

Chairman
Joint Committee on Communications, Climate Action and
Environment
Leinster House
Dublin 2

20th Feb 2018

Re: Correspondence concerning evidence given to committees of the Houses of the Oireachtas by the Department of Communications, Climate Action and Environment and An Post about the National Postcode System (Eircode) and its usage by An Post

Deputy Hildegard Naughton TD,

1. My email of 2 Jan 2018 withdrawing my response of 6th Dec 2017 refers.
2. As you will be aware, the withdrawal referred to above was as a result of receiving additional information with respect to Mr. King's response to your Committee of 13 Sept 2017, which had not been provided to me in advance.
3. In considering this event, I was reminded that responses on such matters to an Oireachtas Committee by Departmental Officials become a matter of Public Record. This being the case, I felt it necessary to review Mr. King's response in its totality. In doing so, I identified some notable errors and omissions which, for the sake of the Public Record and the completeness of your consideration of my original complaint, should be corrected.
4. I am requesting therefore, that Mr. King be invited to correct the issues identified below and to resubmit his response to you having done so. Once done, I will be able to respond on the basis of correct information and the Committee, therefore, will be able to make their final judgement having been fully and correctly informed.
5. I wish, therefore, to bring to your attention the following statements from Mr. King's response which can be unambiguously identified as being incorrect or incomplete by reference to other reliable documents which are available to both Mr. King & your Committee;- with relevant extracts quoted and added here for convenience.
6. **Incorrect Statement 1**
 - a. In Mr. King's response he states as follows: ***"Firstly the justification for the selection of Eircode was not solely on the basis of that it would be used for sorting/delivering mail"***.

b. The detail which immediately follows this statement includes references to multiple alternative uses of Eircode and the combination appears to suggest that they are all at least equal, if not more equal, in importance with respect to the selection, procurement and implementation of Eircode. In other words it is being suggested to the Committee that **“sorting/delivery of mail”** i.e. its **postal** related capabilities, were not the primary consideration in relation to the selection of Eircode, and this is verifiably incorrect.

c. **Reasons Statement 1 is Incorrect**

i. **By Legislation:** Eircode has been supplied under a procurement process managed by the Dept. of Communications in relation to a **National POSTCODE System (NPS)**

1. The Communications Regulation (Postal Services) Act 2011 in paragraph 34.(1).(b) identifies the POSTCODE as part of the country’s non-physical **“POSTAL infrastructure”**.¹
2. The same Act defines the **POSTCODE** in paragraph 66. (2) as being **“for the purposes, or relating to, the provision of POSTAL services.”** This paragraph also refers to other uses but that these require secondary decision making by the Minister.²

ii. **By Ministerial Consent**

1. Consent for expenditure on a contract to deliver the NPS was given by then Minister for Public Expenditure and Reform, Brendan Howlin TD in December 2013. The consent was given in accordance with section 66 of the Communications Regulation (Postal Services) Act 2011 as referenced above and with several conditions. Consent was **“provided on the understanding..... that the contract complied fully with the requirements of the Communications Regulation (Postal Services) Act 2011”**³ as well as other criteria. In accordance with Para 66(2), as referenced in para 6.c.2 above, in order to be compliant with the Act, the contract would have to procure a POSTCODE which would **PRIMARILY “relate to the provision of POSTAL services”**. If it does not satisfy this requirement then there is no Ministerial consent for Eircode itself, as required by the Act, and, therefore, there is also no consent

¹ Page 33 Postal Act 2011 extract attached

² Page 57 Postal Act 2011 extract attached

³ PQ 12279/15 Deputy Michael Colreavy TD on Consent for Eircode by Minister Public Expenditure & Reform attached

for any other purposes it may be used for, such as those referred to by Mr. King in his response.

iii. **By Departmental Governance - Capital Expenditure Planned Outputs & Impact**

