



Údarás um Fhorfheidhmiú Corparáideach  
Corporate Enforcement Authority

**PRESS STATEMENT  
FOR IMMEDIATE RELEASE**

**CORPORATE ENFORCEMENT AUTHORITY  
PUBLISHES HIGH COURT INSPECTORS' REPORT**

The Corporate Enforcement Authority (CEA) has today published the Report of the Inspectors appointed by the High Court to investigate the affairs of Independent News & Media PLC. The Report is available on the CEA's website<sup>1</sup>.

The CEA wishes to express its sincere gratitude to the Inspectors, Messrs. Sean Gillane SC and Richard Fleck CBE, for accepting the nomination to act as Inspectors, and for their diligence in executing their statutory functions.

The CEA received the Inspectors' Report on the afternoon of Thursday 25 July 2024. The parties provided with the Report were asked by the Court to indicate whether they believe that it should be published in full, i.e., without redactions or restrictions. Over the days that followed, the CEA conducted a preliminary review of the Report and, on the basis of that review, concluded that the Report should be published in full. All of the other parties to whom the Report was provided shared that view.

The CEA will now conduct a detailed examination of the Report, including the Inspectors' analyses, findings, and conclusions.

Until that examination has concluded and the CEA has determined what, if any, action is warranted on foot of the Report's contents, it would be inappropriate for the CEA to make any further comment.

ENDS/

**CORPORATE ENFORCEMENT AUTHORITY  
31 JULY 2024**

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<sup>1</sup> <https://cea.gov.ie>

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## **NOTE FOR EDITORS**

### **The Corporate Enforcement Authority**

Established in 2022, the Corporate Enforcement Authority (**CEA**) is Ireland's company law enforcement agency. The CEA's functions include:

- encouraging compliance with the Companies Act 2014,
- investigating instances of suspected breaches of the Companies Act 2014,
- taking appropriate enforcement action in response to identified breaches of company law,
- supervising the activities of liquidators of insolvent companies, and
- operating a regime of restriction and disqualification in respect of directors of insolvent companies.

### **Purpose of an Inspection**

Section 748 of the Companies Act 2014 provides that the High Court may, on the application of the CEA, appoint one or more Inspectors to a company. The purpose of an Inspection is to facilitate an investigation into the affairs of the company in question and the reporting on those affairs in such manner as the as the High Court directs. Inspectors' terms of reference are, therefore, a matter for the High Court.

### **Background to the Inspection**

#### *Protected disclosures and the ensuing investigation*

Two Inspectors were appointed to Independent News & Media PLC (**INM**) by the High Court following an application having been made by the CEA's predecessor body, the Office of the Director of Corporate Enforcement (**ODCE**), in March 2018.

That application was grounded on:

- i. two protected disclosures received by the ODCE. The first disclosure was received from Mr. Robert Pitt, then Chief Executive Officer of INM, in November 2016 and the second was received from Mr. Ryan Preston, then Chief Financial Officer of INM, in December 2016, and
- ii. the ODCE's subsequent investigation of associated matters.

The protected disclosures referenced above led to the ODCE commencing an investigation into INM. Over the ensuing period from January 2017 to March 2018, the ODCE issued a total of 33 statutory demands to multiple relevant parties for documents, information, and explanations, viz:

	<b>2017</b>	<b>2018</b>	<b>Total</b>
Demands issued under section 778 of the Companies Act 2014	5	2	7
Demands issued under section 780 of the Companies Act 2014	6	0	6
Demands issued under section 784 of the Companies Act 2014	17	0	17
Demands issued under section 166 of the Companies Act 2014	2	1	3
<b>Total</b>	<b>30</b>	<b>3</b>	<b>33</b>

During this period the High Court also heard an application by Mr. Leslie Buckley, former Chairman of INM, concerning assertions of legal professional privilege. This application was heard before the then President of the High Court, Mr. Justice Kelly, with judgment delivered in February 2018. A copy of that decision is available [here](#).

#### *The ODCE's concerns*

By March 2018 and arising from its investigative activity, the ODCE had identified the following issues that, in its assessment, warranted further investigation. The ODCE had, by that time, formed the view that the further issuing of statutory demands would not resolve the matters outstanding but, rather, that the appointment of Inspectors by the High Court would be necessary in order to resolve those matters still outstanding.

It is relevant in that regard that Inspectors appointed by the High Court are conferred with greater powers of investigation than are available to the ODCE or CEA, including, in particular, the powers to require persons to attend and to take evidence on oath.

The principal issues identified as requiring further investigation were as follows:

- i. the accessing by third parties of INM's IT systems and the collection, extraction, and/or processing of data held therein,
- ii. the proposed acquisition by INM of Newstalk Radio,
- iii. the proposed payment of a success fee to Island Capital in connection with the disposal of INM's holding in APN News & Media Limited,
- iv. the INM Board's response to the disclosures/attempted disclosures made by Mr. Pitt and Mr. Preston,

- v. whether inside information was unlawfully disclosed to third parties by the then INM Chairman, Mr. Leslie Buckley, and the INM Board's response to being made aware of same, and
- vi. whether information that was confidential to INM (including, but not limited to, legal advice received by INM) was disclosed to third parties by the then INM Chairman, Mr. Leslie Buckley, and the INM Board's response to being made aware of same.

