availability and choosing not to work on occasion'*** is a false statement.

- At no time did Mr. McGranaghan 'Choose not to work'.

- On two occasions between January 2014 and March 2020 Mr. McGranaghan sought and received permission from MEPC Director Michael English to take time off work for family reasons. This is entirely consistent with Contract of Service.

- That Mr. English accepted and conceded that the right of 'Permission' to allow Mr. McGranaghan time off work lay exclusively with Mr. English, is entirely consistent with a Contract of Service.

- At no time did Mr. McGranaghan request time off work to offer his services concurrently to others.

- At no time did Mr. English give Mr. McGranaghan permission to take time off work to offer his services concurrently to others.
- At no time did Mr. McGranaghan take time off work with MEPC Music Ltd to offer his services concurrently to others.
- The reality of the situation, based on the evidence provided by both parties, is that Mr. McGranaghan was a diligent and dependable employee who only requested took time off twice in 6 years, on both occasions due to family reasons. This is entirely consistent with a Contract of Service employee with an exemplary attendance record.
- Mr. McGranaghan was, at all times, under the control and direction of MEPC Director Michael English as to where, when, how, and what work is done. Mr. English, MEPC Director, assumed full authority to instruct Mr. Mc Granaghan on what to wear, what to learn, what to play, how to play, to how much Mr. McGranaghan was paid and whether Mr. McGranaghan could have time off work. This is entirely consistent with a Contract of Service.

59. In 'Point 63' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC said that it was custom and practice in the industry that replacement musicians had to stand-in in the event of double bookings etc. MEPC submitted that it had had no problem with substitution once the replacement was a suitably qualified musician'

Points of Fact:

- The situation of a double booking is not relevant to Mr. McGranaghan as it never happened. Mr. McGranaghan never refused his services to MEPC Music Ltd in favour of other work.
- On two occasions between January 2014 and March 2020 Mr. McGranaghan sought and received permission from MEPC Director Michael English to take time off work for family reasons. This is entirely consistent with Contract of Service.
- That Mr. English accepted and conceded that the right of 'Permission' to allow Mr. McGranaghan time off work lay exclusively with Mr. English, is entirely consistent with a Contract of Service.
- On the two occasions, over a period of 6 years, when Mr. McGranaghan was given permission to take time off work by Mr. English, MEPC sourced, secured and paid for the substitute. This is entirely consistent with a Contract of Service.

60. In 'Point 64' of the Appeals Officer's decision, the Appeals Officer states:

'While substitution did arise on rare occasions, it was not a common feature and the ***worker did provide personal service****. There have been just 3 instances where he chose not to work. Mr. McGranaghan gave the impression to the inspector (report of*

28/07/2020) that frequent unavailability would have been frowned upon by the company. This is understandable. The company has strongly argued that it had engaged a fiddle player regardless of who that was. MEPC's position is that it had been indifferent as to who performed once they were competent. In Karshan, the Court of Appeal approved the UK Court of Appeal in "Deliveroo" [2021] EWCA Civ 952 and the finding that a right of substitution might not be inconsistent with rendering personal service where the extent to which the right of substitution is limited or occasional or where a contractor is unable to carry out the work'

Points of Fact:

- It is accepted and conceded by the Appeals Officer that **"w*hile substitution did arise on rare occasions, it was not a common feature*".**
- It is accepted and conceded by the Appeals Officer that "***the worker did provide personal service***".
- The reality of the situation, based on the evidence provided by both parties, is that Mr. McGranaghan was a diligent and dependable employee who only ever took time off twice in 6 years, on both occasions due to family reasons. This is entirely consistent with a Contract of Service employee with an exemplary attendance record.
- The statement that MEPC Music Ltd **"*had engaged a fiddle player regardless of who that was*"** is a false statement.
- It is accepted and conceded by the Appeals Officer "***there could have been little ad hoc about who played in the band as the music had to be selected and rehearsed in advance*".**
- There can be little doubt that the "ad hoc" system as described by MEPC Music Ltd in the de novo oral hearing would be particularly difficult on a cruise, or whilst playing abroad which formed a large part of Mr. McGranaghan's duties for MEPC Music Ltd.

61. In 'Point 65' of the Appeals Officer's decision, the Appeals Officer states:

'Counsel for MEPC made a valid point is asserting that what has been referred to as holidays were periods of shallow bookings and this did not equate to the musicians being on holidays. He added that MEPC had other enterprise interests and performed without a band, using recordings'

Points of Fact:

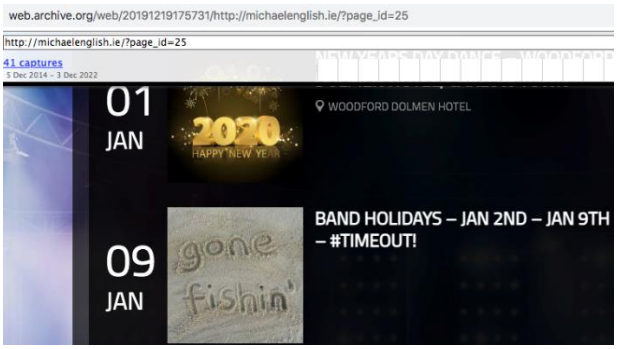
- The statement that '***what has been referred to as holidays were in fact periods of shallow bookings and this did not equate to the musicians being on holidays'*** is a false statement.
- The Scope Section Deciding Officer stated:

'MEPC Music Ltd would take all the bookings for all the performances and the schedule of performance dates would then be communicated to the musicians in the band. MEPC Music Ltd decided what gigs to take, when to take them, and when the band holidays would be. Generally, the musicians were allocated 8-10 days in January and the same in September each year.

His holidays were decided by the company. The band members were allocated 8-10 days in January and the same in September.

Mr. McGranaghan could not take holidays at his own discretion'

- The true factual position is that these so-called ***'periods of shallow bookings'*** were referred to by MEPC Music Ltd as ***"band holidays"*** on social media, in person to Mr. McGranaghan and the other band members by Michael English, in the emails containing the list of dates, and on the MEPC Music Ltd website such as this example:



- The Appeals Officer's statement that this was a valid point, is profoundly different to the approach taken by Scope Section and runs contrary to precedents handed down by the higher courts. This is a matter of great concern for all appeals of Scope Section decisions.

- In 'Point 48' of the Appeals Officer's decision, the Appeals Officer refers to a "pdf file showing the list of gigs emailed from 2014 onwards" which was contained in an email from Mr. McGranaghan dated 26/08/2021 (de novo). In that document there are:
    - 3 periods referred to as "Holidays", and
    - 9 periods referred to as "Band Holidays."

- In 'Point 49' of the Appeals Officer's decision, the Appeals Officer references an email from Mr. McGranaghan dated 11/01/2021 (de novo). Contained in that email are 5 screenshots from the website www.michaelenglish.ie which irrefutably identifies "Band Holidays" for the periods in question.

- It is a matter of serious concern that MEPC Music Ltd knowingly made false and misleading statements as to how MEPC Music Ltd referred to as "Band Holidays."

- It is a matter of serious concern that MEPC Music Ltd knowingly concealed evidence as to how MEPC Music Ltd referred to as "Band Holidays."
- It is a matter of serious concern that the Appeals Officer ignored the evidence in front of him.
- It is a matter of serious concern that the Appeals Officer knowingly concealed the evidence that was available to him.
- Prima facie evidence now exists that an offence may have been committed under Section 251 of the Social Welfare Consolidation Act 2005.
- The reality of the situation is that a worker cannot compel an employer to pay holiday pay. It is outside the control of the worker.
- In most circumstances the absence of holiday pay is a consequence of being mislabelled as self-employed not an indicator of self-employment.

62. In 'Point 66' of the Appeals Officer's decision, the Appeals Officer states:

'*I note that the worker worked without the benefit of holiday pay or sick pay. He was only paid for the gigs performed. Mr. McGranaghan worked during the period of work in question without complaint*'

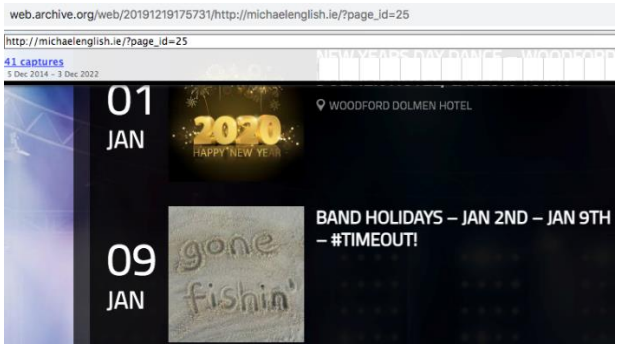
Points of Fact:

- The reality of the situation is that a worker cannot compel an employer to pay holiday pay. It is outside the control of the worker.
- In most circumstances the absence of holiday pay is a consequence of being mislabelled as self-employed.
- The Appeals Officer's statement that Mr. McGranaghan ***"was only paid for the gigs performed"*** is factually incorrect. Refer to Point 26.
- It is factually incorrect to state that Mr. McGranaghan was paid 'Per Gig'. Mr. McGranaghan performed multiple duties for MEPC Music Ltd such as learning new songs/material for Michael English, transcribing notation, creating chord charts, performing for other artists at variety concerts, learning the other artists' songs and material in advance, performing for support artists for MEPC Music Ltd, learning the support artists' songs and material in advance, working in promotional videos for the band, performing for other artists on the instructions of MEPC Music Ltd and paid for paid by MEPC Music Ltd. At times Mr. McGranaghan even drove the minibus which carried the band members for MEPC Music Ltd. This is not an exhaustive list of Mr. McGranahan's duties for MEPC Music Ltd.
- The statement by the Appeals Officer that ***"Mr. McGranaghan worked during the period of work in question without complaint"*** is a false statement and de novo evidence.
- Mr. McGranaghan was not present at the "not de novo" oral hearing.

63. In 'Point 67' of the Appeals Officer's decision, the Appeals Officer states:

'I find that the worker did not avail of or seek holidays and I disagree with the Deciding Officer who found that holidays were decided by the company. Periods of inactivity are not holidays and there is no dispute that the worker had only been paid on the basis of his performance'

Points of Fact:

- The statement from the Appeals Officer that **"*periods of inactivity are not holidays*"** is a false statement.
- The reality of the situation is that a worker cannot compel an employer to pay holiday pay. It is outside the control of the worker.
- In most circumstances the absence of holiday pay is a consequence of being mislabelled as self-employed.
- The Appeals Officer's statement that Mr. McGranaghan **"*had only been paid on the basis of his performance*"** is factually incorrect. Refer to Point 26.
- It is factually incorrect to state that Mr. McGranaghan **'*had only been paid on the basis of his performance*'**. Mr. McGranaghan performed multiple duties for MEPC Music Ltd such as learning new songs/material for Michael English, transcribing notation, creating chord charts, performing for other artists at variety concerts, learning the other artists' songs and material in advance, performing for support artists for MEPC Music Ltd, learning the support artists' songs and material in advance, working in promotional videos for the band, performing for other artists on the instructions of MEPC Music Ltd and paid for paid by MEPC Music Ltd. At times Mr. McGranaghan even drove the minibus which carried the band members for MEPC Music Ltd. This is not an exhaustive list of Mr. McGranahan's duties for MEPC Music Ltd.
- MEPC Music Ltd's assertion that holidays were periods of inactivity is completely contradicted by MEPC Music Ltd's description of periods of inactivity as ***"Band Holidays"*** on MEPC Music Ltd's own website as provided below:
  - 

- On the matter of "Band Holidays", prima facie evidence now exists that an offence may have been committed under Section 251 of the Social Welfare Consolidation Act 2005. Refer to point 61.

- The statement from the Appeals Officer that **"*there is no dispute that the worker had only been paid on the basis of his performance*"** is a false statement. Refer to Point 26.

- Mr. McGranaghan was disputing his employment status and conditions as early as 2014 when he declined to engage any further in discussions about a contract for service as it did not reflect the reality of his situation with MEPC Music Ltd.

64. In 'Point 68' of the Appeals Officer's decision, the Appeals Officer states:

'As counsel for the appellant submitted, the reality of the music industry is that musicians can be both employed and self-employed and the music industry was the origin of the gig economy.

Points of Fact:

- It is accepted and conceded by MEPC Music Ltd ***that "musicians can be both employed and self-employed".***

- It is factually incorrect to say that "*the music industry was the origin of the gig economy.*" The oldest band in the world is the Royal Danish Orchestra which has been employing musicians since 1448. If anything, the music industry is one of the oldest forms of 'Contract of Service' employment conditions.

- The term "gig economy" was coined in 2009 by Tina Brown, former editor of 'New Yorker.' It was created to describe how workers in the knowledge economy increasingly were pursuing "a bunch of free-floating projects, consultancies, and part-time bits and pieces while they transacted in a digital marketplace." This does not describe the work of musicians who provide a service.

- It is factually incorrect to say that "*the music industry was the origin of the gig economy.*" Although the term "gig" was commonly used by jazz musicians in the 1920s (generally referenced to 1926) it is a common misconception to say that this is the origin of the term "gig economy." The term "gig" was in use to mean a non-musical job or occupation from 1908. The term "gig" used to mean a 'business affair' or 'business event' was in use from 1907. The origin is unknown but is believed to come from the term "gag" which dates to 1890 and means "business method", "practice", or "behaviour."

- Occupations which appear the same may differ in terms and conditions and the reality of the relationship. This is why each case must be determined on its own circumstances. There is no more justification to calling all musicians self-employed as there is to be calling all journalists self-employed based on job description alone.

- A musician cannot be both employed and self-employed whilst performing the same duties for the same employer at the same time.

65. In 'Point 69' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. McGranaghan's absence from the hearing prevented any exploration of his working history up to joining MEPC. He has admitted in submissions that he did do some "freelance" work which he said he included in his self-assessment tax return. This included studio recording work and gigs with other bands. The worker told the investigating officer that he had 3 to 4 gigs with other bands in 2019 and about 5 recording sessions. In his absence, it was not possible to obtain any further elaboration'

Points of Fact:

- An Appeals Officer may, by giving notice in writing, require a person to attend an oral hearing and to produce any relevant documents. A person failing to comply with such a notice is guilty of an offence and, on summary conviction, may be fined up to €1,500 (Section 314). This provision has been availed of to require witnesses to attend to give evidence on the question being determined. This happened with courier 'Notice Party' in 2000 and with the 16 Construction worker 'Notice Parties' in 2016.

- It is a matter of serious concern that at the Social Welfare Appeals Office, as a quasi-judicial tribunal, a 'Not' de novo oral hearing took place, de novo evidence given was not sworn, witnesses with pertinent evidence were not compelled to attend, that the entire process was held in secret, that natural justice was ignored and that a de novo decision was made where a matter of potentially many millions of euros, and the rights of thousands of workers, was decided by overturning a Scope Section decision, all of this done without any legal or judicial oversight.

- The statement by the Appeals Officer that **"*Mr. McGranaghan's absence from the hearing prevented any exploration of his working history up to joining MEPC*"** is not the question at issue.

- The question at issue is whether the worker, Matthew McGranaghan, has been working for the appellant company, MEPC Music Ltd., under a contract of service or under a contract for services.

- The statement by the Appeals Officer that the question at issue covers the period from 1st January 2014 until 26 August 2021 is factually incorrect.

- The question at issue covers the period from 1st January 2014 until the date of Mr. McGranaghan's dismissal on the 22nd September 2021.

- Activities outside Mr. McGranaghan's obligations to MEPC Music Ltd were on such a small scale as to be regarded as purely marginal and ancillary.

- It is accepted and conceded by the Appeals Officer that in 2019 Mr. McGranaghan had worked with other bands or in a recording studio on a maximum of 8 to 9 individual occasions in his own free time during a 365-day period, whereas Mr. McGranaghan worked 48/49 weeks with MEPC Music Ltd.

66. In 'Point 70' of the Appeals Officer's decision, the Appeals Officer states:

> *'Mr. McGranaghan had been paid on the basis of invoices submitted and was not paid if he did not work. He was paid a fixed rate per gig and he negotiated this rate with the appellant company. The rates paid differed when performing on cruises The worker was paid €1,000 in respect of a 7-day cruise and €1 ,500 for a 10-day cruise with no travel or accommodation costs'*

Points of Fact:

- The statement by the Appeals Officer that **"*Mr. McGranaghan had been paid on the basis of invoices submitted*"** is factually incorrect.
- Invoices were not submitted for payment.
- Payment was made weekly, usually on a Friday.
- Payment was made by MEPC to Mr. McGranaghan in advance.
- Invoices were only submitted after payment.
- That MEPC paid Mr. McGranaghan in advance for work MEPC expected him to do personally, as the resident fiddle player for the band, is entirely consistent with a mutuality of obligation.
- Mr. McGranaghan received his weekly wage by cheque on a Friday, in advance of his week's work, throughout 2014, 2015, 2016 and until December 2017 when MEPC Music Ltd switched payment to ETF.
- Mr. McGranaghan received his weekly wage by cheque on a Friday, in advance of his week's work, throughout 2014, 2015, 2016 and until December 2017 when MEPC Music Ltd switched payment to ETF.
- That Mr. McGranaghan was not paid if he did not work is a common feature for every worker in the world, particularly for contract of service workers. It is inconceivable that not being paid not to work is even considered as salient evidence to this or any other determination of employment status.
- The statement by the Appeals Officer that Mr. McGranaghan **"*was paid a fixed rate per gig*"** is a false statement. Refer to Point 26.
- It is a false statement to state that Mr. McGranaghan **'*was paid a fixed rate per gig*'**. Mr. McGranaghan performed multiple duties for MEPC Music Ltd such as learning new songs/material for Michael English, transcribing notation, creating chord charts, performing for other artists at variety concerts, learning the other artists' songs and material in advance, performing for support artists for MEPC Music Ltd, learning the support artists' songs and material in advance, working in promotional videos for the band, performing for other artists on the instructions of MEPC Music Ltd and paid for paid by MEPC Music Ltd. At times Mr. McGranaghan even drove the minibus which

carried the band members for MEPC Music Ltd. This is not an exhaustive list of Mr. McGranaghan's duties for MEPC Music Ltd.