1. The procurement process for the NPS (Eircode) started in 2011. On page 38 of the DCENR Capital Expenditure Review in the same year, it states that the outputs of the project would be 3 fold, one of which was the ***“Integration of the postcode into the National Mail Delivery System”***⁴ It will be understood that the ***“National Mail Delivery System”*** is that part of An Post’s operations which includes local sorting and delivery of mail. All other outputs relate to this and NOT any other 3rd party or secondary uses, such as those referred to by Mr. King in his response.
2. The review also details the intended “Impact” of the NPS and states ***“the project will bring about greater efficiency and competitiveness in POSTAL and other logistical services”***⁵ This reconfirms ***“POSTAL services”*** as the primary intended impact area.

iv. **By Evidence to An Oireachtas Committee (PAC)**

1. On 19 June 2014, in a response to queries from the Public Accounts Committee, then Assistant Secretary General of DCENR defended Eircode by using the planned benefits to An Post as the primary case. He specifically stated that ***“Significant direct benefits also arise for the postal sector as a result of the implementation of the National Postcode. These include increased mail volumes and greater cost efficiencies”***⁶
2. He also stated of An Post that ***“The Chief Executive also drew particular attention to distribution efficiencies arising from the implementation of the new postcode system and the substantial savings which would be made by An Post in future years as a result”***⁷

⁴ Page 38 DCENR Capital Expenditure Review 2011 extract attached

⁵ Page 38 DCENR Capital Expenditure Review 2011

⁶ Page 2 Reply A/Sec DCENR to Public Accounts Committee 19 June 2014

⁷ Page 6 Reply A/Sec DCENR to Public Accounts Committee 19 June 2014

v. **By Postcode Design Specification**

1. In April 2014, then Minister for Communications Pat Rabbitte approved the design of the NPS as laid out in the NPS Design Report V4.0 and launched it as Eircode on the 28th of that month. The detailed report specifically states that ***“The detailed design of the postcode should facilitate automated and manual sorting of the post (through consultation with the USP)”***⁸ This leaves no doubt that the main client for the postcode and for which it was being designed was the USP, i.e. An Post
2. The same report later makes it specifically clear that the design of the postcode (Eircode) was PRIMARILY for the USP (An Post) and that other uses were categorically ***“SECONDARY”***. It states: ***“ the postcode design must facilitate automatic and manual sorting of the post, the detail of which was to be refined in consultation with the USP. The NPS must be optimised for the fulfilment of the requirements associated with postal addressing. This is not to say however that the postcode cannot potentially be used for other additional purposes, but this must be a secondary consideration and approved in all cases by DCENR in advance to avoid potential reputational damage to the NPS”***⁹ These statements categorically confirm that the NPS (Eircode) and its design were primarily focused at An Post and other uses are not only secondary but they also require specific individual approvals in advance (see also Ref 2 and the requirements of the 2011 Act)

vi. **By Contract**

1. The contract for the NPS (Eircode), signed with Capita by then Minister Pat Rabbitte in Dec 2013, states of the DCENR established Project Management Office (PMO) in relation to **POSTAL Integration** that it will ***“monitor the relationship between An Post and the PMLH (Capita) to ensure a cohesive working arrangement both with respect to the integration of the postcode within the mail system and also any dissemination related activities. To oversee the achievement***

⁸ Page 1 NPS Design Report V4.0 May 2014

⁹ Page 9 NPS Design Report V4.0 May 2014

*of any An Post related milestones”*¹⁰ This makes it clear, therefore, that integration with the An Post mails system was a contracted primary concern of both the Dept.’s and the License Holder’s responsibilities.