### *Judicial Review proceedings*

Immediately following the lodging of the application with the High Court for the appointment of Inspectors, INM brought proceedings against the ODCE seeking to judicially review the ODCE's decision to lodge proceedings without having first afforded INM the opportunity to be consulted with and to make submissions on the proposed lodging of the application for the appointment of Inspectors.

The case proceeded as a 'telescoped' hearing, i.e., the leave application and the substance of the application were considered during the same hearing. The case was heard before Mr. Justice Noonan, who delivered judgment in June 2018. Noonan J. characterised the application as "*novel and without precedent*"<sup>2</sup> and stated that he was satisfied that, as a matter of law, such a proposition could not be sustained and dismissed the application. The judgment is available [here](#).

### **The Inspectors**

Having heard the application in July 2018, the then President of the High Court, Mr. Justice Kelly, delivered judgment in September 2018 (judgment [here](#)) and ordered the appointment of two Inspectors who had been nominated by the ODCE. That decision was not appealed.

### *Richard Fleck, CBE*

Mr Richard Fleck, CBE is a solicitor by profession. Mr. Fleck was formerly a Partner (and is currently a Consultant) with Herbert Smith Frehills, London. Mr. Fleck was a Director of the Financial Reporting Council (FRC) from 2004 to 2014. Mr. Fleck has also previously been Chairman of the Auditing Practices Board. Other relevant experience includes having been appointed as an Inspector by the Bank of England and having advised on several investigations and statutory inspections under UK company law. In addition, he has advised many FTSE listed companies on corporate governance matters.

### *Seán Gillane, SC*

Mr Seán Gillane is a Senior Counsel. He was called to the Inner Bar in 2009, having been called to the Bar in 1997. Mr Gillane is a highly experienced practitioner, specialising in criminal law. He was previously Senior Counsel to the O'Higgins Commission of Investigation.

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<sup>2</sup> At paragraph 56.

## **Inspectors' independence**

Inspectors are appointed by the High Court. They are entirely independent of the CEA. They obtained their terms of reference from the High Court and, upon completion of their work, reported to the High Court. The High Court directed publication of the Inspectors' Report.

## **Inspectors' powers**

Court-appointed Inspectors are vested with substantial powers of investigation. Those powers, contained in the Companies Act 2014, include the power:

- to require the production of books and documents<sup>3</sup>,
- to require persons to attend before the Inspectors<sup>4</sup>,
- to require all reasonable assistance in connection with the investigation<sup>5</sup>,
- to examine company officers, agents, and others on oath in relation to the affairs of the company<sup>6</sup>, and
- subject to Court approval and where considered necessary, to investigate the affairs of any other body corporate that is related to the company under investigation<sup>7</sup>.

In addition, the High Court can give such directions as it thinks necessary or expedient, whether to the Inspectors or to any other person, including directions given with a view to ensuring that the investigation is carried out as quickly and inexpensively as possible<sup>8</sup>.

## **Related litigation**

In 2020, Mr. Leslie Buckley brought an application before the High Court seeking that the Inspectors should be recused on the grounds of bias. In a decision delivered in February 2021 (available [here](#)), Mr. Justice Simons refused that application.

Since 2018, a series of interim applications have been made to the High Court for permission to obtain access to the pleadings that grounded the ODCE's application to appoint Inspectors, e.g., [here](#), and for permission to use those pleadings in proceedings against INM, and possibly other persons, for breach of privacy and breach of data protection rights, e.g., [here](#). Mr. Justice Simons also, in December 2021, refused to halt proceedings brought by Mr. Karl Brophy and Mr. Gavin O'Reilly (see [here](#)).

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<sup>3</sup> Sections 753 and 754.

<sup>4</sup> Sections 753 and 754.

<sup>5</sup> Sections 753 and 754.

<sup>6</sup> Section 756.

<sup>7</sup> Section 750.

<sup>8</sup> Section 749.

### **Costs of the Inspection**

Pursuant to section 762 of the Companies Act 2014, the expenses of, and incidental to, the Inspection have been defrayed, in the first instance, by the ODCE/CEA.

The costs to date of the Inspection are as follows:

	<b>€000s</b>
Inspectors' fees	4,765
IT-related expenses	404
Experts' fees	87
Stenographers' fees	217
Legal fees discharged on the Inspectors' behalf	47
Administrative support	72
Accommodation costs	81
<b>Total</b>	<b>5,673</b>

Section 762 further provides that the High Court may direct that a body corporate dealt with in an Inspectors' report shall be liable to repay the CEA so much of the expenses as the Court directs.

### **Status of the Inspectors' Report**

In accordance with section 881 of the Companies Act 2014, an Inspectors' Report is admissible in any civil proceedings as evidence of the:

- (a) facts set out in it without further proof, unless the contrary is shown, and
- (b) opinion of the Inspectors in relation to any matter contained in the Report.