- The statement by the Appeals Officer that Mr. McGranaghan **"*negotiated this rate with the appellant company*"** is a false statement.
- Mr. McGranaghan was offered the job by MEPC Music Ltd at a rate decided by MEPC Music Ltd.
- Mr. McGranaghan did not request or demand a rate.
- The statement by the Appeals Officer that **"*The rates paid differed when performing on cruises*"** is factually incorrect.
- Mr. McGranaghan was not paid a performance rate on cruises.
- It is factually incorrect that there was no travel or accommodation costs for Mr. McGranaghan. All travel and subsistence were provided by MEPC Music Ltd. This is entirely indicative of contract of service conditions.

67. In 'Point 71' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC told the hearing that when working on ships/cruises, the worker had only committed to performing for a 2-hour gig per night during the week-long trip. Outside of this, he had opportunities to perform with other musicians and bands on the cruise'

Points of Fact:

- It is factually incorrect to state that Mr. McGranaghan had **"*only committed to performing for a 2-hour gig per night*".**
- The true factual position as accepted by the Appeals Officer is that

  "there could have been little ad hoc about who played in the band as the music had to be selected and rehearsed in advance."

- The true factual position as accepted by the Appeals Officer is that other than Mr. McGranaghan's original commitment in 2013 to accept the job offered by MEPC Music Ltd, MEPC Music Ltd has never asked Mr. McGranaghan to separately commit to any of the duties he is required to do for MEPC Music Ltd, nor has Mr. McGranaghan ever had to give a commitment other than the original commitment to accept the job on the terms offered by MEPC Music Ltd in 2013.
- It is an utter and unsustainable falsehood that commitments were either sought or given on an individual basis for individual live performances at any time between 2013 and the day Mr. McGranaghan was dismissed in 2021.
- It is repeatedly accepted and conceded by the Deciding Officer and by MEPC Music Ltd that Mr. McGranaghan was paid by MEPC Music Ltd whilst working on the cruises and worked under the control and direction of MEPC Music Ltd as part of his normal duties for MEPC Music Ltd.

- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan only ever played with other bands on these cruises outside of the times he was scheduled to carry out his duties for MEPC Music Ltd.
- At no time on these cruises was Mr. McGranaghan ever instructed by MEPC Music Ltd or anybody else, that he was prohibited from playing with other bands in his own free time when not carrying out his duties for MEPC Music Ltd.
- It is accepted and conceded by the Scope Deciding Officer that it was only during Mr. McGranaghan's free time when not obligated to work for MEPC Music Ltd that Mr. McGranaghan could work with other bands:

  "During his free time on the cruise he was able to perform with bands if they requested a fiddle player. This was usually done to pass the time."

- The true factual position is that Mr. McGranaghan's duties for MEPC Music Ltd on these cruises were for a total of 3.5 hours of live performances and up to 3 hours of rehearsals out of a total of 168 hours spent on board the cruise.
- The true factual position is that Mr. McGranaghan had a total of 161.5 hours of free time on the cruise where he was not expected to do any duties for MEPC Music Ltd.
- The true factual position is that Mr. McGranaghan performed with other bands to pass the time when not fulfilling his obligated duties for MECP Music Ltd.
- Mr. McGranaghan played with other bands to pass the time because he is a musician, and musicians enjoy playing music with other musicians, many of whom have known each other for decades. Mr. McGranaghan played with other bands for the *'craic and the ceol'* to relieve the boredom.

68. In 'Point 72' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC revealed that a separate company, Paul Claffey Ltd., operated cruises and booked bands to perform on the cruises and that more than one band was booked with up to 15 lead singers with musicians booked for a typical cruise. This difference in working conditions between Ireland and overseas was not captured in the considerations of the Deciding Officer'

Points of Fact:

- That the Appeals Officer has recorded that at the NOT 'De novo' Oral Hearing, 'New' evidence was **'revealed'** is beyond reasonable understanding.
- The true factual position is that the Oral Hearing was a 'De novo' appeal and the Appeals Officer subsequently attached a NOT DE NOVO label to what was demonstrably a 'De novo' appeal.
- It is a matter of serious concern that at the Social Welfare Appeals Office, as a quasi-judicial tribunal, a de novo oral appeal hearing took place, de novo

evidence given was not sworn, witnesses with pertinent evidence were not compelled to attend, that the entire process was held in secret, that natural justice was ignored and that a de novo decision was made where a matter of potentially many millions of euros, and the rights of thousands of workers, was decided by overturning a Scope section decision and falsely claiming the Oral Hearing was NOT a de novo appeal.

- The statement ***"Paul Claffey Ltd., operated cruises and booked bands to perform on the cruises"*** is a false statement.
- The company "Paul Claffey Ltd." does not exist**.**
- The company Paul Claffey Tours Limited does exist.
- While Mr. Claffey is a director of both MEPC Ltd and Paul Claffey Tours Ltd, these are separate corporate entities.
- Mr. McGranaghan never engaged with Mr. Claffey as anything other than a Director of MEPC Music Ltd.
- Mr. McGranaghan never worked for Paul Claffey Tours Ltd and Mr. McGranaghan was never paid by Paul Claffey Tours Ltd.
- At all times Mr. McGranaghan worked for MEPC Music Ltd.
- At all times Mr. McGranaghan was paid by MEPC Music Ltd.
- Mr. McGranaghan's records show that he was always paid by MEPC Music Ltd for cruises and Spain/Portugal tours:
    - ***24th May 2016, €1,250 Paid in advance by MEPC Music Ltd for 18th – 22nd May in Ireland & Spain 24th – 31st May.***
    - ***6th Sep 2016, €995 Paid by MEPC Music Ltd for 26th & 27th Aug in Ireland & Mediterranean Cruise 28th Aug – 4th Sep.***
    - ***3rd Oct 2016 €1,160 Paid in advance by MEPC Music Ltd for 29th & 30th Sep and 1st Oct in Ireland & Portugal 2nd – 9th Oct.***
    - ***7th Feb 2017 €1,495 Paid in advance by MEPC Music Ltd for 3rd – 5th Feb in Ireland & Western Caribbean Cruise 9th –19th Feb.***
    - ***22nd May 2017 €1,165 Paid in advance by MEPC Music Ltd for 19th – 21st May in Ireland & Spain 23rd – 30th May.***
    - ***25th Sep 2017 €2,320 Paid in advance by MEPC Music Ltd for 20th – 24th Sept in Ireland, 26th – 30th Sep & 1st Oct in UK, & Portugal 3rd – 10th Oct.***
    - ***13th Feb 2018, €1500 Paid in advance by MEPC Music Ltd for Eastern Caribbean Cruise 15th – 25th Feb.***
    - ***8th June 2018, €1330 Paid in advance by MEPC Music Ltd for 8th & 9th Jun in Ireland & Spain 10th – 19th Jun.***
    - ***1st October 2018, €670 Paid in advance by MEPC Music Ltd for Portugal 2nd – 10th Oct.***
    - ***10th May 2019, €1500 Paid in advance by MEPC Music Ltd for Alaskan Cruise 11th – 20th May.***

- ***7th Jun 2019, €2060 Paid in advance by MEPC Music Ltd for 7th & 8th Jun in Ireland & Spain 9th – 18th Jun.***
- ***4th October 2019, €1000 Paid in advance by MEPC Music Ltd for Portugal 30th Sep – 7th Oct.***
- ***24th February 2020, Paid in advance by MEPC Music Ltd for Mexican Cruise 20th Feb – 1st Mar.***

- At no time in the Scope determinations and investigations had MEPC Music Ltd ever claimed that Paul Claffey Tours Ltd operated the cruise.
- Nowhere in the grounds of appeal have MEPC Music stated that Paul Claffey Tours Ltd operate the cruise.
- This is de novo evidence.
- This is entirely false evidence.
- An agent of MEPC Music Ltd knowingly made a statement and representation which was, to MEPC Music Ltd's knowledge, false and misleading.
- It is accepted and conceded by the Deciding Officer that **"*there had been a mutuality of obligation because of the 6 years*"** of the continual mutuality of obligation between MEPC Music Ltd and Mr. McGranaghan.
- It is repeatedly accepted and conceded by the Deciding Officer and by MEPC Music Ltd that Mr. McGranaghan was paid by MEPC Music Ltd whilst working on the cruises and worked under the control and direction of MEPC Music Ltd as part of his normal duties for MEPC Music Ltd.
- It is accepted and conceded by the Deciding Officer in his Scope decision that MEPC Music Ltd ***"would take all the bookings for all the performances".***
- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan operated under a mutuality of obligation to MEPC Music Ltd and was obligated to render personal service.
- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan was MEPC Music Ltd's **"*regular fiddle player and essential to the band's performance.*"**
- In point 54 it is accepted and conceded by the Appeals Officer that Mr. McGranaghan worked under the control and direction of MEPC Music Ltd.
- The true factual position is that Paul Claffey Tours Ltd was never at all involved with the cruises Mr. McGranaghan worked under the instruction of and paid for by MEPC Music Ltd.
- This is an outrageously false claim. The cruises in question are annual charter cruises operated and promoted by Gertrude Byrne Promotions INC in the USA and have nothing to do with Paul Claffey Tours Ltd. This fact was confirmed by the Deciding Officer in his decision as follows:

"***The band also plays on a cruise ship each year on a week long cruise for a US promotions company"***

- Gertrude Byrne Promotions, INC was registered in the State of New York, USA on 3rd September 1991.
- Gertrude Byrne Promotions INC was registered in the State of Florida, USA on 5th December 2014.
- Mr. McGranaghan received emails forwarded by MEPC Music Ltd, originally from Gertrude Byrne Promotions INC containing relevant information pertaining to the cruise and travel arrangements.
    - 16th January 2017 – Gertrude Byrne Promotions INC email with cabin numbers.
    - 20th January 2017 – Gertrude Byrne Promotions INC email with flight information.
    - 21st January 2017 – Gertrude Byrne Promotions INC email with flight information.
    - 4th February 2018 – Gertrude Byrne Promotions INC email with cabin numbers.
    - 4th May 2019 – Gertrude Byrne Promotions INC email with hotel room information.
    - 27th April 2019 – Gertrude Byrne Promotions INC email with flight information.
    - 24th January 2020 – Gertrude Byrne Promotions INC email with hotel room and cabin information.
    - 25th January 2020 – Gertrude Byrne Promotions INC email with flight information.
- Paul Claffey Tours Ltd had no business involvement whatsoever in the cruises operated by Gertrude Byrne Promotions INC.
- So great is the animosity between Paul Claffey and Gertrude Byrne that it is well known throughout the music industry that legal proceedings between the two parties occurred in 1998 when Paul Claffey and his associate, were awarded an injunction against Gertrude Byrne, Manager Gertrude Byrne Promotions INC. An extensive legal case ensued which finally culminated in the dismissal with prejudice of the $10 million lawsuit brought against Gertrude Byrne by Paul Claffey and his associate.
- The statement by the Appeals Officer that there was a ***"difference in working conditions between Ireland and overseas"*** is a false statement.

- The true factual position is that Mr. McGranaghan never worked for Paul Claffey Tours Ltd. Mr. McGranaghan worked for MEPC Music Ltd and was paid by MEPC Music Ltd.

- The statement by the Appeals Officer that this ***'difference' "was not captured in the considerations of the Deciding Officer"*** is because it is false and de novo evidence, which was not included in the original investigation, the Scope Section decision nor in the Grounds for Appeal by MEPC Music Ltd.

- Any perceived difference between the working conditions in Ireland and overseas based on the involvement of Paul Claffey as a separate legal entity is an entirely falsely manufactured ***difference*** accepted by Appeals Officer as de novo evidence in a "not de novo" Oral Appeal Hearing.

- It is a matter of serious concern that at the Social Welfare Appeals Office, as a quasi-judicial tribunal, a de novo oral appeal hearing took place, de novo evidence given was not sworn, witnesses with pertinent evidence were not compelled to attend, that the entire process was held in secret, that natural justice was ignored and that a de novo decision was made where a matter of potentially many millions of euros, and the rights of thousands of workers, was decided by overturning a Scope section decision and falsely claiming the Oral Hearing was NOT a de novo appeal.

69. In 'Point 73' of the Appeals Officer's decision, the Appeals Officer states:

'While the worker had been paid €250 per gig on commencement, this increased to €280 from March 2019. This figure included the costs associated with performing the work the main cost being travel. As the appellant company argued, it is not possible to explore Mr. McGranaghan's tax status and whether he had availed of tax relief for motor expenses'

Points of Fact:

- The statement by the Appeals Officer **"*the worker had been paid €250 per gig on commencement*"** is factually incorrect. Mr. McGranaghan was not paid per gig.

- Payment was made weekly, usually on a Friday.

- Mr. McGranaghan performed multiple duties for MEPC Music Ltd such as learning new songs/material for Michael English, transcribing notation, creating chord charts, performing for other artists at variety concerts, learning the other artists' songs and material in advance, performing for support artists for MEPC Music Ltd, learning the support artists' songs and material in advance, working in promotional videos for the band, performing for other artists on the instructions of MEPC Music Ltd and paid for paid by MEPC Music Ltd. At times Mr. McGranaghan even drove the minibus which carried the band members for MEPC Music Ltd. This is not an exhaustive list of Mr. McGranahan's duties for MEPC Music Ltd.

- The statement by the Appeals Officer **"*this figure included the costs associated with performing the work the main cost being travel*"** is factually incorrect.
- Travel to and from work is an employee's own private travel. It is not a business journey.
- Employees' travel expenses are only paid when they travel on business journeys. Employees are paid subsistence if employees are working away from their normal place of work. This is entirely consistent with the working conditions of Mr. McGranaghan as described by both parties and is a clear 'Contract of Service' situation.
- The Minister for Public Expenditure and Reform has recently published updated mileage and subsistence rates for the public service, which were effective from 1 September 2022. The Minister for Public Expenditure and Reform is very clear, as are the Revenue Commissioners, that travel to and from work is an employee's own private travel.
- This also applies to hybrid workers such as Mr. McGranaghan for whom live performances are his 'Normal place of work' but much of his work for MEPC Music Ltd was done at home learning, transcribing and practicing for live performances.
- Most workers living in the Western Region, such as Mr. McGranaghan, travel to work by car 69%, and this is higher than the national average of 62.4%.
- High milage is the nature of the music industry. The is no single location in Ireland where Mr. McGranaghan could live that would serve to reduce milage.
- Many employees have commute times of an hour or more, it is quite common.
- Mr. McGranaghan's commutes to work were generally from his own home rural location to another rural location where milage driven was above the national average but still consistent with commute times of normal employees commuting into city centres.
- MEPC Music Ltd accepts and concedes that Mr. McGranaghan was not paid travel expenses which were not associated with MEPC Music Ltd's business requirements.
- Mr. McGranaghan's unpaid commutes to and from work are entirely consistent with every other Contract of Service employee in the country.
- An Appeals Officer may, by giving notice in writing, require a person to attend an oral hearing and to produce any relevant documents. A person failing to comply with such a notice is guilty of an offence and, on summary conviction, may be fined up to €1,500 (Section 314). This provision has been availed of to require witnesses to attend to give evidence on the question being

determined. This happened with courier 'Notice Party' in 2000 and with the 16 Construction worker 'Notice Parties' in 2016.

70. In 'Point 74' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. McGranaghan had a long working relationship with the appellant company. It is significant that he approached Mr. English of the company and negotiated his fee. Mr. McGranaghan was satisfied to work without the benefit of a written contract'

Points of Fact:

- In the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] Supreme Court case, it was not at all significant that the worker, Sandra Mahon, approached Henry Denny & Sons Ltd for a job.
- That Sandra Mahon approached Henry Denny & Sons Ltd for a job wasn't significant enough to be considered a factor by the Supreme Court.
- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan had a long working relationship with the appellant company.
- Mr. McGranaghan worked 48/49 weeks a year for MEPC Music Ltd for 6 years.
- Mr. McGranaghan was offered the job by MEPC Music Ltd at a rate decided by MEPC Music Ltd.
- It is factually incorrect for the Appeals Officer to claim that it is significant that Mr. McGranaghan approached Mr. English.
- In October 2013 Mr. McGranaghan learned that Paul Claffey and Michael English were in business together, with Paul Claffey in the role as manager, and that Michael English was going back full-time on the road to perform at dances and theatres.
- In general, jobs are rarely if ever advertised in the music industry and mostly the word filters through the band and musicians' network by word of mouth.
- None of the jobs for Michael English's band were advertised.
- Mr. McGranaghan did not know Paul Claffey or Michael English personally.
- Mr. McGranaghan asked a colleague of his in the entertainment industry who knew Paul Claffey personally, to pass on his number to Paul Claffey and let him know that Mr. McGranaghan was interested in the job.
- As a result of this, Michael English sent Mr. McGranaghan a text message on 7 November 2013 at 8:12 pm attaching his email address.
- A meeting took place between Mr. McGranaghan and Mr. English on 13th November 2013.