- d. Therefore, it is clear that from related Legislation, Ministerial Consent, Departmental Governance, Evidence to the Oireachtas, Specifications and also the formal signed Contract, Eircode was **primarily** designed to be used for **POSTAL Services** and, in particular, **by the USP, An Post**; - to increase mail volumes, realise savings and to achieve efficiencies. Moreover, it is clear that from the same sources other uses of Eircode are to be considered **secondary** and specifically requiring special advance Ministerial approval before such use (to avoid reputational damage). For these reasons (and the many other quotable official sources), if Mr King’s statement in his response serves to suggest or create the impression, as it appears to do, that other uses of Eircode are equally as important or more important and automatically authorised, then this is incorrect and misleading and should not be maintained as part of the Public Record. Therefore, in this regard, I believe that Mr. King should be invited to amend his response accordingly.

7. **Incorrect Statement 2**

- a. In his response, Mr. King also makes the following statement: ***“The total spend to-date on the project implementation phase and Eircode service operations which commenced in July 2015 is €21.48 million, with the expected cost to the exchequer over the full 10 years of license contract being €38 million”***
- b. This figure is as confirmed by the C&AG in his report of September 2015 as the corrected and projected CAPITAL cost to DCENR an that only.
- c. **Reasons Statement 2 is Incorrect**
- i. The €38 million quoted is not the ***“expected cost to the exchequer”*** for Eircode as it appears that Mr. King is suggesting. No total cost to the exchequer has ever been officially calculated. However, answers to a series of PQ’s on the subject relating to the cost to Government Departments for Eircode operational implementation do give some perspective on the likely related Exchequer costs. These accumulated costs will contribute to the final **Total Cost to the Exchequer** of the NPS project over the 4 years of the project to date from Dec 2013 and the projected cost up to the end of the 10th year in Dec 2023

¹⁰ Page 78 NPS Contract Dec 2013

1. Dáil PQ 28145/17 from Deputy Timmy Dooley, replied to on 17th June 2017 by Minister Regina Doherty TD, shows the cost of Eircode operational implementation by the Department of Employment Affairs and Social Protection over the 2 year period 2015- 2016 to be €380,932.92 incl. VAT ¹¹ with ongoing annual costs in excess of €37,000 identified.
 2. Dáil PQ 8625/17 FROM Deputy Catherine Murphy TD, replied to on 21 February 2017 shows the cost of Eircode implementation by the Department of Agriculture, Food & the Marine over the period 2014 to Feb 2017 as €276.375 incl. VAT ¹²
 3. There are further such PQ's which give related Departmental costs available on the record of the Dáil.
- ii. An extrapolation of Eircode related implementation costs across all Government Departments, Agencies, Semi-States and State owned Banks using relevant answers from PQ's and other relevant material has not been officially undertaken in order to come up with **"the cost to the exchequer"**. However, it can be reasonably deduced to be in the order of multiples of millions in excess of the €38 million quoted by Mr. King
- d. It is suggested therefore, that Mr. King should amend the related statement in his response to reflect the true reality of the likely total exchequer cost for the NPS (Eircode) from all data available to him and his Dept.

8. **Incorrect Statement 3**

- a. In his response to the Committee, Mr. King states as follows: ***"In 2014 the European Commission fully investigated the complaint in relation to the Postcode Procurement process that is referred to in Mr. Delaney's letter. The Commission determined that they had found no breach of procurement law in relation to the postcode tender. The Department received further correspondence from the EU Commission in October 2015 which confirmed that there were no grounds to reopen an investigation into this matter and concluded that Ireland had made significant efforts recently in the field of consortium bidding, by issuing guidance and fostering dialogue between contracting authorities and prospective bidders"***.
- b. This statement is verifiably both incorrect and incomplete in several regards and in being so, it could have the effect of unjustifiably undermining the

¹¹ PQ 28145/17 Deputy Timmy Dooley TD June 2017 on Dept. Social Protection Eircode costs

¹² PQ 8625/17 Deputy Catherine Murphy TD Feb 2017 on Dept. Agriculture Eircode costs

character, credibility and ethical standing of Mr Delaney. It is, therefore, of critical importance that the Committee consider carefully the multiple reasons why the statement should be corrected.