- Mr. McGranaghan was asked by Michael English what terms Mr. McGranaghan was looking for and asked Mr. McGranaghan to supply a CV.
- It is highly unusual to supply a CV as a self-employed person.
- On 27th November 2013, Michael English phoned Mr. McGranaghan and offered Mr. McGranaghan a job at a rate decided by MEPC Music Ltd.
- Mr. McGranaghan was offered a job with MEPC Ltd as the resident fiddle player with the band.
- The statement by the Appeals Officer that ***'Mr. McGranaghan was satisfied to work without the benefit of a written contract'*** is entirely false, speculative, and fails to address the reality of the situation.
- Mr. McGranaghan was not present at the Oral Hearing and at no time has Mr. Granaghan ever expressed the opinion that he was 'satisfied to work without the benefit of a written contract'.
- MEPC Music Ltd were legally obliged to provide Mr. McGranaghan with a 'written statement of terms of employment' within the first 5 days of starting his job as resident fiddle player with the Michael English Band trading as MEPC Music Ltd.
- That MEPC Music Ltd failed to comply with its legal obligation to provide Mr. McGranaghan with a contract is the only significant fact pertinent to the Appeals Officer.
- The Appeals Officer's statement that Mr. McGranaghan was satisfied to work without the benefit of a written contract ***'is significant'***, is profoundly different to the approach taken by Scope Section and runs contrary to precedents handed down by the higher courts. This is a matter of great concern for all appeals of Scope Section decisions.
- The true factual position is that MEPC Music Ltd was satisfied to ignore its legal obligation to provide Mr. McGranaghan with a written contract.
- The statement from the Appeals Officer that ***"Mr. McGranaghan was satisfied to work without the benefit of a written contract"*** is a groundless assumption by the Appeals Officer who had it within his powers to compel Mr. McGranaghan to appear at the oral hearing.

71. In 'Point 75' of the Appeals Officer's decision, the Appeals Officer states:

'Scope argued that the evidence was that Mr. McGranaghan had been working for a body as opposed to being in business on his own accord and while it was accepted that he had done work for other bodies, the question at issue was his work with MEPC. However, the circumstances under which the contract was entered into remains of importance as is whether the worker had a history of self-employment or whether the terms were being imposed upon him/her. While the file does not contain details of Mr. McGranaghan's work history, he has stated that he had approached the

appellant company for the work because the prospect of a regular slot with a busy popular band had appealed to him. I take it that he preferred this to the "freelancing" work he had been doing'

Points of Fact:

- It is accepted and conceded by the Appeals Officer that the circumstances under which the contract was entered into is a matter of importance.
- The statement by the Appeals Officer **that "*whether the worker had a history of self-employment*"** misrepresents the facts. The question at issue is Mr. McGranaghan's work with MEPC Music Ltd. A history of self-employment is only relevant if it is a history of self-employment with MEPC Music Ltd. As Mr. McGranaghan had no history of self-employment with MEPC Music Ltd prior to 1st January 2014 the only question at issue is his work with MEPC Music Ltd since 2014.
- In October 2013 Mr. McGranaghan learned that Paul Claffey and Michael English were in business together, with Paul Claffey in the role as manager, and that Michael English was going back full-time on the road to perform at dances and theatres.
- In general, jobs are rarely if ever advertised in the music industry and mostly the word filters through the band and musicians' network by word of mouth.
- None of the jobs for Michael English's band were advertised.
- Mr. McGranaghan did not know Paul Claffey or Michael English personally.
- Mr. McGranaghan asked a colleague of his in the entertainment industry who knew Paul Claffey personally, to pass on his number to Paul Claffey and let him know that Mr. McGranaghan was interested in the job.
- As a result of this, Michael English sent Mr. McGranaghan a text message on 7 November 2013 at 8:12 pm attaching his email address.
- A meeting took place between Mr. McGranaghan and Mr. English on 13th November 2013.
- Mr. McGranaghan was asked by Michael English what terms Mr. McGranaghan was looking for and asked Mr. McGranaghan to supply a CV.
- It is highly unusual to supply a CV as a self-employed person.
- On 27th November 2013, Michael English phoned Mr. McGranaghan and offered Mr. McGranaghan a job at a rate decided by MEPC Music Ltd.
- Mr. McGranaghan was offered a job with MEPC Ltd as the resident fiddle player with the band.

- Details of Mr. McGranaghan's prior work history, prior to commencement with MEPC Music Ltd are not matters of question for the Appeals Officer and the only question at issue is his work with MEPC Music Ltd.
- The statement by the Appeals Officer **"*has stated that he had approached the appellant company for the work because the prospect of a regular slot with a busy popular band had appealed to him*"** is de novo evidence and factually incorrect.
- The true factual position as recorded in the INS1 form and in the de novo email of 11th January 2021, is that Mr. McGranaghan approached the appellant company for a job. It is extremely significant that the Appeals Officer has altered the fact that Mr. McGranaghan was looking for a job with MEPC Music Ltd.
- The true factual position is that Mr. McGranaghan did approach the appellant company for a job with a busy company. Mr. McGranaghan provided his services for MEPC Music Ltd and not for himself.
- In general, a person will be regarded as providing his/her services under a contract of service and not as an independent contractor where he/she is providing those services for another person and not for himself/herself.
- In the statement by the Appeals Officer **"*I take it that he preferred this to the "freelancing" work he had been doing*"** the Appeals Officer is accepting and conceding that the work done by Mr. McGranaghan for MEPC Music Ltd is different to self-employment.
- The statement from the Appeals Officer that ***"I take it that he preferred this to the "freelancing" work he had been doing"*** is a groundless assumption by the Appeals Officer who had it within his powers to compel Mr. McGranaghan to appear at the oral hearing.
- An Appeals Officer may, by giving notice in writing, require a person to attend an oral hearing and to produce any relevant documents. A person failing to comply with such a notice is guilty of an offence and, on summary conviction, may be fined up to €1,500 (Section 314). This provision has been availed of to require witnesses to attend to give evidence on the question being determined. This happened with courier 'Notice Party' in 2000 and with the 16 Construction worker 'Notice Parties' in 2016.

72. In 'Point 76' of the Appeals Officer's decision, the Appeals Officer states:

'An enduring working relationship is not necessarily indicative of a contract of service although a contract for service can evolve into a contract of service where there is an exclusive relationship. That is not the case here'

Points of Fact:

- The true factual position is that Mr. McGranaghan's position with MEPC Music Ltd was not a contract for service that evolved into a contract of service.
- The true factual position is that MEPC Music Ltd entered into a contract of service with Mr. McGranaghan from the outset.
- The true factual position is this is not the case here based on the fact that Mr. McGranaghan always operated under a contract of service with MEPC Music Ltd.

73. In 'Point 77' of the Appeals Officer's decision, the Appeals Officer states:

'Scope said that the evidence was that Mr. McGranaghan had been paid a fixed rate per gig and had not therefore been exposed to financial risk and was paid the agreed rate whatever the takings for the booking. While the worker had been paid a fixed rate per gig, an exposure to financial risk arose from the location of the gigs. The gigs involving less travel were naturally more profitable. There would have been some scope to reduce travel costs by managing travel and accommodation in the most efficient manner. It is also significant that Mr. McGranaghan went into this arrangement with his eyes open when negotiating the rate as his email of 14 November 2013 confirms'

Points of Fact:

- The statement by the Appeals Officer that **"*the worker had been paid a fixed rate per gig*"** is factually incorrect. Refer to Point 26.
- Mr. McGranaghan performed multiple duties for MEPC Music Ltd such as learning new songs/material for Michael English, transcribing notation, creating chord charts, performing for other artists at variety concerts, learning the other artists' songs and material in advance, performing for support artists for MEPC Music Ltd, learning the support artists' songs and material in advance, working in promotional videos for the band, performing for other artists on the instructions of MEPC Music Ltd and paid for paid by MEPC Music Ltd. At times Mr. McGranaghan even drove the minibus which carried the band members for MEPC Music Ltd. This is not an exhaustive list of Mr. McGranaghan's duties for MEPC Music Ltd.
- The statement by the Appeals Officer that **"*an exposure to financial risk arose from the location of the gigs*"** is a false statement.
- Mr. McGranaghan was not exposed to financial risk from the location of live performances.
- That accommodation was provided for Mr. McGranaghan and the band by MEPC Music Ltd when in remote locations playing successive nights in Ireland or in a resort in Spain or Portugal, was accepted and conceded by MEPC Music Ltd in 'Point 59' of the Appeals Officer's decision, which

states: ***'The hearing heard that, on occasion, accommodation was provided when the band was playing successive nights at a remote location'***

- Travel to and from work is an employee's own private travel. It is not a business journey.
- Employees' travel expenses are only paid when they travel on business journeys. Employees are paid subsistence if employees are working away from their normal place of work. This is entirely consistent with the working conditions of Mr. McGranaghan as described by both parties and is a clear 'Contract of Service' situation.
- The Minister for Public Expenditure and Reform has recently published updated mileage and subsistence rates for the public service, which were effective from 1 September 2022. The Minister for Public Expenditure and Reform is very clear, as are the Revenue Commissioners, that travel to and from work is an employee's own private travel.
- This also applies to hybrid workers such as Mr. McGranaghan for whom live performances are his 'Normal place of work' but much of his work for MEPC Music Ltd was done at home learning, transcribing and practicing for live performances.
- Most workers living in the Western Region, such as Mr. McGranaghan, travel to work by car 69%, and this is higher than the national average of 62.4%.
- High milage is the nature of the music industry. The is no single location in Ireland where Mr. McGranaghan could live that would serve to reduce milage.
- Many employees have commute times of an hour or more, it is quite common.
- Mr. McGranaghan's commutes to work were generally from his own home rural location to another rural location where milage driven was above the national average but still consistent with commute times of normal employees commuting into city centres.
- MEPC Music Ltd accepts and concedes that Mr. McGranaghan was not paid travel expenses which were not associated with MEPC Music Ltd's business requirements.
- Mr. McGranaghan's unpaid commutes to and from work are entirely consistent with every other Contract of Service employee in the country.
- **It is extremely significant that**, even though the absence of travel expenses to work is not at all considered a factor in self-employment status in the Code of Practice, by the Revenue Commissioners, or in law, travel expenses and a job rate are the unlawful precedents set in the 1995 'Test Case':

  'Payment was made on the basis of rate per job plus mileage allowance'

- **It is extremely significant** that the 'Reality of the Situation' as accepted and conceded by MEPC Music Ltd and Mr. McGranaghan is that Mr. McGranaghan was not paid travel expenses to and from work.

- **It is extremely significant** that the Appeals Officer is ignoring the 'Reality of the Situation' as accepted by both parties.

- **It is extremely significant** that the Appeals Officer is substituting his own 'de novo' opinion as 'evidence' which runs contrary to the reality of the situation as accepted and conceded by both parties.

- The Appeals Officer's statement that ***"there would have been some scope to reduce travel costs by managing travel and accommodation in the most efficient manner"***, is profoundly different to the approach taken by Scope Section and runs contrary to precedents handed down by the higher courts. This is a matter of great concern for all appeals of Scope Section decisions.

- The statement by the Appeals Officer that ***"It is also significant that Mr. McGranaghan went into this arrangement with his eyes open when negotiating the rate as his email of 14 November 2013 confirms"*** is factually incorrect and exposes an extreme bias against Mr. McGranaghan on the part of the Appeals Officer.

74. In 'Point 78' of the Appeals Officer's decision, the Appeals Officer states:

'In Castleisland, Geoghegan J regarded two factors as fundamental; firstly, the circumstances in which the workers became self-employed and paying tax as self-employed contractors; secondly, that the workers had to carry their own insurance'

Points of Fact:

- It is factually incorrect to say that Mr. McGranaghan had sought self-employment. Mr. McGranaghan ***'had sought a job with'*** MEPC Music Ltd.

- Mr. McGranaghan was not required to have any Public Liability Insurance.

- Personal motor car insurance is a requirement for all motor car vehicle owners and drivers regardless of employment status or even if they are employed. It is not, nor cannot be taken as an indicator of self-employment status. That motor car insurance, a universal legal requirement for all motor vehicle owners and drivers regardless of employment status, has been deliberately misconstrued by the Appeals Office to be an indicator of self-employment, is a matter of serious concern. This deliberate misconstruing of 'Liability Insurance' with 'Private Motor Vehicle Insurance' is the leading cause of misclassification of employees as self-employed using the unlegislated 'Owner/Driver Model' of self-employment.

- Mr. McGranaghan was not exposed to any financial loss.

- Mr. McGranaghan could not profit from sound management nor lose from poor management whilst fulfilling his duties for MEPC Music Ltd.

- The true factual position is that Mr. McGranaghan was provided with the clothing and equipment necessary to carry out the work concerned by MEPC Music Ltd, without any contribution from Mr. McGranaghan and the remuneration he earned from live performances was solely dependent on Mr. McGranaghan providing the live performances at the times and places nominated by MEPC Music Ltd. Mr. McGranaghan was obligated to perform multiple duties for MEPC Music Ltd. Live performance, being only one of those duties.

- It is further accepted that Mr. McGranaghan was not in a position by management of scheduling and bookings to insure for himself a higher profit from carrying out his obligated duties with MEPC Music Ltd.

- It is further accepted that Mr. McGranaghan did not engage other people to assist in the work.

- The appropriate test in determining if Mr. McGranaghan was providing his services under contract of service, is whether Mr. McGranaghan was providing his services for MEPC Music Ltd and not for himself.

75. In 'Point 79' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. McGranaghan joined the band in January 2014 after approaching the appellant company in 2013 and expressing an interest. No vacancy was advertised and the worker, an accomplished and well-known fiddle player, was offered the place in the band after a meeting with Mr. English. Mr. McGranaghan has declared that a rate of €250 per gig was negotiated'

Points of Fact:

- In October 2013 Mr. McGranaghan learned that Paul Claffey and Michael English were in business together, with Paul Claffey in the role as manager, and that Michael English was going back full-time on the road to perform at dances and theatres.

- In general, jobs are rarely if ever advertised in the music industry and mostly the word filters through the band and musicians' network by word of mouth.

- None of the jobs for Michael English's band were advertised.

- Mr. McGranaghan did not know Paul Claffey or Michael English personally.

- Mr. McGranaghan asked a colleague of his in the entertainment industry who knew Paul Claffey personally, to pass on his number to Paul Claffey and let him know that Mr. McGranaghan was interested in the job.

- As a result of this, Michael English sent Mr. McGranaghan a text message on 7 November 2013 at 8:12 pm attaching his email address.
- A meeting took place between Mr. McGranaghan and Mr. English on 13th November 2013.
- Mr. McGranaghan was asked by Michael English what terms Mr. McGranaghan was looking for and asked Mr. McGranaghan to supply a CV.
- It is highly unusual to supply a CV as a self-employed person.
- On 27th November 2013, Michael English phoned Mr. McGranaghan and offered Mr. McGranaghan a job at a rate decided by MEPC Music Ltd.
- Mr. McGranaghan was offered a job with MEPC Ltd as the resident fiddle player with the band.
- The statement "Mr. McGranaghan has declared that a rate of €250 per gig was negotiated" is a false statement.
- The true factual position is that in an email dated the 14th November 2013 to MEPC Music Ltd, Mr. McGranaghan informed MEPC Music Ltd "In my present situation, I'm on €250 per night."
- The true factual position is that on 27th November 2013, Michael English phoned Mr. McGranaghan and offered Mr. McGranaghan a job at a rate decided by MEPC Music Ltd.
- The use of the word 'Negotiated' as a negative in relation to Mr. McGranaghan by the Appeals Officer exposes the Appeals Officer's ignorance of how job interviews and applications are conducted in the private sector.
- It is normal practice for potential employees to 'Negotiate' for a wage with potential employers. That the public sector would have little if any experience in this area does not mean that 'negotiation' of a wage is in any way not the 'reality of the situation' for all Contract of Service employees in the private sector when applying for jobs.
- The Michael English Band is a business, that business trades as MEPC Music Limited. Mr. McGranaghan was offered a JOB with the business MEPC Music Ltd as the resident fiddle player with MEPC Music Ltd. and was an integral part of that business. Mr. McGranaghan was providing his services for MEPC Music Ltd and not for himself.
- The true factual position is that Mr. McGranaghan was provided with the clothing and equipment necessary to carry out the work concerned by MEPC Music Ltd, without any contribution from Mr. McGranaghan and the remuneration he earned from live performances was solely dependent on Mr. McGranaghan providing the live performances at the times and places nominated by MEPC Music Ltd. Mr. McGranaghan was obligated to perform

multiple duties for MEPC Music Ltd. Live performance, being only one of those duties.

- It is further accepted that Mr. McGranaghan was not in a position by management of scheduling and bookings to insure for himself a higher profit from carrying out his obligated duties with MEPC Music Ltd.
- It is further accepted that Mr. McGranaghan did not engage other people to assist in the work.
- The appropriate test in determining if Mr. McGranaghan was providing his services under contract of service, is whether Mr. McGranaghan was providing his services for MEPC Music Ltd and not for himself.

76. In 'Point 80' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. McGranaghan did not express any dissatisfaction with his working status until 2020 when he claimed that he had only become conscious of what he termed the "bogus self-employment" coverage'

Points of Fact:

- Mr. McGranaghan was disputing his employment status and conditions as early as 2014 when he declined to engage any further in discussions about a contract for service as it did not reflect the reality of his situation with MEPC Music Ltd.
- Mr McGranaghan raised the issue of employment in 2019 with Paul Claffey in conversation on the 5th February in the Gleneagle Hotel, Killarney, and on the 8th February in the Mullingar Park Hotel, Mullingar.
- In his initial Scope submission, Mr McGranaghan quoted the contents of an email dated 13th February 2019 from MEPC Music Ltd to Mr McGranaghan (and other band members) detailing options for band members. This email arose as a result of Mr McGranaghan raising the issue of being recognised as an employee in February 2019.
- The statement by the Appeals Officer that it was only in 2020 ***"had only become conscious of what he termed the "bogus self-employment" coverage"*** is a false statement.
- Since 2014 Mr. McGranaghan was fully aware of and disputing his irregular employment status.
- Mr. McGranaghan was unaware that his irregular employment status was colloquially known as 'bogus self-employment.'
- Bogus self-employment is not an official term in use by the Department of Social Protection or the Social Welfare Appeals Office.
- In 2018 Mr. McGranaghan read media coverage about 'bogus self-employment' and immediately recognised that the term 'bogus self-

employment' perfectly described his irregular employment status with MEPC Music Ltd.

- In 2019 Mr. McGranaghan wrote to the Minister for Social Protection on the issue of 'bogus self-employment.'
- In 2019 Mr. McGranaghan met with Senator Ged Nash and discussed the issue of 'bogus self-employment' in the music industry.
- In 2019 Mr. McGranaghan wrote to and spoke to other Oireachtas members on the issue of 'bogus self-employment' in the music industry.
- In December 2020 Minister for Social Protection Heather Humhpreys wrote to the Privileges Committee and stated that bogus self-employment is a matter of '***Public importance, public interest and significant public concern'.***
- In 2016, the loss to the State through PRSI evasion was estimated by the Minister for Finance to be €54m. In 2016, Minister Varadkar, as Minister for Social Welfare, launched his 'Welfare Cheats Cheat Us All' campaign. A 'Fact Check' on the amount lost through claimant fraud by TheJournal.ie concluded that €51.9 million had been lost to the state through claimant fraud. It is a fact that Employer PRSI evasion was a greater loss to the state than Claimant Fraud.
- The true factual position is that bogus self-employment is not just a matter of ***"public importance, public interest and significant public concern"***, it represents greater loss to the exchequer than all other forms of Social Welfare fraud combined.

77. In 'Point 81' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC's counsel argued that the company had no knowledge of Mr. McGranaghan's tax status and whether he had availed and any social welfare or pandemic unemployment payments. MEPC said that Mr. McGranaghan's social media profile now identifies him as representing music industry workers'

Points of Fact:

- MEPC Music Limited was successful in receiving a total of €175,866 in two separate Government grants (Live Performance Support Scheme 2021(LPSS2021), and Live Performance Restart Grant Scheme (LPRGS)) from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media.
- A key requirement for eligibility of both schemes and grants was that the business must be "***tax compliant***". MEPC Music Ltd is appealing a Scope Section decision that MEPC Music Ltd was not compliant with its tax and PRSI obligations. It is MEPC Music Ltd's tax compliance at issue, not Mr. McGranaghans.
- The full outstanding potential non-compliance with PRSI obligations would fall to the appellant company. It also follows that Mr. McGranaghan's tax

status is a consequence of being labelled as self-employed and that any potential non-compliance with Revenue Obligations would also fall to the appellant employer.

- It is accepted and conceded by MEPC Music Ltd that the full outstanding potential noncompliance liability for the mislabelling of Mr. McGranaghan as self-employed would fall to the appellant company.
- The Michael English Band is a business, that business trades as MEPC Music Limited. Mr. McGranaghan was offered a JOB with the business MEPC Music Ltd as the resident fiddle player with MEPC Music Ltd. and was an integral part of that business. Mr. McGranaghan was providing his services for MEPC Music Ltd and not for himself.
- It is MEPC Music Ltd's non-compliance with its PRSI obligations which is the issue at question.
- Since June 2020 Mr McGranaghan has been the spokesperson for the Music & Entertainment Association of Ireland. Since then, he has been a key figure for representing the industry to Government, helped negotiate many of the supports that were delivered to musicians and music businesses throughout the pandemic during 2020, 2021 & 2022.

78. In 'Point 82' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. Ryan argued that Mr. McGranaghan's PRSI status was central to this appeal and the potential consequent liability. The Supreme Court in Castleisland regarded the tax status of the workers as significant and whether they had claimed reliefs under the self-assessment system. It is inconceivable that Mr. McGranaghan did not avail of the reliefs available when declaring himself as self-employed and paying PRSI at the self-employed S rate particularly in the context of being paid a flat rate per gig. This issue could only have been resolved by Mr. McGranaghan himself but he chose not to participate in the hearing'

Points of Fact:

- MEPC Music Limited were successful in receiving a total of €175,866 in two separate Government grants (Live Performance Support Scheme 2021(LPSS2021), and Live Performance Restart Grant Scheme (LPRGS)) from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media.
- A key requirement for eligibility of both schemes and grants was that the business must be **"tax compliant."**
- The full outstanding potential non-compliance with PRSI obligations would fall to the appellant company. It also follows that Mr. McGranaghan's tax status is a consequence of being labelled as self-employed and that any potential non-compliance with Revenue Obligations would also fall to the appellant employer.

- It is accepted and conceded by MEPC Music Ltd that the full outstanding potential noncompliance liability for the mislabelling of Mr. McGranaghan as self-employed would fall to the appellant company.
- As is accepted and conceded in evidence by MEPC Music Ltd, Mr. McGranaghan is only one of a number of musicians who work for MEPC Music Ltd and are paid in a similar Atypical way.
- The true factual position is that Mc. McGranaghan faces no liability for being mislabelled as self-employed by MEPC Music Ltd. MEPC Music Ltd went into this arrangement with its eyes wide open knowing that the full liability for mislabelling employees as self-employed falls entirely on MEPC Music Ltd.
- The Michael English Band is a business, that business trades as MEPC Music Limited. Mr. McGranaghan was offered a JOB with the business MEPC Music Ltd as the resident fiddle player with MEPC Music Ltd. and was an integral part of that business. Mr. McGranaghan was providing his services for MEPC Music Ltd and not for himself.
- The statement by the Appeals Officer that ***'This issue could only have been resolved by Mr. McGranaghan'*** is a demonstrably false and deliberately misleading statement.
- If the Appeals Officer believed that Mr. McGranaghan could produce any documents or other evidence relevant to his 'Not' de novo, de novo appeal, then it was incumbent on the Appeals Officer under Section 314 of the Social Welfare Consolidation Act to give written notice to Mr. McGranaghan requiring Mr. McGranaghan to attend at the oral appeal hearing.
- The Appeals Officer 'CHOSE' not to require Mr. McGranaghan to attend under Section 314 of the Social Welfare Consolidation Act.
- The Appeals Officer 'CHOSE' not to require Mr. McGranaghan to attend under Section 314 of the Social Welfare Consolidation Act because the unlawful use of 'Test Cases' and the precedents set in those 'Test Cases' would have had to have been resolved BEFORE an oral appeal hearing could take place had the Appeals Officer done so.
- The statement by the Appeals Officer that Mr. McGranaghan ***'chose not to participate in the hearing'*** is a demonstrably false and deliberately misleading statement.
- Mr. McGranaghan was not legally obliged to participate at a de novo oral appeal hearing where de novo evidence was given but not sworn. Where witnesses with pertinent evidence were not compelled to attend. Where the entire process was held in secret. Where natural justice was ignored and where a de novo decision was made by overturning a Scope Section decision and falsely claiming the Oral Appeal Hearing was NOT a de novo appeal.

- Mr. McGranaghan was not legally obliged to participate in a quasi-judicial tribunal namely the independent Social Welfare Appeals Office, which up until the publication of this appeal decision falsely and deliberately denied the use of any and all precedential test-cases in correspondence to Mr. McGranaghan.

- The true factual position was accepted and conceded by the Appeals Officer in this written Appeal decision in paragraph 10 as follows:

  "While test cases may have been used in the past, they have been used in very specific and limited circumstances"

- On 19th October 2022, the Appeals Officer clearly identified that:

  'In the 1995 Social Welfare Appeals Office's annual report, which is referenced in his correspondence to the Committee on Public Accounts, there is a synopsis of a motor-cycle couriers' case at pages 24&25'

- That this 'case' was a 'Test Case' was accepted and conceded by the Minister and the Department in 2002 and that FACT is recorded in the Ombudsman's report of February 2002. The Appeals Officer WAS ABLE to provide this 'Test Case' to Mr. McGranaghan **but chose not to**.

- Upon the failure of the Social Welfare Appeals Office to comply with his request for details of 'Sample/Test' Cases, Mr. McGranaghan requested that the question should be referred to the Circuit Court in accordance with section 307(1) of the Social Welfare Consolidation Act 2005. Not only was Mr. McGranaghan eager to have any appeal heard, Mr. McGranaghan pleaded with the Appeals Officer to refer the issue to the Circuit Court where witnesses would be sworn in and evidence would be given under oath.

- The true factual position is that Mr. McGranaghan was not legally obliged to attend at a "not de novo" de novo oral appeal hearing and very astutely would not allow himself to be placed in such a situation.

- That other parties at the "not de novo" de novo appeal hearing did attend at a "not de novo" de novo oral appeal hearing when the matter of unlawful 'sample/test' cases, admitted to by the Minister, were denied by the Appeals Office is a serious matter for those parties.

79. In 'Point 83' of the Appeals Officer's decision, the Appeals Officer states:

'Counsel for the appellant company pointed out that Mr. McGranaghan was not present to clarify what tax reliefs connected to his work that he had availed of or what declaration he had made in relation to his tax status. It has been confirmed, and admitted on the worker's INSI declaration, that PRSI has been submitted at the self-employed S rate'

Points of Fact:

- MEPC Music Limited were successful in receiving a total of €175,866 in two separate Government grants (Live Performance Support Scheme 2021(LPSS2021), and Live Performance Restart Grant Scheme (LPRGS)) from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media.
- A key requirement for eligibility of both schemes and grants was that the business must be **"tax compliant."**
- The full outstanding potential non-compliance with PRSI obligations would fall to the appellant company. It also follows that Mr. McGranaghan's tax status is a consequence of being labelled as self-employed and that any potential non-compliance with Revenue Obligations would also fall to the appellant employer.
- It is accepted and conceded by MEPC Music Ltd that the full outstanding potential noncompliance liability for the mislabelling of Mr. McGranaghan as self-employed would fall to the appellant company.
- It is MEPC Music Ltd's non-compliance with its PRSI obligations which is the issue at question.

80. In 'Point 84' of the Appeals Officer's decision, the Appeals Officer states:

'Mr.Ryan questioned whether Mr. McGranaghan had registered for VAT and whether he had made other declarations as to his working status for PUP and re-start grants. In the absence of Mr. McGranaghan, it was not possible to clarify these issues'

Points of Fact:

- MEPC Music Limited were successful in receiving a total of €175,866 in two separate Government grants (Live Performance Support Scheme 2021(LPSS2021), and Live Performance Restart Grant Scheme (LPRGS)) from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media.
- A key requirement for eligibility of both schemes and grants was that the business must be **"tax compliant."**
- The full outstanding potential non-compliance with PRSI obligations would fall to the appellant company. It also follows that Mr. McGranaghan's tax status is a consequence of being labelled as self-employed and that any potential non-compliance with Revenue Obligations would also fall to the appellant employer.
- It is accepted and conceded by MEPC Music Ltd that the full outstanding potential noncompliance liability for the mislabelling of Mr. McGranaghan as self-employed would fall to the appellant company.
- As is accepted and conceded in evidence by MEPC Music Ltd, Mr. McGranaghan is only one of a number of musicians who work for MEPC Music Ltd and are paid in a similar A-typical way.

- The true factual position is that Mr. McGranaghan faces no liability for being mislabelled as self-employed by MEPC Music Ltd. MEPC Music Ltd went into this arrangement with its eyes wide open knowing that the full liability for mislabelling employees as self-employed falls entirely on MEPC Music Ltd.

- The Michael English Band is a business, that business trades as MEPC Music Limited. Mr. McGranaghan was offered a JOB with the business MEPC Music Ltd as the resident fiddle player with MEPC Music Ltd. and was an integral part of that business. Mr. McGranaghan was providing his services for MEPC Music Ltd and not for himself.

- The statement by the Appeals Officer that ***'In the absence of Mr. McGranaghan, it was not possible to clarify these issues''*** is a demonstrably false and deliberately misleading statement.

- If the Appeals Officer believed that Mr. McGranaghan could produce any documents or other evidence relevant to his 'Not' de novo, de novo appeal, then it was incumbent on the Appeals Officer under Section 314 of the Social Welfare Consolidation Act to give written notice to Mr. McGranaghan requiring Mr. McGranaghan to attend at the oral appeal hearing.

- The Appeals Officer 'CHOSE' not to require Mr. McGranaghan to attend under Section 314 of the Social Welfare Consolidation Act.

- The Appeals Officer 'CHOSE' not to require Mr. McGranaghan to attend under Section 314 of the Social Welfare Consolidation Act because the unlawful use of 'Test Cases' and the precedents set in those 'Test Cases' would have had to have been resolved BEFORE an oral appeal hearing could take place had the Appeals Officer done so.

- Mr. McGranaghan was not legally obliged to participate at a de novo oral appeal hearing where de novo evidence was given but not sworn. Where witnesses with pertinent evidence were not compelled to attend. Where the entire process was held in secret. Where natural justice was ignored and where a de novo decision was made by overturning a Scope Section decision and falsely claiming the Oral Appeal Hearing was NOT a de novo appeal.

- Mr. McGranaghan was not legally obliged to participate in a quasi-judicial tribunal namely the independent Social Welfare Appeals Office which, up until the publication of this appeal decision, repeatedly falsely denied the use of any and all precedential sample/test-cases in correspondence to Mr. McGranaghan.

- The true factual position that test cases were used by the SWAO was accepted and conceded by the Appeals Officer in this written Appeal decision in paragraph 10 as follows:

> ***"While test cases may have been used in the past, they have been used in very specific and limited circumstances"***

- On 19th October 2022, the Appeals Officer clearly identified that:

  '***In the 1995 Social Welfare Appeals Office's annual report, which is referenced in his correspondence to the Committee on Public Accounts, there is a synopsis of a motor-cycle couriers case at pages 24&25'***

- That this 'case' was a 'Test Case' was accepted and conceded by the Minister and the Department in 2002 and that FACT is recorded in the Ombudsman's report of February 2002. The Appeals Officer WAS ABLE to provide this 'Test Case' to Mr. McGranaghan **but chose not to**.

- Upon the failure of the Social Welfare Appeals Office to comply with his request for details of 'Sample/Test' Cases, Mr. McGranaghan requested that the question should be referred to the Circuit Court in accordance with section 307(1) of the Social Welfare Consolidation Act 2005. Not only was Mr. McGranaghan eager to have any appeals heard, Mr. McGranaghan pleaded with the Appeals Officer to refer the issue to the Circuit Court where witnesses would be sworn in and evidence would be given under oath.

- The true factual position is that Mr. McGranaghan was not legally obliged to attend at a "not de novo" de novo oral appeal hearing and very astutely would not allow himself to be placed in such a situation.

- That other parties at the "not de novo" de novo appeal hearing did not exercise their choice not to attend is a matter for those parties.

81. In 'Point 85' of the Appeals Officer's decision, the Appeals Officer states:

'In his July 2020 submission, attached to the INSI declaration, Mr. McGranaghan recounted details of a meeting with MEPC in February 2019 regarding possible employment status. Mr. McGranaghan outlined an option whereby band members with turnover in excess of €37,500 would register for VAT and invoice MEPC accordingly. He described that proposal as similar to the current arrangement. As Mr. McGranaghan was paid €50,000pa or thereabouts for his 200 gigs, then he had to register for VAT. In the absence of evidence to the contrary, I am assuming that the worker did register for VAT and claimed the reliefs available to him as a self-employed contractor'

Points of Fact:

- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan had **"*a meeting with MEPC in February 2019 regarding possible employment status*".**

- In Point 86 of this Appeals Officer's Decision issued on 20th January 2023, the Appeals Officer states

  "I do note that Mr. McGranaghan had expressed no dissatisfaction with his status until 2020".

- It is a matter of serious concern that the Appeals Officer recorded what he knew to be a false and deliberately misleading statement in stating **"*that Mr. McGranaghan had expressed no dissatisfaction with his status until 2020.*"**

- It is a matter of serious concern that at the Social Welfare Appeals Office, as a quasi-judicial tribunal, a 'Not' de novo oral hearing took place, de novo evidence given was not sworn, witnesses with pertinent evidence were not compelled to attend, that the entire process was held in secret, that natural justice was ignored and that a de novo decision was made where a matter of potentially many millions of euros, and the rights of thousands of workers, was decided by overturning a Scope Section decision, all of this done without any legal or judicial oversight.

- It is factually incorrect to state **"*Mr. McGranaghan outlined an option whereby band members with turnover in excess of €37,500 would register for VAT and invoice MEPC accordingly.*"**

- The true factual position is that it was MEPC Music Ltd that outlined an option to Mr. McGranaghan whereby band members with turnover in excess of €37,500 would register for VAT and invoice MEPC accordingly.