- c. In summary, by error and omission the statement apparently serves to suggest that Mr. Delaney made a complaint to the EC which was a tardy afterthought and which was quickly investigated and dismissed without any issues identified; - thereby suggesting that Mr. Delaney had made what could be considered as a vexatious complaint.

- d. **Reasons Statement 3 is Incorrect**

- i. The complaint in question was investigated by the European Commission over a 19 month period between May 2012 and Nov 2013 and not ***"in 2014"*** as Mr. King has stated. The complaint was made to the EC only after the same complaint, which was submitted to DCENR in February 2011 at the start of the NPS procurement process, was dismissed by DCENR without action. A letter from the EC Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs in Brussels to the Irish Ambassador in Brussels on 8th April 2014 ¹³ states as follows: ***"I am writing to you concerning the award of a public contract for the creation of a postcode system in Ireland which was the subject of EU Pilot case 3891/12/MARK. The Commission decided to close this case in November 2013"*** The results of the investigation were communicated to the Mr. Delaney, the complainant, in Oct 2013. The complainant was asked if further investigation was required. The complainant had no further matters for investigation and so, on the complainant's confirmation, the investigation ended in Nov 2013 and the outcome & correction phase began. This started by notification of the findings and required outcomes and corrections to Irish Authorities in Nov 2013. It should be noted that the investigation phase was not done in isolation but did involve DCENR being given opportunities to defend its actions in relation to the procurement process during that 19 month period.
- ii. Ref 13 also states the following: [the investigation was closed and the EC] ***"invited the Irish authorities to adopt measures which aimed at avoiding similar errors and to inform the Commission***

¹³ Letter Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Brussels to the Irish Ambassador, Brussels on 8 April 2015

of the measures adopted". The error in question relates to a pre-qualification requirement which did not allow economic operators to combine their economic and financial standing. Article 47(3) of Directive 2004/18/EC specifically allows economic operators to form consortia in order to rely on each other's strengths in a procurement process. This scheme enables smaller economic operators to compete in tendering procedures which they would otherwise find difficult to access. The pre-qualification conditions set by the Irish contracting authorities in this particular case in effect prevented potential bidders from forming consortia. Therefore, the investigation did determine that there were issues to be corrected and laid out how DCENR were to address those issues. This, therefore, confirms that Mr. Delaney's complaint, made first to DCENR and then to the EC, was not vexatious as Mr. King's statement may seem to suggest. It is also worth noting that the EC was not acting for Mr. Delaney but instead in order to protect and correct the procurement processes used by Member States. Its priority was to have the processes corrected for the future and to do this by negotiation with the Authorities of the Member State rather than by prosecution.

- iii. The EC's letter clearly confirms that the terms of the NPS procurement set by DCENR **"prevented" bidders from forming consortia**; - something which is supported and encouraged specifically by EC procurement regulations (as well as in Dept. of Finance Circulars at the time) and, therefore, was unjustifiably denied to SME's in this case.
- iv. It took almost 1 year for DCENR to make an effort **"to inform the Commission of the measures adopted"** as instructed. A response was received by the EC team in Oct 2014 but this was deemed **"not satisfactory", "partial" & "unclear"**¹⁴, thereby causing the EC to make direct contact with DCENR by using the Irish Ambassador to Brussels as an intermediary in April 2015 as previously indicated (Ref 13)
- v. The correspondence sought that the: **"Irish authorities clarify their position. I would therefore invite your administration to provide us with the following information within the next six**

¹⁴ Email EC Legal Staff 02 March 2015

weeks: - Further clarification regarding the impact of existing measures in Ireland (included Circular 10/14) remedying the error which was made in the EU Pilot postcode case; or
- The timeframe and the type of actions that Ireland plans to take to ensure errors similar to those which occurred in the EU Pilot case referenced above will not occur in the future;
- Any other information that you consider appropriate in this context”