- It is factually incorrect to state that Mr. McGranaghan **"*described that proposal as similar to the current arrangement*"** At no time did Mr. McGranaghan ever make that statement or describe that proposal.

- The Appeals Officer has not clarified where he got this de novo evidence which he attributes to Mr. McGranaghan.

- It is accepted and conceded by the Appeals Officer that **"*Mr. McGranaghan was paid €50,000pa or thereabouts*"** by MEPC Music Ltd.

- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan was not paid per gig but was paid what amounted to an annual salary.

- The statement by the Appeals officer that **"*In the absence of evidence to the contrary, I am assuming*"** is a damning indictment of the lack of professionality, legality, and integrity shown by both the Appeals Officer and the Social Welfare Appeals Office.

- If the Appeals Officer believed that Mr. McGranaghan could produce any documents or other evidence relevant to his 'Not' de novo, de novo appeal, then it was incumbent on the Appeals Officer under Section 314 of the Social Welfare Consolidation Act to give written notice to Mr. McGranaghan requiring Mr. McGranaghan to attend at the oral appeal hearing.

- The Appeals Officer 'CHOSE' not to require Mr. McGranaghan to attend under Section 314 of the Social Welfare Consolidation Act.

- It is not the position of the Appeals Officer or the Social Welfare Appeals Office to assume anything. Insurability of employment decisions must be

based on the reality of the situation and the individual facts and circumstances pertaining to Mr. McGranaghan.

- That the Appeals Officer is including his own assumptions as evidence is utterly farcical and would not be accepted in any judicial or reputable quasi-judicial proceeding in this country. This is a matter of extreme concern and one which must be brought before the courts.

82. In 'Point 86' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC asserted that Mr. McGranaghan had only raised the issue of his working status in May 2020 and the appellant company denied that the issue had been raised at any time during 2019. Mr.English produced an exchange of texts from May 2020 which appeared to be amicable. While not determinative on the issue, I do note that Mr. McGranaghan had expressed no dissatisfaction with his status until 2020'

Points of Fact:

- The statement by MEPC Music Ltd that **"*Mr. McGranaghan had only raised the issue of his working status in May 2020 and the appellant company denied that the issue had been raised at any time during 2019*"** is a false statement.

- Mr. McGranaghan was disputing his employment status and conditions as early as 2014 when he declined to engage any further in discussions about a contract for service as it did not reflect the reality of his situation with MEPC Music Ltd.

- Mr McGranaghan raised the issue of employment in 2019 with Paul Claffey in conversation on the 5th February in the Gleneagle Hotel, Killarney, and on the 8th February in the Mullingar Park Hotel, Mullingar.

- In his initial Scope submission, Mr McGranaghan quoted the contents of an email dated 13th February 2019 from MEPC Music Ltd to Mr McGranaghan (and other band members) detailing options for band members. This email arose as a result of Mr McGranaghan raising the issue of being recognised as an employee in February 2019.

- The statement by the Appeals Officer that it was only in 2020 ***"had only become conscious of what he termed the "bogus self-employment" coverage"*** is a false statement.

- Since 2014 Mr. McGranaghan was fully aware of and disputing his irregular employment status.

- Mr. McGranaghan was unaware that his irregular employment status was colloquially known as 'bogus self-employment.'

- Bogus self-employment is not an official term in use by the Department of Social Protection of the Social Welfare Appeals Office.

- In 2018 Mr. McGranaghan read media coverage about ‘bogus self-employment' and immediately recognised that the term ‘bogus self-employment' perfectly described his irregular employment status with MEPC Music Ltd.
- In 2019 Mr. McGranaghan wrote to the Minister for Social Protection on the issue of ‘bogus self-employment.’
- In 2019 Mr. McGranaghan met with Senator Ged Nash and discussed the issue of ‘bogus self-employment' in the music industry.
- In 2019 Mr. McGranaghan wrote to and spoke to other Oireachtas members on the issue of ‘bogus self-employment' in the music industry.
- In December 2020 Minister for Social Protection Heather Humhpreys wrote to the Privileges Committee and stated that bogus self-employment is a matter of ‘***Public importance, public interest and significant public concern’.***
- In 2016, the loss to the State through PRSI evasion was estimated by the Minister for Finance to be €54m. In 2016, Minister Varadkar, as Minister for Social Welfare, launched his ‘Welfare Cheats Cheat Us All’ campaign. A ‘Fact Check’ on the amount lost through claimant fraud by TheJournal.ie concluded that €51.9 million had been lost to the state through claimant fraud. It is a fact that Employer PRSI evasion was a greater loss to the state than Claimant Fraud.
- The true factual position is that bogus self-employment is not just a matter of ***“public importance, public interest and significant public concern”,*** it represents greater loss to the exchequer than all other forms of Social Welfare fraud.
- ***“Mr.English produced an exchange of texts from May 2020”*** is de novo evidence “produced” at a “not de novo” hearing.
- The statement by the Appeals officer ***“which appeared to be amicable”*** is a groundless assumption by the Appeals Officer who had it within his powers to compel Mr. McGranaghan to appear at the oral hearing.
- Professional courtesy on Mr. McGranaghan’s part should not be misconstrued as amicable.
- The statement by the Appeals Officer **“*I do note that Mr. McGranaghan had expressed no dissatisfaction with his status until 2020*”** is a false statement.
- In Point 85 of this Appeals Officer’s Decision issued on 20th January 2023, the Appeals Officer states that Mr. McGranaghan had:

> **“*a meeting with MEPC in February 2019 regarding possible employment status*”.**

- It is a matter of serious concern that the Appeals Officer recorded what he knew to be a false and deliberately misleading statement in stating **"*that Mr. McGranaghan had expressed no dissatisfaction with his status until 2020.*"**

83. In 'Point 87' of the Appeals Officer's decision, the Appeals Officer states:

'The hearing also heard that MEPC had planned a musical for 2020 which was to be performed in 60 to 70 venues and that the band musicians, such as Mr. McGranaghan, were not required for the musical'

Points of Fact:

- The planned musical in question never actually happened. This is a purely hypothetical point and bears no relevance to the reality of the situation. It has no bearing on the facts of the case.
- Throughout 2019, in the planning stages of the musical, MEPC Music Ltd promised Mr. McGranaghan and the other band members that they would be required as part of their duties to work as the pit orchestra for the proposed musical.
- The proposed musical was not staged as Covid-19 restrictions were introduced.
- The proposed musical had 16 confirmed shows in 11 different venues in Ireland in the first 7 months of 2020.
- In order to contextualise this claim of performing a commercial musical in an additional 60 venues in the final 5 months of 2020, Sir Andrew Lloyd Webber's company "The Really Useful Group" had been scheduled to perform a UK & Ireland tour of "The Phantom of the Opera" over a 14-month period starting in late February 2020 and was to be performed in 8 venues, one of which was in Ireland.
- In 2019, Blood Brothers, the third longest-running musical production in West End history, toured Ireland for 24 performances in 2 venues.

84. In 'Point 88' of the Appeals Officer's decision, the Appeals Officer states:

'While the Deciding Officer did take account of the work done for Paul Claffey Tours, this overseas was not differentiated in the decision although the working conditions were quite different from those pertaining to Irish tours. When abroad, accommodation and travel was provided thus removing any financial risk even at the loss making venues described'

Points of Fact:

- This is de novo evidence.

- The statement by the Appeals Officer **"w*hile the Deciding Officer did take account of the work done for Paul Claffey Tours*"** is a false statement.
- The company "Paul Claffey Tours" does not exist.
- The company Paul Claffey Tours Limited does exist.
- While Mr. Claffey is a director of both MEPC Ltd and Paul Claffey Tours Ltd, these are separate corporate entities.
- Mr. McGranaghan never engaged with Mr. Claffey as anything other than a Director of MEPC Music Ltd.
- Mr. McGranaghan never worked for Paul Claffey Tours Ltd and Mr. McGranaghan was never paid by Paul Claffey Tours Ltd.
- At all times Mr. McGranaghan worked for MEPC Music Ltd.
- At all times Mr. McGranaghan was paid by MEPC Music Ltd.
- Mr. McGranaghan's records show that he was always paid by MEPC Music Ltd for cruises and Spain/Portugal tours:
    - ***24th May 2016, €1,250 Paid in advance by MEPC Music Ltd for 18th – 22nd May in Ireland & Spain 24th – 31st May.***
    - ***6th Sep 2016, €995 Paid by MEPC Music Ltd for 26th & 27th Aug in Ireland & Mediterranean Cruise 28th Aug – 4th Sep.***
    - ***3rd Oct 2016 €1,160 Paid in advance by MEPC Music Ltd for 29th & 30th Sep and 1st Oct in Ireland & Portugal 2nd – 9th Oct.***
    - ***7th Feb 2017 €1,495 Paid in advance by MEPC Music Ltd for 3rd – 5th Feb in Ireland & Western Caribbean Cruise 9th –19th Feb.***
    - ***22nd May 2017 €1,165 Paid in advance by MEPC Music Ltd for 19th – 21st May in Ireland & Spain 23rd – 30th May.***
    - ***25th Sep 2017 €2,320 Paid in advance by MEPC Music Ltd for 20th – 24th Sept in Ireland, 26th – 30th Sep & 1st Oct in UK, & Portugal 3rd – 10th Oct.***
    - ***13th Feb 2018, €1500 Paid in advance by MEPC Music Ltd for Eastern Caribbean Cruise 15th – 25th Feb.***
    - ***8th June 2018, €1330 Paid in advance by MEPC Music Ltd for 8th & 9th Jun in Ireland & Spain 10th – 19th Jun.***
    - ***1st October 2018, €670 Paid in advance by MEPC Music Ltd for Portugal 2nd – 10th Oct.***
    - ***10th May 2019, €1500 Paid in advance by MEPC Music Ltd for Alaskan Cruise 11th – 20th May.***
    - ***7th Jun 2019, €2060 Paid in advance by MEPC Music Ltd for 7th & 8th Jun in Ireland & Spain 9th – 18th Jun.***
    - ***4th October 2019, €1000 Paid in advance by MEPC Music Ltd for Portugal 30th Sep – 7th Oct.***
    - ***24th February 2020, Paid in advance by MEPC Music Ltd for Mexican Cruise 20th Feb – 1st Mar.***

- At no time in the Scope determinations and investigations had MEPC Music Ltd ever claimed that Mr. McGranaghan worked for Paul Claffey Tours Ltd.
- Nowhere in the grounds of appeal have MEPC Music stated that Mr. McGranaghan worked for Paul Claffey Tours Ltd.
- This is de novo evidence.
- This is entirely false evidence.
- An agent of MEPC Music Ltd knowingly made a statement and representation which was, to MEPC Music Ltd's knowledge, false and misleading.
- The statement by the Appeals Officer that ***"overseas was not differentiated in the decision although the working conditions were quite different from those pertaining to Irish tours"*** is a false statement.
- The true factual position is that Mr. McGranaghan never worked for Paul Claffey Tours Ltd. Mr. McGranaghan worked for MEPC Music Ltd and was paid by MEPC Music Ltd.
- The statement by the Appeals Officer that this "***overseas was not differentiated in the decision although the working conditions were quite different from those pertaining to Irish tours"*** is because it is false and de novo evidence which was not included in the original investigation, the Scope Section decision nor in the Grounds for Appeal by MEPC Music Ltd.
- Any perceived difference between the working conditions in Ireland and overseas based on the involvement of Paul Claffey as a separate legal entity is an entirely falsely manufactured ***difference*** accepted by Appeals Officer as de novo evidence in a "not de novo" Oral Appeal Hearing.
- It is a matter of serious concern that at the Social Welfare Appeals Office, as a quasi-judicial tribunal, a de novo oral appeal hearing took place, de novo evidence given was not sworn, witnesses with pertinent evidence were not compelled to attend, that the entire process was held in secret, that natural justice was ignored and that a de novo decision was made where a matter of potentially many millions of euros, and the rights of thousands of workers, was decided by overturning a Scope section decision and falsely claiming the Oral Hearing was NOT a de novo appeal.
- That accommodation was provided for Mr. McGranaghan and the band by MEPC Music Ltd when in remote locations playing successive nights in Ireland or in a resort in Spain or Portugal, was accepted and conceded by MEPC Music Ltd in 'Point 59' of the Appeals Officer's decision, which states:

  'The hearing heard that, on occasion, accommodation was provided when the band was playing successive nights at a remote location'
- Mr. McGranaghan was not exposed to any financial loss.

- Mr. McGranaghan could not profit from sound management nor lose from poor management whilst fulfilling his duties for MEPC Music Ltd.
- Point 88 of this Appeals Officer's decision is one of a number of "Conclusions" which are not included in his ***official*** conclusions.

85. In 'Point 89' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. McGranaghan had admitted doing studio work and performed with other bands in addition to MEPC. This would include Paul Claffey Tours Ltd'

Points of Fact:

- That the Appeals Officer has recorded that at the NOT 'De novo' Oral Hearing, this 'new' evidence was 'adduced' is beyond reasonable understanding.
- The true factual position is that the Oral Hearing was a 'De novo' appeal, and the Appeals Officer subsequently attached a NOT DE NOVO label to what was demonstrably a 'De novo' appeal.
- The statement by the Appeals Officer that ***"'Mr. McGranaghan had admitted doing studio work and performed with other bands in addition to MEPC. This would include Paul Claffey Tours Ltd'"*** is a false statement.
- Not only is this a false statement by the Appeals Officer, the Appeals Officer knows this to be a false statement.
- This is a serious matter of concern. MEPC Music Ltd have knowingly made false and misleading statements to the effect that Mr. McGranaghan worked for Paul Claffey Tours Ltd.
- This is a serious matter of concern. The Appeals Officer has knowingly made false and misleading statements to the effect that Mr. McGranaghan worked for Paul Claffey Tours Ltd.
- Prima Facia evidence now exists that MEPC Music Ltd may be guilty of an offence under section 251 of the Social Welfare Consolidation Act 2005.
- Prima Facia evidence now exists that representatives/agents of MEPC Music Ltd may be guilty of an offence under section 251 of the Social Welfare Consolidation Act 2005. This point will be raised with MEPC Music Ltd's legal representative when Mr. McGranaghan in next in the WRC where Mr. Ryan BL will be requested to withdraw and disassociate himself from these accusations against Mr. McGranaghan which are demonstrably false and are prima facia evidence that an offence has been committed. Mr. Ryan is PERSONALLY responsible for any statements he has made in this regard.
- While Mr. Claffey is a director of both MEPC Ltd and Paul Claffey Tours Ltd, these are separate corporate entities.

- Mr. McGranaghan never engaged with Mr. Claffey as anything other than a Director of MEPC Music Ltd.
- Mr. McGranaghan never worked for Paul Claffey Tours Ltd and Mr. McGranaghan was never paid by Paul Claffey Tours Ltd.
- At all times Mr. McGranaghan worked for MEPC Music Ltd.
- At all times Mr. McGranaghan was paid by MEPC Music Ltd.
- Mr. McGranaghan's records show that he was always paid by MEPC Music Ltd for cruises and Spain/Portugal tours:
    - ***24th May 2016, €1,250 Paid in advance by MEPC Music Ltd for 18th – 22nd May in Ireland & Spain 24th – 31st May.***
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    - ***4th October 2019, €1000 Paid in advance by MEPC Music Ltd for Portugal 30th Sep – 7th Oct.***
    - ***24th February 2020, Paid in advance by MEPC Music Ltd for Mexican Cruise 20th Feb – 1st Mar.***
- At no time in the Scope determinations and investigations had MEPC Music Ltd ever claimed that Mr. McGranaghan worked for Paul Claffey Tours Ltd.
- Nowhere in the grounds of appeal have MEPC Music stated that Mr. McGranaghan worked for Paul Claffey Tours Ltd.
- It is accepted and conceded by the Deciding Officer that **"*there had been a mutuality of obligation because of the 6 years*"** of the continual mutuality of obligation between MEPC Music Ltd and Mr. McGranaghan.

- It is repeatedly accepted and conceded by the Deciding Officer and by MEPC Music Ltd that Mr. McGranaghan was paid by MEPC Music Ltd and worked under the control and direction of MEPC Music Ltd as part of his normal duties for MEPC Music Ltd.

- It is accepted and conceded by the Deciding Officer in his Scope decision that MEPC Music Ltd ***"would take all the bookings for all the performances".***

- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan operated under a mutuality of obligation to MEPC Music Ltd and was obligated to render personal service.

- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan was MEPC Music Ltd's **"*regular fiddle player and essential to the band's performance.*"**

- In point 54 it is accepted and conceded by the Appeals Officer that Mr. McGranaghan worked under the control and direction of MEPC Music Ltd.

- The true factual position is that Mr. McGranaghan never worked for Paul Claffey Tours Ltd, nor any other corporate entity associated with Paul Claffey other than MEPC Music Ltd.

- It is a matter of serious concern that at the Social Welfare Appeals Office, as a quasi-judicial tribunal, a de novo oral appeal hearing took place, de novo evidence given was not sworn, witnesses with pertinent evidence were not compelled to attend, that the entire process was held in secret, that natural justice was ignored and that a de novo decision was made where a matter of potentially many millions of euros, and the rights of thousands of workers, was decided by overturning a Scope section decision and falsely claiming the Oral Hearing was NOT a de novo appeal.