- vi. Mr King also refers to ***“correspondence from EU Commission which confirmed that there were no grounds to reopen an investigation into this matter and concluded that Ireland had made significant efforts recently in the field of consortium bidding, by issuing guidance and fostering dialogue between contracting authorities and prospective bidders”***. This correspondence was in Oct 2015 ¹⁵ and Mr King’s statement seems to suggest that in it the EC expressed satisfaction with the actions and replies of the DCENR. This was not in fact the case as the correspondence states: ***“At the same time, the clarifications provided by the Irish authorities do not seem to address the specific error detected in the case at stake.”***
- vii. It is only because of separate and unrelated actions by the Dept.’s of Finance and Public Expenditure and Reform and as a result of the specific Eircode related outcomes of the C&AG report on Eircode procurement published in Sept 2015 (collectively referred to as ***“Ireland”*** by the Commission) that the EC decided to close the outcomes & correction phase of their investigation. This finally happened almost 3.5 years after the initial investigation began. Not being full satisfied, the EC stated: ***“Nevertheless, our departments will continue to monitor the situation regarding consortium bidding in Ireland, in order to verify that procurement procedures are conducted in a fair and non-discriminatory way”***.
- e. It is clear, therefore, that Mr. King seems to present an account of the EC investigation which does not fully inform the Committee and the Public Record in an accurate and fulsome way of the serious issues identified

¹⁵ Letter Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Brussels to the Irish Ambassador, Brussels on 14 Oct 2015

both with the procurement process and the required follow-up. Whilst these facts are not relevant to the issue at hand, as it is the case that Mr. King has chosen to address them in some detail it is, therefore, important that errors and omissions related to his treatment do not serve to unjustifiably undermine Mr. Delaney's character, credibility and ethical standing both now, whilst he is engaging with the Committee, and into the future when the detail of these events are being further researched using Mr King's response as a reference. The treatment should also reflect the reality of the investigation.

- f. It is, therefore, considered appropriate that Mr. King should be invited to correct these errors and omissions in order to reflect the reality of the matter.

9. **Incorrect Statement 4**

- a. The final substantive paragraph in Mr King's response contains a statement which reads as follows: ***“Operational matters and the role of developing commercial strategies for the post office network are matters for the Board and management of An Post and not one in which the Department has a statutory function”***
- b. This statement serves to suggest that Mr. King, as head of the Eircode Section, and his Department have no influence over whether An Post use Eircode or not in their operations or their network.
- c. **Reasons Statement 4 is Incorrect**
 - i. Paragraph 6 of this document and its associated references put it beyond doubt that there is a legislative, Ministerial, Departmental, design and contractual requirement and expectation that the USP (An Post) will implement the NPS (Eircode) in order to realise the savings, efficiencies and mail volume increases, which are all defined as the intended benefits for it. Those requirements and expectations were created and managed by DCENR (now DCCAIE) and the processes it established. Furthermore, An Post took an active part both as a bidder and as a consultative partner in the process which resulted in the Eircode design and contract. The final invitation to bid sent to the final bidders (Capita & ?) in June 2015 states as follows: ***“A Postcode Steering Group (PSG) has been established by the Department to oversee the procurement process and the subsequent implementation of postcodes. It has also established a Postal Integration Group (PIG) to oversee the integration of***

postcodes in postal services. As part of the procurement process, the Department has requested An Post to provide a document containing information about An Post's postal operations and mail sortation systems for distribution to organisations invited to tender for the postcode implementation project¹⁶The

document contains detailed information provided by An Post about its sorting operations and its recommendations as to a design to suit integration with its processes. Examination of the NPS Design Report V4.0 of May 2015 (Ref 9), shows direct consultation with and input from An Post with respect to the NPS design and an understanding that such was necessary as implementation in its operations was taken for granted.