86. In 'Point 90' of the Appeals Officer's decision, the Appeals Officer states:

'Mr.Ryan, for MEPC, referred to Mr. McGranaghan's media profile where he pointedly omits any reference to MEPC or previous involvement with MEPC. Mr. McGranaghan's social media profile reveals that he has worked with Dolores Keane, Nathan Carter, Mary Black, Philomena Begley, Brendan Shine, Dominic Kirwan to name but a few'

Points of Fact:

- Mr. McGranaghan's social media profile is not evidence in this "not de novo" appeal hearing.

- It is abundantly clear that this de novo "not de novo" oral appeal hearing descended into unbridled character assassination of Mr. McGranaghan by both MEPC Music Ltd and the Appeals Officer.

- Mr.Ryan, for MEPC Music Ltd's statement that Mr. McGranaghan's social media ***'pointedly omits any reference to MEPC or previous involvement with MEPC'*** is a false statement.

- The true factual position is that Mr. McGranaghan references Brendan Shine, Dominic Kirwan and Philomena Begley in his social media profile, all of whom he played with as part of his duties with MEPC Music Ltd which was paid for by MEPC Music Ltd.

- Nowhere on MEPC Director Michael English's Twitter profile is MEPC Music Ltd referred to.

87. In 'Point 91' of the Appeals Officer's decision, the Appeals Officer states:

'MEPC's counsel rejected the assertion that Mr. McGranaghan was seen as part of MEPC's band and argued that the worker had been identified as a fiddle player rather than the band's fiddle player. Mr. Ryan went on to say that, even so, the COA had held in Karshan that a worker who is closely identified with a brand was not a relevant consideration'

Points of Fact:

- It is accepted and conceded by the Appeals Officer in Point 53 of this Appeals Officer's Decision that Mr. McGranaghan was MEPC Music Ltd's **"*regular fiddle player and essential to the band's performance*"**

- It is accepted and conceded by the Appeals Officer in Point 53 of this Appeals Officer's Decision that the question at issue is **"*again very different from Karshan where the company offered the work to a rota of workers*"**

- It is accepted and conceded by the Appeals Officer in Point 53 of this Appeals Officer's Decision that **"*Mr. McGranaghan had been expected to perform*"** with MEPC Music Ltd unless he had sought and received permission from MEPC Music Ltd to take time off work.

- It is accepted and conceded by the Appeals Officer in Point 51 of this Appeals Officer's Decision that the question at issue is very different from the Karshan case when he states "***That is very different from this case where the appellant company had committed to play at venues months in advance and was only able to do so by being able to rely on its musicians. There could have been little ad hoc about who played in the band as the music had to be selected and rehearsed in advance.***"

- The true factual position is that out of approximately 1,200 performances over 6 years by MEPC Music Ltd's band, as the band's resident fiddle player Mr. McGranaghan was absent on two occasions with prior approval from MEPC Music Ltd for the absences.

88. In 'Point 94' of the Appeals Officer's decision, the Appeals Officer states:

'Mr. McGranaghan was under a certain degree of control and direction but not to the extent that he was supervised. He was told what to play and where the gig was. The worker supplied labour only but is an accomplished musician who also provided his services elsewhere. The worker received a fix rate per gig. He was free to send a substitute who was paid by the company. No overtime was paid.

The worker provided his own instruments and some equipment. The provision by the worker of his transport is an important consideration as without transport, the worker would not have been in a position to do the work. The worker was exposed financially because his gain was dictated by the location of the gig. Mr. McGranaghan advised that he had to drive to wherever the gig had been and travel time was anything from 30 minutes to 5 hours and stated that he had been doing 1,000 miles a week on average'

Points of Fact:

- These are conclusions not included in the Appeals Officer's 'official' 'Conclusions'
- False statement - ***'Mr. McGranaghan was under a certain degree of control and direction but not to the extent that he was supervised'***
- True factual position is that Mr. Mr Granaghan was supervised extensively in all aspects of the music he played and how he played it on behalf of MEPC Music Ltd.
- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan "was told what to play".
- The statement by the Appeals Officer that Mr. McGranaghan was only told "what to play" is factually incorrect.
- The true factual position is that Mr. McGranaghan was not just told by MEPC Music Ltd "what to play," but was also told:
    - which instrument (fiddle or acoustic guitar) to play,
    - the key in which he was to play,
    - the style in which he was to play,
    - the notes he was to play (if his own choice wasn't what the musical director wanted),
    - in which part of the song to play,
    - the order in which to play the songs,
    - the tempo.

  The true factual position with regards to OTHER OBLIGATIONS Mr. McGranaghan had with MEPC Music Ltd, was that he was told:

    - What clothes to wear (MEPC Music Ltd provided a band uniform)
    - The time for sound-check
    - When to arrive at a venue for rehearsal

- When to arrive at an airport/ferry terminal etc.
- To supply details of his passport to MEPC Music Ltd for VISA applications
- The music he was required to learn on days when there were no live performances with MEPC Music Ltd i.e. days when Mr. McGranaghan was at home
- The music he was required to learn to accompany other artists on days when there were no live performances with MEPC Music Ltd i.e. days when Mr. McGranaghan was at home
- When to arrive at a venue for a rehearsal with other artists that he was required to accompany as part of his duties with MEPC Music Ltd.
- To supply details of his driving license to MEPC Music Ltd for vehicle rental
- The location and time to pick-up the vehicle rental for MEPC Music Ltd.

- The statement by the Appeals Officer that Mr. McGranaghan was only told ***"where the gig was"*** is factually incorrect.

- The true factual position is that Mr. McGranaghan was not just told by MEPC Music Ltd "where the gig was," but was also told:
  - months in advance of the location of Live Performances
  - months in advance of the date of Live Performances
  - Mr. McGranaghan in the course of his employment with MEPC Music Ltd engaged in 217.6 Live Performances on a yearly basis, many of which were repeat venues which ran on average in 8-week cycles
  - Mr. McGranaghan performed in these venues as one of his duties for MEPC Music Ltd up to 8 times a year – sometimes more (Allingham Arms, McWilliam Park, The Ryandale, The Hazel Tree, The Well, The Shearwater, The Hillgrove, Hotel Kilmore, The Gleneagle Hotel to name but a few)
  - MEPC Music Ltd's yearly schedule also included annual performances at festivals such as Clonmany Festival, Síamsa Sráide in Swinford, Monaghan Country Music Festival to name but a few. Generally, these festivals occurred at the same time each year.
  - This schedule also included overseas & Irish concert tours including:
    - New Year's Day Dance (Carlow)
    - Gertrude Byrne Cruise (Typically in February)
    - UK Tour Spring (March/April)
    - Spain (Typically late May/June)
    - UK Tour Autumn (September)
    - Portugal (early October)
    - Irish Concert Tour (October & November)
    - Christmas Church Concert Tour (November & December)

- Mr. McGranaghan never gave and was never required to give ‘individual commitment to individual’ live performances.
- The only time Mr. McGranaghan ever expressed his availability was when he accepted the job offer from MEPC Director Michael English in 2013.
- At no time after Mr. McGranaghan accepted the job offer from Mr. English, did Mr. McGranaghan ever feel the need to ‘signal his availability’.
- At no time after Mr. McGranaghan accepted the job offer from Michael English, did MEPC Music Ltd. request or require Mr. McGranaghan to signal his availability.
- At all times Mr. McGranaghan was fully available to MEPC Music Ltd.
- At all times MEPC Music Ltd expected Mr. McGranaghan to be available without signalling his ongoing availability.

- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan provided “labour only”.

- It is accepted and conceded that by the Appeals Officer Mr. McGranaghan is an ***“accomplished musician”.***

- The true factual position is that Mr. McGranaghan is not just an accomplished musician, Mr. McGranaghan is a **Professional** musician and holds a First Class Degree with Honors in Music.

- The true factual position is that Mr. McGranaghan’s chosen genre when he is working for himself is Irish Traditional Music.

- The true factual position is that when Mr. McGranaghan creates and performs music on his own behalf it is Irish Traditional Music, or music that is similar in nature such as Scottish Traditional music, Shetland music, Cape Breton music, Nova Scotia music. It is through Mr. McGranaghan's work in this capacity that he was recognised with the group he co-created, Kintra, by the Speaker of the Northern Ireland Assembly, by President McAleese in Áras an Uachtaráin, and at Milwaukee Irish Fest. This was voluntary work by Mr. McGranaghan during his time in university.

- The true factual position is that Mr. McGranaghan does not play *Country and Irish music* on his own behalf, for his own pleasure, or in his own time.

- The true factual position is that Mr. McGranaghan declined full-time job offers to play Country and Irish music on several occasions from when he was 16 until he finished University in 2011.

- The true factual position is that in 2011 Mr. McGranaghan finally conceded to play Country and Irish music because it was the only music genre within Ireland where Mr. McGranaghan could earn up to €50,000 per annum working as an employed professional musician for a professional business.

- The true factual position is that the alternative to playing Country and Irish music as an employed professional musician in a professional business for Mr. McGranaghan was to be an unemployed professional traditional Irish musician, because such employment is extremely rare within the island of Ireland.

- The true factual position is that Mr. McGranaghan as a professional musician, only plays Country and Irish music for a pay cheque.

- In his decision the Scope section Deciding Officer states that Mr. McGranaghan:

  > "***occasionally played with other bands in his time off, because of his commitments to the Michael English band, he did not have the time to work elsewhere. I am satisfied that working with Michael English was his main employment***"

- The true factual position according to records with the Revenue Commissioners is that in 2019 Mr. McGranaghan was paid €55,195 by MEPC Music Ltd.

- The true factual position according to records with the Revenue Commissioners is that in 2019 Mr. McGranaghan earned an additional income of €694.82 not from MEPC Music Ltd.

- The true factual position is that activities outside Mr. McGranaghan's obligations to MEPC Music Ltd were on such a small scale as to be regarded as purely marginal and ancillary.

- The true factual position is that earnings outside Mr. McGranaghan's main employment with MEPC Music Ltd amounted to 1.24% of his total income in 2019.

- The true factual position is that earnings from Mr. McGranaghan's main employment with MEPC Music Ltd amounted to 98.76% of his total income in 2019.

- The true factual position is that the years 2018 & 2019 were the two busiest years during his period of employment with MEPC Music Ltd that Mr. McGranaghan earned additional income from performing additional work outside of his employment with MEPC Music Ltd.

- The true factual position according to records before 2018 with the Revenue Commissioners is that Mr. McGranaghan did not earn any additional income outside of his employment with MEPC Music Ltd.

- The true factual position according to records with the Revenue Commissioners is that Mr. McGranaghan did not earn any additional income outside of his employment with MEPC Music Ltd during the first 3 months of

2020 when ultimately the music industry was locked down due to Covid-19 restrictions.

- The statement by the Appeals Officer that Mr. McGranaghan **"*was paid a fixed rate per gig*"** is a false statement. Refer to Point 26.
- The statement by the Appeals Officer that Mr. McGranaghan "was free to send a substitute" is a false statement. Refer to Points 12, 14, 18, 19, 21, 42, 44, 58 and 59.
- It is accepted and conceded by the Appeals Officer that the substitute "*was paid by the company*" (MEPC Music Ltd).
- The statement by the Appeals Officer that "No overtime was paid" is a false statement.
- The true factual position was that overtime was paid.
- The true factual position was that Mr. McGranaghan was offered overtime for a performance on the Late Late Show.
- The true factual position was that Mr. McGranaghan declined overtime. Refer to Point 12.
- It is accepted and conceded by the Appeals Officer that Mr. McGranaghan only provided the small tools of the trade.
- The Statement by the Appeals Officer that ***"The provision by the worker of his transport is an important consideration as without transport, the worker would not have been in a position to do the work"*** is an extreme matter of concern. This statement is both false and factually incorrect and exposes 27 years of deliberately corrupted decisions by the Social Welfare Appeals Office.
- The ***'Provision of transport'*** by a worker is not at all referred to in the code of practice as an indicator of self-employment.
- The ***'Provision of transport'*** by a worker was not at all an indicator of self-employment status in Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997].
- The ***'Provision of transport'*** by a worker to and from work is an employee's own private travel. The Revenue Commissioners are insistent that transport to and from work is an employee's private travel.
- The ***'Provision of transport'*** by a worker was rejected as an indicator of self-employed status in a legal submission by the Minister for Social Protection to the Social Welfare Appeals Office in 2001.
- The true factual, legal and unarguable position is that ***'Provision of transport'*** is rejected by the Revenue Commissioners, the Code of Practice, the Higher

Courts and the Minister for Social Protection as an indicator of self-employment status.

- The true factual, legal and unarguable position on ***'Provision of transport'***, presented to the Social Welfare Appeals Office in 2001 by Mr. Connaughton BL on behalf of the Minister for Social Protection is that:

  > ***'Insofar as there are any distinguishing facts, they appear only to relate to the provision of a motorcycle*** (Transport) ***by the claimant and it is respectfully suggested that this cannot of itself justify a conclusion that the claimant is in business on his own account'***

- The true factual, legal and unarguable position is that ***'Provision of transport'*** has been unlawfully used as an indicator of self-employment status by the Social Welfare Appeals Office since 1995.

- The true factual, legal and unarguable position is that Mr. McGranaghan was required to perform the work personally and did not, as a matter of practice, work for anybody else and the unlawful precedent of ***'Provision of transport'*** cannot and does not override that Mr. McGranaghan was not in business on his own account.

- Mr. McGranaghan worked for the Michael English Band trading as MEPC Music Ltd, Mr. McGranaghan did not work for the 'Matthew McGranaghan Band'.

- The unsustainable position of the Appeals Officer is that if an employer does not provide any worker with transport to and from work, that worker can be labelled as self-employed by group and class by the Social Welfare Appeals Office.

- If the Appeals Officer is allowed to continue to use ***'Provision of transport'*** as an unlawful 'Precedent' to mislabel employees as self-employed, ALL OF IRELAND's entire workforce can be mislabelled as self-employed

- The true factual position is that in applying ***'Provision of Transport'*** to any employment as the overriding indicator of self-employment status renders all employees as self-employed, including the Appeals Officer himself.

- ***'Provision of Transport'*** is one of three 'precedents' set in the Social Welfare Appeals Office 1995 Courier 'Test Case':

  - ***Provided his own vehicle and equipment***
  - ***Was responsible for all expenses including tax, maintenance, insurance etc and***
  - ***Payment was made on the basis of rate per job plus mileage allowance***

- ***'Provision of Transport'*** is two of four precedents 'negotiated' between the Revenue Commissioners and Courier Industry Employers in a private meeting

in the Burlington Hotel in 1997 to label all couriers as self-employed in order for Courier Employers to evade their statutory obligations.

- The statement by the Appeals Officer that ***'without transport, the worker would not have been in a position to do the work'*** is a false and deliberately misleading statement which no reasonable person could agree with.
- Mr. McGranaghan is a professional musician, that is his WORK. The tools of Mr. McGranaghan's trade are musical instruments, namely fiddle and guitar. Mr. McGranaghan does not require transport to be a musician. He does not play 'Transport' on stage, in rehearsals nor when practicing and learning at home.
- It is without doubt that the Appeals Officer himself provides transport to and from his work, it does not nor cannot be used to mislabel the Appeals Officer as self-employed.
- It is without doubt that the vast majority of employees in this country provide transport to and from their work. The provision of transport to and from work is not, nor cannot be used to label those employees as self-employed.
- The statement from the Appeals Officer that '***The worker was exposed financially because his gain was dictated by the location of the gig***' is a deliberately misleading statement which no reasonable person could agree with.
- All contract of employment workers, are ***'exposed financially'*** because of their universal need to provide their own transport to and from work. Mr. McGranaghan is no different from all other 'contract of service' employees in this regard.
- A worker's transport to and from work cannot be regarded as 'Small tools of the trade'.
- A worker's transport to and from work cannot be regarded as an indicator of employment status, this is an erroneous view of the law on the part of the Appeals Officer.
- At all times Mr. Mc Granaghan worked for the Michael English Band trading as MEPC Music Ltd, the Appeals Officer's unreasonable focus on Mr. Mc Granaghan's provision or not of transport does not nor cannot disguise that Mr. McGranaghan was not in business on his own account.
- Mr. McGranaghan was well paid by MECP Music Ltd for his ability as a professional musician, his transport to work was never raised or discussed by either MEPC Music Ltd or Mr. McGranaghan, there was no reason to, it is the accepted norm for all contract of service employees that provision of transport is their own personal non-distinguishing responsibility.

- One's transport to one's place of work cannot be regarded as a 'Distinguishing Feature' of a worker's employment status.
- The statement by the Appeals Officer that Mr. McGranaghan's ***'gain was dictated by the location of the gig'*** is not a distinguishing feature of Mr. McGranaghan's employment status.
- Any worker has the absolute right to live where they can choose or afford, a longer commute to work does not, nor cannot change their employment status.
- Mr. McGranaghan's gain was dictated by having a job as a professional musician. Mr. McGranaghan was well paid by MEPC Music Ltd to be a professional musician. How Mr. McGranaghan transported himself to work is not nor cannot be regarded as a 'Gain' or 'Loss' within the meaning of the authorities cited.
- Mr. McGranaghan's annual salary more than compensated for his personal transport choices.
- If the Appeals Officer's unreasonable conclusion that one's personal provision of transport to one's work, can be used to label one as self-employed, then every single 'Contract of Employment' worker in the country can be mislabelled as self-employed.
- The provision of transport to and from work does not negate the Appeals Officer's responsibility to accept the general rule that if one is not in business on one's own account, then 'transport' and the entire unreasonable tangent the Appeals Officer has insisted on creating out of thin air, means absolutely nothing. It is entirely superfluous to the question at issue before the Appeals Officer.