- ii. It has already been established that the contract (Ref 10) for the NPS (Eircode) sets out a responsibility of the DCENR Project Management Office (PMO) to ***“monitor the relationship between An Post and the PMLH (Capita) to ensure a cohesive working arrangement both with respect to the integration of the postcode within the mail system and also any dissemination related activities. To oversee the achievement of any An Post related milestones”***
 - iii. Figure 13.6 of the Comptroller and Auditor General’s Eircode report of Sept 2015¹⁷ shows that An Post/Geodirectory will be paid in the order of €17 million for its active participation in the delivery of Eircode over the 10 year period to Dec 2023.
- d. For these reasons Mr King is wrong to suggest that An Post was at an arm’s length in terms of NPS design and is now at the same arm’s length in terms of its implementation into its operations and network. There are agreed milestones for that implementation and Mr King’s own section is responsible for overseeing those milestones on behalf of the taxpayer. There can be no doubt from the references introduced here that there are clear expectations of An Post in relation to its implementation of the NPS
- e. As Mr. King is aware of related contractual milestones, he should be invited to replace this incorrect statement and related paragraph with one where the milestones related to An Post implementation of the NPS (Eircode) are stated and the current status in relation to their

¹⁶ DCENR Final Invitation to Tender Document 28 June 2015

¹⁷ C&AG Eircode Report Sept 2015

achievement is unambiguously confirmed. Capita are responsible through their contract for routine reports in these regards so all the necessary data should be immediately available to Mr. King. It is for the same reason that approximations of Eircode usage by the Public on mail should not be presented to the Committee in responses. The Committee should be receiving exact figures from the monitoring done by An Post for which it quoted DCENR in the Final Invitation to Tender Document (Ref16)

10. By reference to official documentation, readily available to both Mr. King and the Committee, 4 incorrect statements, by error, omission and suggestion, have been presented here. Many more extracts from related official documentation could also be used to substantiate the reasons given.
11. I emphasise that this is not a final response to Mr. King's letter to the Committee, but instead, a request that Mr. King be invited to review this document, its references and the substantial supporting documentation available to him, and make corrections before the content of that response can be considered.
12. All persons who hold positions in Public Office and who hold themselves to professional standards and ethics, have a responsibility to ensure that information they present for the Public Record, especially the record of our Oireachtas, should make every effort to be correct and fulsome and should not, by error or omission, cause or give the potential to cause the character, credibility or ethical standing of someone who is not in Public Office to be in any way unjustifiably undermined. It is for that reason that I feel that Mr. King will be enthusiastic to make the corrections identified once they are brought to his attention by the Committee.
13. I request, therefore, that this document be passed to him for his attention and necessary action.
14. Once Mr. King has availed of this opportunity, my final response will be based on the outcome.

Gary Delaney
MSc(NT), FRIN, FCSI, FRICS, Lt NS (Ret'd)

Carrigaline, Cork

References Attached

1. Page 33 of Postal Act 2011
2. Page 57 of Postal Act 2011
3. PQ 12279/15 Deputy Michael Colreavy TD on Consent for Eircode by Minister Public Expenditure & Reform
4. Page 38 of DCENR Capital Expenditure Review 2011
5. Page 38 of DCENR Capital Expenditure Review 2011
6. Page 2 of Reply A/Sec DCENR to Public Accounts Committee 19 June 2014
7. Page 6 of Reply A/Sec DCENR to Public Accounts Committee 19 June 2014
8. Page 1 of NPS Design Report V4.0 May 2014
9. Page 9 of NPS Design Report V4.0 May 2014
10. Page 78 of NPS Contract Dec 2013
11. PQ 28145/17 Deputy Timmy Dooley TD June 2017 on Dept. Social Protection Eircode costs
12. PQ 8625/17 Deputy Catherine Murphy TD Feb 2017 on Dept. Agriculture Eircode costs
13. Letter Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Brussels to the Irish Ambassador, Brussels on 8 April 2015
14. Email EC Legal Staff 02 March 2015
15. Letter Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Brussels to the Irish Ambassador, Brussels on 14 Oct 2015
16. Extracts DCENR Final Invitation to Tender Document 28 June 2015
17. Figure 13.6 C&AG Eircode Report Sept 2015