89. In 'Point 95' of the Appeals Officer's decision, the Appeals Officer states:

'I find there was scope for the worker to gain additional profit by being able to play for other bands such as when on cruises. There were no set hours and the level of preparation and effort varied according to venue and location. The worker did not work exclusively for the appellant company. While the figure of 200 gigs a year was cited, this included work overseas and gigs on cruises run by a different company. The worker also worked for other bands although he states that the opportunity to do so diminished because of the commitment demanded by the appellant company. No travel expenses were paid in respect of travel on the island of Ireland regardless of location. The worker did not have holiday periods and there was no provision for either holiday pay or sick pay. The worker paid tax and PRSI as a Schedule D self-employed worker'

Points of Fact:

- The statement by the Appeals **officer "*I find there was scope for the worker to gain additional profit by being able to play for other bands such as when on cruises***" is a false statement.

- Mr. McGranaghan was employed by MEPC Music Ltd and in his spare time when not fulfilling his obligated duties with MEPC Music Ltd, on occasion, he performed with other bands.
- This additional income was not "profit".
- In his decision the Scope section Deciding Officer states about Mr. McGranaghan

  > **"*During his free time on the cruise he was able to perform with bands if they requested a fiddle player. This was usually done to pass the time and the other bands would pay $50 - $100 off his on-board bill on the ship. He was able to perform with other bands/artists on the cruise ship, provided it wasn't at the same time as shows for MEPC.*"**

- It is accepted and conceded by the Appeals Officer in this Appeals officer's decision in Point 105 that Mr. McGranaghan "*described standing in with another band who then paid $50-$100 off his on-board bill.*"
- Refer to point 67 for further information about work onboard the cruise ship.
- The true factual position is that Mr. McGranaghan played with other bands to pass the time because he is a musician, and musicians enjoy playing music with other musicians, many of whom have known each other for decades. Mr. McGranaghan played with other bands for the *'craic and the ceol'* to relieve the boredom.
- It is accepted and conceded by the Appeals Officer that "*preparation and effort*" existed in preparing for Live Performances. Refer to Points 12, 16, 22, 27, 51, 56, 62, 63, 66, 69 and 73.
- It is accepted and conceded by the Appeals Officer that "*preparation and effort*" is required for Live Performances. Refer to Points 12, 16, 22, 27, 51, 56, 62, 63, 66, 69 and 73.
- The statement by the Appeals Officer that **"*the worker did not work exclusively for the appellant company*"** is factually incorrect.
- The true factual position is that earnings from Mr. McGranaghan's main employment with MEPC Music Ltd amounted to 98.76% of his total income in 2019.
- The true factual position is that activities outside Mr. McGranaghan's obligations to MEPC Music Ltd were on such a small scale as to be regarded as purely marginal and ancillary.
- No reasonable person can argue that 1.24% of Mr. McGranaghan's yearly income is anything other than marginal and ancillary.
- It is factually incorrect that a "**figure of 200 gigs a year was cited**".

- The true factual position was that there was an average of 217.6 live performances per annum.
- The statement by the Appeals Officer that this **"*included work overseas and gigs on cruises run by a different company*"** is deliberately misleading.
- The true factual position is that at all times Mr. McGranaghan worked for MEPC Music Ltd including work overseas and cruises.
- The true factual position is that at all times travel and subsistence was provided to Mr. McGranaghan by MEPC Music Ltd when working abroad, on cruises or on successive nights in remote locations in Ireland.
- The true factual position is that at all times Mr. McGranaghan was paid by MEPC Music Ltd including work overseas and cruises.
- It is accepted and conceded that on very rare occasions, because of his commitments to MEPC Music Ltd, and only in his own free time, did Mr. McGranaghan occasionally worked with other bands. However, this work amounted to 1.24% of Mr. McGranaghan's yearly income and cannot be seen by any reasonable person as anything other than marginal and ancillary.
- The statement by the Appeals Officer that **"*No travel expenses were paid in respect of travel on the island of Ireland regardless of location*" is a misleading statement.**
- It is accepted and conceded by MEPC Music Ltd that **subsistence** was paid i.e. **"*accommodation was provided when the band was playing successive nights at a remote location*"** in Ireland.
- The statement by the Appeals Officer that **"*The worker did not have holiday periods*"** is a false statement. Refer to Points 4, 20, 61 and 63.
- That MEPC Music Ltd did not provide "*either holiday pay or sick pay*" is a consequence of MEPC Music Ltd mislabelling Mr. McGranaghan as self-employed. It is not an indicator of Mr. McGranaghan's employment status.
- It is accepted and conceded that Mr. McGranaghan "*paid tax and PRSI as a Schedule D self-employed worker*" however, it was disputed by Mr. McGranaghan, and accepted by the Scope section Deciding officer that Mr. McGranaghan's Schedule D self-employed status was as a result of MEPC Music Ltd mislabelling Mr. McGranaghan as self-employed.

In his 'Conclusions' in Points 97, 104 and 106, the Appeals Officer states:

> *'97. The Deciding Officer failed to distinguish between the work done on the island of Ireland and the work performed overseas where different conditions applied and, in the case of the cruises, the work was done for a different company, Paul Claffey Tours Limited.*

104. The appellant company performed on cruises and other bands were also booked. The hearing heard that these cruises were booked by Paul Claffey Tours Limited and not MEPC and Mr. McGranaghan was paid by Paul Claffey Tours. ***This diminishes the working relationship with the appellant company however closely associated.***

106.Mr. McGranaghan performed over 200 gigs a year with both MEPC and Paul Claffey Tours. This provided financial security and reduced financial risk especially when performing overseas. Mr. McGranaghan did not seek employment with MEPC but was seeking the financial security that playing in a busy popular band would offer.

Points of Fact:

- This is a serious matter of concern. MEPC Music Ltd have knowingly made false and misleading statements to the effect that Mr. McGranaghan was paid by Paul Claffey Tours Ltd.
- This is a serious matter of concern. The Appeals Officer has knowingly made false and misleading statements to the effect that Mr. McGranaghan was paid by Paul Claffey Tours Ltd.
- Not only is this a false statement by the Appeals Officer, but the Appeals Officer also knows this to be a false statement.
- Prima Facie evidence now exists that MEPC Music Ltd may be guilty of an offence under sections 251 and 252 of the Social Welfare Consolidation Act 2005.
- Mr. McGranaghan never worked for and was never paid by Paul Claffey tours Limited. Despite this unassailable fact, Mr. McGranaghan has repeatedly had his good name deliberately besmirched in his absence by MEPC Music Ltd, their agents and the Appeals Officer. This deliberate progression of falsehoods finally leading to the false accusation that Mr. McGranaghan was *paid by Paul Claffey Tours Limited* is as follows:
    - **In 'Point 32' of the Appeals Officer's decision,** the Appeals Officer states:

      'The hearing heard that a separate company, Paul Claffey Tours Ltd, operated cruises and booked bands to perform on the cruises".
    - **In 'Point 42' of the Appeals Officer's decision,** the Appeals Officer states:

      "This number includes the cruise work for Paul Claffey Tours Limited."
    - **In 'Point 72' of the Appeals Officer's decision,** the Appeals Officer states:

'MEPC revealed that a separate company, Paul Claffey Ltd., operated cruises and booked bands to perform on the cruises

- **In 'Point 88' of the Appeals Officer's decision**, the Appeals Officer states:

  'While the Deciding Officer did take account of the work done for Paul Claffey Tours, this overseas was not differentiated in the decision although the working conditions were quite different from those pertaining to Irish tours'

- **In 'Point 89' of the Appeals Officer's decision**, the Appeals Officer states:

  'Mr. McGranaghan had admitted doing studio work and performed with other bands in addition to MEPC. This would include Paul Claffey Tours Ltd'

- **In 'Point 97' of the Appeals Officer's decision,** the Appeals Officer states:

  "The Deciding Officer failed to distinguish between the work done on the island of Ireland and the work performed overseas where different conditions applied and, in the case of the cruises, the work was done for a different company, Paul Claffey Tours Limited"

- **In 'Point 104' of the Appeals Officer's decision,** the Appeals Officer states:

  'The appellant company performed on cruises and other bands were also booked. The hearing heard that these cruises were booked by Paul Claffey Tours Limited and not MEPC and Mr. McGranaghan was paid by Paul Claffey Tours. This diminishes the working relationship with the appellant company however closely associated'

- **In 'Point 106' of the Appeals Officer's decision**, the Appeals Officer states:

  'Mr. McGranaghan performed over 200 gigs a year with both MEPC and Paul Claffey Tours'

  The above deliberate progression of falsehoods is prima facie evidence of offences under Section 251 of the Social Welfare Consolidation Act 2005.

- That it is accepted as a fact by the Appeals Officer that Mr. McGranaghan *worked for and was paid by Paul Claffey Tours Limited* has serious consequences for Mr. McGranaghan with the Revenue Commissioners and the Department of Social Protection.

- Mr. McGranaghan has been effectively criminalised, turned into the *'bad guy'*, in his absence, at a "not de novo" de novo Oral Appeal hearing, where at all times, the true factual position. that Mr. McGranaghan had worked for and been paid by MEPC Music Ltd. was not only available to the Appeals Officer, but it was also decided as fact by the Deciding Officer.

- At all times, Mr. McGranaghan told the truth, the whole truth and nothing but the truth. The same cannot be said for MEPC Music Ltd, their agents, the Appeals Officer or indeed, the Chief Appeals Officer.

- The true factual position is MEPC Music Ltd knowingly made statements and representations both written and verbal which MEPC Music Ltd knew to be false and misleading in any material respect, and knowingly concealed material facts.

- The true factual position is MEPC Music Ltd produced, furnished, caused and knowingly allowed to be produced and furnished, documents and information which MEPC Music Ltd knew to be false in a material particular.

- That ***'the hearing heard'*** evidence to the effect that Mr. McGranaghan was paid by Paul Claffey Tours Limited, is 'De novo' evidence.

- The false and misleading statement that Mr. McGranaghan was paid by Paul Claffey Tours Limited is contained in two legal submissions by agents on behalf of MEPC Music Ltd. The first written legal submission was emailed to the Social Welfare Appeals Office on 2nd November 2022, the day after the "not de novo" de novo Oral Appeal Hearing. The second written legal submission was emailed to the Workplace Relations Commission on the 16th January 2023. Both legal written submissions state:

"*The Claimant was paid by Paul Claffey Tours Limited*"

- Mr. McGranaghan was not paid by Paul Claffey Tours Limited.

- The claim that Mr. McGranaghan "*was paid by Paul Claffey Tours Limited*" is prima facie evidence that an offence may have been committed under Section 252 of the Social Welfare Consolidation Act 2005.

- Prima Facie evidence that offences may have been committed under the Social Welfare Consolidation Act 2005 are contained in two written legal submissions on behalf of MEPC Music Ltd which are evidence before the Social Welfare Appeals Office and the Workplace Relations Commission.

- It is difficult to see how the Chief Appeals Officer of the Adjudicator in the WRC can engage any further in their processes until the Minister for Social Protection declares what she intends to do, if anything, regarding the prima facie evidence of offences under Sections 251 & 252 of the Social Welfare Consolidation Act 2005.

- That the Appeals Officer accepted 'De novo' evidence to the effect that Mr. McGranaghan worked and was paid by Paul Claffey Tours Limited

demonstrates that the 'Oral Hearing' was, in fact and in practice, a 'De novo' appeal.

- The Appeals Officer labelled a 'de novo' appeal as "not de novo" only after the Appeal had been heard and 'de novo' evidence adduced and accepted by the Appeals Officer.
- That the Appeals Officer has recorded that at the "not de novo" Oral Hearing, this 'new' evidence was 'adduced' is beyond reasonable understanding.
- The true factual position is that the Oral Hearing was a 'de novo' appeal and the Appeals Officer subsequently attached a "not de novo" label to what was demonstrably a 'de novo' appeal.
- While Mr. Claffey is a director of both MEPC Ltd and Paul Claffey Tours Ltd, these are separate corporate entities.
- Mr. McGranaghan never engaged with Mr. Claffey as anything other than a Director of MEPC Music Ltd.
- At no time in the Scope determinations and investigations had MEPC Music Ltd ever claimed that Mr. McGranaghan worked for Paul Claffey Tours Ltd.
- Nowhere in the grounds of appeal have MEPC Music stated that Mr. McGranaghan worked for Paul Claffey Tours Ltd.
- At no time has any evidence ever existed or been presented to the Social Welfare Appeals Officer which could reasonably justify the overturning of the Scope Deciding Officer's decision.
- The only thing *diminished* by the use of false statements by the Appeals Officer in overturning the decision of the Deciding Officer is the credibility of the Appeals Officer and the Social Welfare Appeals Office.
- Mr. McGranaghan has no doubt that this vilification of his good name by MEPC Music Ltd and the Social Welfare Appeals Office was deliberate from the outset.

Substitution

- **The Scope Section decision concluded that it was not Mr. McGranaghan's responsibility to provide or pay for a substitute.**

  In their 'Grounds for Appeal' (12) MEPC Music Ltd accepted and conceded that MEPC Music Ltd would pay for any substitute.

  The reality of the situation is that MEPC Music Ltd accept and concede that MEPC Music Ltd bear sole responsibility for payment and provision of a substitute.

  The reality of the situation is that Mr. McGranaghan never provided or paid for a substitute.

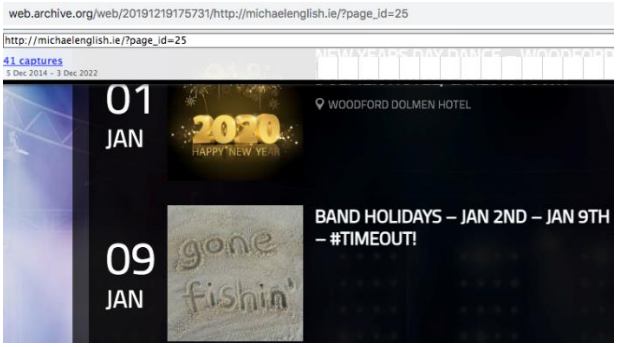
The only 'Finding of Fact' which can be made by any reasonable person is that MEPC Music Ltd 'Provided' and 'Paid' for a substitute on the two occasions when Mr. McGranaghan was absent.

Holidays

- **The Scope Section decision concluded that Mr. McGranaghan's holidays were decided by MEPC Music Ltd.**

  MEPC Music Ltd denied the existence of Band Holidays to the Social Welfare Appeals Office and stated they were ***slack periods/shallow bookings*.**

  The true factual position is that these so-called ***'periods of shallow bookings'*** were referred to by MEPC Music Ltd as ***"band holidays"*** on social media, in person to Mr. McGranaghan and the other band members by Michael English, in the emails containing the list of dates, and on the MEPC Music Ltd website such as this example:



- **Prima facie evidence now exists that an offence may have been committed under Section 251 of the Social Welfare Consolidation Act 2005.**

Mutuality of Obligation

- **The Scope Section decision concluded that MEPC Music Ltd was Mr. McGranaghan's main employment.**

  MEPC Music Ltd falsely alleged that MEPC Music Ltd was not Mr. McGranaghan's main employment.

  MEPC Music Ltd falsely alleged that Mr. McGranaghan worked for and was paid by Paul Claffey Tours Limited.

  Mr. McGranaghan never worked for, nor was he paid by Paul Claffey Tours Limited.

- **Prima facie evidence now exists that an offence may have been committed under Sections 251 & 252 of the Social Welfare Consolidation Act 2005.**

Integration

- **The Scope Section decision concluded that Mr. McGranaghan has been the band's resident fiddle player since 2014.**

  The Appeals Officer concludes that Mr. McGranaghan was MEPC Music Ltd's regular fiddle-player and essential to the band's performance.

  The only 'Finding of Fact' which can be made by any reasonable person is that Mr. McGranaghan was MEPC Music Ltd's resident fiddle-player and was essential to the band's performance.

  Mr. McGranaghan was fully integrated into the band.

Control

- The Scope Section decision concluded that Mr. McGranaghan satisfied the control test.
- The Scope Section decision concluded that Mr. McGranaghan was under the control of the musical director.
- The Scope Section decision concluded that Mr. McGranaghan had no say in determining the job specifications.
- The Scope Section decision concluded the musical director had the final say.
- The Scope Section decision concluded that Mr. McGranaghan supplied labour only.
- The Scope Section decision concluded that Mr. McGranaghan only provided the small tools of his trade.
- The Scope Section decision concluded that Mr. McGranaghan had no say in determining his own hours of work.
- The Scope Section decision concluded that Mr. McGranaghan had no say in sourcing the employment.
- The Scope Section decision concluded that Mr. McGranaghan's holidays were decided by MEPC Music Ltd.
- The Scope Section decision concluded that Mr. McGranaghan's work was dictated by MEPC Music Ltd as regards content.
- The Scope Section decision concluded that Mr. McGranaghan's travel, and subsistence were provided by MEPC Music Ltd.
- The Scope Section decision concluded that Mr. McGranaghan could not take his holidays at his own discretion.
- The Scope Section decision concluded that Mr. McGranaghan is directed by MEPC Music Ltd as to what work is done.
- The Scope Section decision concluded that Mr. McGranaghan is directed by MEPC Music Ltd as to how the work is done.
- The Scope Section decision concluded that Mr. McGranaghan is directed by MEPC Music Ltd as to when the work is done.

In the decision of the Appeals Officer, the Appeals Officer says:

"*control is not a determining factor and the circumstances recounted here could apply equally to an employee or contractor.*"

The reality of the situation is that Mr. McGranaghan was fully under the control and direction of MEPC Music Ltd in all aspects of his work with MEPC Music Ltd.

The reality of the situation is that no reasonable person could conclude that the control factors as described in the Scope section decision were not a determining factor in Mr. McGranaghan's employment status.

The reality of the situation is that no reasonable person could conclude that the control factors as described in the Scope section decision could equally apply to a self-employed person.

The Enterprise Test

- **The Scope Section decision concluded that Mr. McGranaghan was not exposed to financial risk and could not gain or lose financially from the performance of his work for MEPC Music Ltd.**

  The Scope Section decision concluded that Mr. McGranaghan was not required to provide public liability insurance.

  MEPC Music Ltd accepted and conceded that band members got paid for loss-making live performances of the Michael English band trading as MEPC Music Ltd.

  The reality of the situation is that Mr. McGranaghan is not exposed to financial risk in carrying out his work for MEPC Music Ltd.

  The reality of the situation is that Mr. McGranaghan does not assume any responsibility for investment and management in the business.

  The reality of the situation is that Mr. McGranaghan a regular, albeit unsocial number of hours per week, per month, and per year.

  The reality of the situation is that Mr. McGranaghan’s main employment was with MEPC Music Ltd.

  The reality of the situation is that earnings from Mr. McGranaghan’s main employment with MEPC Music Ltd amounted to 98.76% of his total income in 2019.

  The reality of the situation is that, at all times, MEPC Music Ltd provided Mr. McGranaghan with subsistence and/or travel expenses on successive nights in remote locations in Ireland, or abroad.

  The reality of the situation is that Mr. McGranaghan was entitled to overtime but declined to work overtime.

  The reality of the situation is that the payment of sick pay was not in Mr. McGranaghan’s control.

  The reality of the situation is that Mr. McGranaghan was never absent from work due to sickness.

The reality of the situation is that Mr. McGranaghan's entitlement or not to sick pay was never tested during his 6 years working for MEPC Music Ltd.

The reality of the situation is that Mr. McGranaghan was obliged to perform the work for MEPC Music Ltd and that MEPC Music Ltd was obliged to offer Mr. McGranaghan the work.

The reality of the situation is that both the Deciding Officer and the Appeals Officer agree that a mutuality of obligation existed.

The reality of the situation is that Mr. McGranaghan was not in business on his own account.

The reality of the situation is that Mr. McGranaghan was not engaged to perform the services he performed for MEPC Music Ltd as a person in business on his own account.

The reality of the situation is that Mr. McGranaghan worked as the resident fiddle-player for the Michael English band trading as MEPC Music Ltd.

The reality of the situation is that Mr. McGranaghan did not work in or for the Matt McGranaghan band.

The reality of the situation is that no reasonable person could conclude that Mr. McGranaghan was not exposed to financial risk and could not gain or lose financially from the performance of his work for MEPC Music Ltd.

Code of Practice

Mr. McGranaghan's circumstances are almost identical to Sandra Mahon in the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] case.

Ms. Mahon	Mr. McGranaghan
Approached Employer	Approached Employer
Written Contract	No Contract
Uniform supplied by the Business	Uniform supplied by the Business
Supplied Labour Only	Supplied Labour Only
Rendered Personal Service	Rendered Personal Service
Not paid if didn't work	Not paid if didn't work
Tax NOT deducted through PAYE	Tax NOT deducted through PAYE
Atypical Payment	Atypical Payment
Rate of Pay decided by Employer	Rate of Pay decided by Employer
Paid Fortnightly	Paid Weekly
Paid on Submission of Invoices	Paid in Advance

Did NOT Subcontract the Work

Employer Paid for Substitution

Did NOT receive Sick Pay

Did NOT receive Holiday Pay

Did NOT supply materials for the job

Only provided small tools of the trade

Travel and/or subsistence were covered by the Employer

Paid Mileage Allowance

Business did not supply Transport

Employer decided what work was done

Employer decided where the work was done

Employer decided when work was done

NOT required to provide Public Liability Insurance

Worked for ONE Business

Did NOT assume any responsibility for investment & management in the business

Did NOT have the opportunity to profit from the sound management in the scheduling of engagements or in the

Did NOT Subcontract the Work

Employer Paid for Substitution

Did NOT receive Sick Pay

Did NOT receive Holiday Pay

Did NOT supply materials for the job

Only provided small tools of the trade

Travel and/or subsistence were covered by the Employer

Not Paid Mileage Allowance

Business did not supply Transport

Employer decided what work was done

Employer decided where the work was done

Employer decided when work was done

NOT required to provide Public Liability Insurance

Worked for ONE Business

Did NOT assume any responsibility for investment & management in the business

Did NOT have the opportunity to profit from the sound management in the scheduling of engagements or in the

performance of tasks arising from the engagements	performance of tasks arising from the engagements
Was not exposed to personal financial risk in carrying out the work	Was not exposed to personal financial risk in carrying out the work

Mr. McGranaghan's terms and conditions are almost identical to Ms. Sandra Mahon's terms and conditions. It is evident that the Appeals Officer did not rely upon the 'Denny' case but ignored it completely.

Unknown to Mr. McGranaghan and the Respondent, communications took place between the Social Welfare Appeals Office and MEPC Music Ltd in the days following the Appeal Hearing on the 1st November 2022, which was only confirmed by way of a Freedom of Information request

Appeals Officer's decision the Appeals Officer presents a FALSE Question at Issue.

The Appeals Officer has impugned Mr. McGranaghan's good name and character, brought his honesty into disrepute, and has reach unreasonable and untruthful judgements regarding Mr. McGranaghan's character, nature and professionality.

From the available evidence, it was the full intention of the Appeals Officer and the Social Welfare Appeals Office to overturn the Scope Scection decision using false evidence, false statements and labelling a 'De Novo' Oral Appeal Hearing as a 'Not De Novo' decision.

Mr. McGranaghan's life has effectively been placed on hold, his career stationary, and his reputation is now damaged by the corrupt decision reached by this Appeals Officer.

When Sandra Mahon's employment conditions are compared with Mr. McGranaghan's the reality of the situation is that there are 3 differences:

CONTRACT

In 'Point 5' of the Appeals Officer's decision, the Appeals Officer fully recognised the authority of the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] Supreme Court case which states that:

> ***"each case must be considered in light of its particular facts and circumstances"***

The precedent regarding written contracts set in the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] Supreme Court case obligates decision makers to examine the facts and realities of the situation on the ground i.e. to look at and beyond the written contract to arrive at the totality of the relationship.

A written contract is of little value in coming to a conclusion as to the work status of the person engaged.

This Supreme Court precedent is reflected in the Code of Practice for determining employment status which states:

> ***'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 existence or absence of a contract is not a determinative factor in employment status. Decision makers are obligated to look past a contract to the reality of situation.

The true factual position as shown in Mr. McGranaghan's case is that claims by the employer, written or verbal, are of little evidential value, and it is the reality of the situation which dictates the employment relationship. The denial of mutuality of obligation by MEPC Music Ltd exposes that there is no formula of words, written or verbal, which can guarantee self-employed status.

RATE PER JOB (PER GIG)

There are different understandings of the term gig.

The Appeals Officer clearly uses the term 'gig' to mean a job, especially one that is temporary or freelance and performed on an informal or on-demand basis.

Professional Musicians use the term 'gig' to mean a live performance by a musician or group.

The reality of the situation is that at all times the evidence has been available to both the Scope section and the Appeals officer that Mr. McGranaghan was paid different rates, for different tasks with 'Live performance' being one of his duties albeit the most prominent and public duty.

The reality of the situation is that at all times the evidence has been available to both the Scope section and the Appeals officer that Mr. McGranaghan was not paid a 'gig' rate for full rehearsals, for cruises, for Spain/Portugal, TV appearances, overtime nor driving the minibus.

In the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] case Ms. Mahon was paid for her 'live demonstrations.'

This was alleged by the employer to be a 'gig rate'. The reality of the situation, as established by The Supreme Court, was that Ms. Mahon worked a full day almost every day

The reality of the situation, as established in The Supreme Court, was that Ms. Mahon was adjudged to be a 'Contract of Service' employee for a commitment of 50 'live demonstrations' per year, whereas Mr. McGranaghan was obliged and did perform an

average 217.6 Live Performances over a 48/49-week duration per annum for MEPC Music Ltd and this accounted for 98.76% of his total income per annum.

The true factual position is the Scope Section decision by the Deciding Officer is based on the reality of the situation, the guidelines in the Code of Practice and Case Law from the Higher Courts.

The Appeals Officer has not shown that the conclusions drawn by the Deciding Officer are ones which no reasonable person could draw.

PERSONAL TRANSPORT

The provision of mileage allowance is entirely predicated on the ownership of a vehicle, in this case Mr. McGranaghan's own personal car. Ownership of a vehicle is not a distinguishing feature of Mr. McGranaghan's employment as a musician. Ownership of a personal vehicle cannot be used to draw conclusions on employment status.

- The ***'Provision of transport'*** by a worker is not at all referred to in the code of practice as an indicator of self-employment.
- The ***'Provision of transport'*** by a worker was not at all an indicator of self-employment status in Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997].
- The ***'Provision of transport'*** by a worker to and from work is an employee's own private travel. The Revenue Commissioners are insistent that transport to and from work is an employee's private travel.
- The ***'Provision of transport'*** by a worker was rejected as an indicator of self-employed status in a legal submission by the Minister for Social Protection to the Social Welfare Appeals Office in 2001.
- The true factual, legal and unarguable position is that ***'Provision of transport'*** is rejected by the Revenue Commissioners, the Code of Practice, the Higher Courts and the Minister for Social Protection as an indicator of self-employment status.
- The true factual, legal and unarguable position on ***'Provision of transport',*** presented to the Social Welfare Appeals Office in 2001 by Mr. Connaughton BL on behalf of the Minister for Social Protection is that:

  > ***'Insofar as there are any distinguishing facts, they appear only to relate to the provision of a motorcycle*** (Transport) ***by the claimant and it is respectfully suggested that this cannot of itself justify a conclusion that the claimant is in business on his own account'***

- The true factual, legal and unarguable position is that ***'Provision of transport'*** has been unlawfully used as an indicator of self-employment status by the Social Welfare Appeals Office since 1995.
- The true factual, legal and unarguable position is that Mr. McGranaghan was required to perform the work personally and did not, as a matter of practice, work for anybody else and the unlawful precedent of ***'Provision of transport'***

cannot and does not override that Mr. McGranaghan was not in business on his own account.

- If the Appeals Officer is allowed to continue to use ***'Provision of transport'*** as an unlawful 'Precedent' to mislabel employees as self-employed, ALL OF IRELAND's entire workforce can be mislabelled as self-employed
- The true factual position is that in applying ***'Provision of Transport'*** to any employment as the overriding indicator of self-employment status renders all employees as self-employed, including the Appeals Officer himself.
- ***'Provision of Transport'*** is a 'precedent' set in the Social Welfare Appeals Office 1995 Courier 'Test Case':
    - ***Provided his own vehicle and equipment***
    - ***Was responsible for all expenses including tax, maintenance, insurance etc***
- ***'Provision of Transport'*** is two of four precedents 'negotiated' between the Revenue Commissioners and Courier Industry Employers in a private meeting in the Burlington Hotel in 1997 to label all couriers as self-employed in order for Courier Employers to evade their statutory obligations.
- The statement by the Appeals Officer that ***'without transport, the worker would not have been in a position to do the work'*** is a false and deliberately misleading statement which no reasonable person could agree with.
- Mr. McGranaghan is a professional musician, that is his WORK. The tools of Mr. McGranaghan's trade are musical instruments, namely fiddle and guitar. Mr. McGranaghan does not require transport to be a musician. He does not play 'Transport' on stage, in rehearsals nor when practicing and learning at home.
- It is without doubt that the Appeals Officer himself provides transport to and from his work, it does not nor cannot be used to mislabel the Appeals Officer as self-employed.
- It is without doubt that the vast majority of employees in this country provide transport to and from their work. The provision of transport to and from work is not, nor cannot be used to label those employees as self-employed.
- The statement from the Appeals Officer that '***The worker was exposed financially because his gain was dictated by the location of the gig***' is a deliberately misleading statement which no reasonable person could agree with.
- All contract of employment workers, are ***'exposed financially'*** because of their universal need to provide their own transport to and from work. Mr. McGranaghan is no different from all other 'contract of service' employees in this regard.
- A worker's transport to and from work cannot be regarded as 'Small tools of the trade'.
- A worker's transport to and from work cannot be regarded as an indicator of employment status, this is an erroneous view of the law on the part of the Appeals Officer.

- One's transport to one's place of work cannot be regarded as a 'Distinguishing Feature' of a worker's employment status.
- The statement by the Appeals Officer that Mr. McGranaghan's ***'gain was dictated by the location of the gig'*** is not a distinguishing feature of Mr. McGranaghan's employment status.
- Any worker has the absolute right to live where they can choose or afford, a longer commute to work does not, nor cannot change their employment status.
- Mr. McGranaghan's gain was dictated by having a job as a professional musician. Mr. McGranaghan was well paid by MEPC Music Ltd to be a professional musician. How Mr. McGranaghan transported himself to work is not nor cannot be regarded as a 'Gain' or 'Loss' within the meaning of the authorities cited.
- Mr. McGranaghan's annual salary more than compensated for his personal transport choices.
- If the Appeals Officer's unreasonable conclusion that one's personal provision of transport to one's work, can be used to label one as self-employed, then every single 'Contract of Employment' worker in the country can be mislabelled as self-employed.
- The provision of transport to and from work does not negate the Appeals Officer's responsibility to accept the general rule that if one is not in business on one's own account, then 'transport' and the entire unreasonable tangent the Appeals Officer has insisted on creating out of thin air, means absolutely nothing. It is entirely superfluous to the question at issue before the Appeals Officer.

MILEAGE ALLOWANCE

It is accepted and conceded by both Mr. McGranaghan and MEPC Music Ltd that Mr. McGranaghan was not paid travel expenses/mileage rate to and from his home to live performances in Ireland.

It is stated by the Appeals Officer that Mr. McGranaghan would have factored the time spent travelling to and from live performances into his negotiations with MEPC Music Ltd.

The Appeals Officer then recorded his personal opinion as evidence and stated, "It is difficult to imagine an employee agreeing to such terms."

The Central Statistics Office published the findings of a report in 2016 which concluded that "Commuters who travelled for longer earned more."

The CSO report found that income for commuters travelling greater than 30 minutes was, on average, 9.5k more than the median earned income for commuters travelling less than 30 minutes.

Average weekly earnings in the arts and entertainment sectors were two-thirds of the average across all sectors (2018), while a third of artists and creative practitioners in the performing arts earned less than the minimum wage.

Mr. McGranaghan's annual income from MEPC Music Ltd was significantly higher than the vast majority of arts, entertainment and performing arts practitioners working in Ireland.

Mr. McGranaghan was one of very few highly paid professional musicians working full-time as a professional musician in Ireland.

It is not difficult to imagine Mr. McGranaghan agreeing to such favourable terms.

The true factual position is the Scope Section decision by the Deciding Officer is based on the reality of the situation, the guidelines in the Code of Practice and Case Law from the Higher Courts.

The Appeals Officer has not shown that the conclusions drawn by the Deciding Officer are ones which no reasonable person could draw.

The true factual position is that the issue of mileage allowance/travel expenses already came before the Higher Courts in the Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1997] case and the payment of mileage allowance/travel expenses was not accepted as an indicator of self-employment.

The true factual position is that Mr. McGranaghan was not paid travel expenses, that is the reality of the position. The Appeal Officer's musings on what Mr. McGranaghan could, should or would have done, and his own personal opinion that Mr. McGranaghan's success in the Music Industry is not an employment that he, as a senior civil servant, could imagine an employee agreeing to, are not the questions at issue.

The Appeals Officer has not shown that the conclusions drawn by the Deciding Officer are ones which no reasonable person could draw.

It is abundantly obvious from the evidence, both genuine and false, adduced in this case, that the unlawful precedents set in the 1995 'Test Case' and further in the 1997 'Special Tax Agreement', are being used by the Social Welfare Appeals Office to deliberately mislabel employees as self-employed.

Mr. McGranaghan had a sanguine expectation that the presentation of the reality of the situation to any reasonable person could and would result in only one outcome, the dismissal of the appeal by MEPC Music Ltd. Instead, the presentation of lies and false statements not under oath, and the acceptance of those as fact by the Appeals Officer, have effectively criminalised Mr. McGranaghan by way of inference and innuendo.

The natural course of justice available to Mr. McGranaghan is to present this Appeal to the Chief Appeals Officer for review but owing to the nature of the prima facie evidence that offences have been committed under the Social Welfare Consolidation Act 2005 the Chief Appeals Officer is now obliged to inform the Minister for Social Protection.

Prima Facie evidence now exists that offences may have been committed under the Social Welfare Consolidation Act 2005 and it is the responsibility of the Minister for Social Protection to decide on the next and proper course of action.