



Coimisiún um Chaighdeáin in Oifigí Poiblí
Standards in Public Office Commission

Report on non-compliance by a senior office holder with requirements of section 23(1) of the Standards in Public Office Act 2001

Dr Fionn Kelly, Consultant, St Brigid's Hospital - HSE

October 2022

Background

Section 23(1) of the Standards in Public Office Act 2001 (the 2001 Act) provides that, on appointment, a senior office holder must furnish evidence of his/her compliance with taxation legislation to the Standards in Public Office Commission (the Commission). For the purposes of the 2001 Act, a senior office holder is defined as the holder of a designated position or directorship in a public body for which the salary on appointment is not less than that for the deputy secretary grade in the civil service.

Specifically, section 23(1) requires that, following the appointment of a senior office holder, he/she must furnish to the Commission within nine months of the date of appointment

- a sworn statutory declaration made by the person within one month of the date of appointment, confirming compliance with their tax obligations, and
- a valid current tax clearance certificate issued by the Revenue Commissioners, or a statement issued by the Revenue Commissioners confirming that the office holder has applied for a tax clearance certificate.

Section 23(2) of the 2001 Act requires the Commission to investigate contraventions of section 23(1).

The full text of section 23 of the 2001 Act is at Appendix 1.

Notification to the Commission

The HSE notified the Commission in September 2019 that Dr Fionn Kelly had been appointed as a medical consultant in St Brigid's Hospital in September 2019. The post to which he was appointed is a senior office within the scope of the obligations set out in Section 23. Accordingly, he was obliged to meet the requirements of section 23(1) of the 2001 Act.

For the purposes of ensuring compliance with the tax clearance obligations provided for under the 2001 Act, many public bodies routinely notify the Commission of appointments that come within the definition of senior office holder, and inform the senior office holders concerned of their obligations under section 23 of the 2001 Act. This is good practice, but the Commission notes that there is no statutory obligation on public bodies to do so.

Investigation by the Commission

The Commission did not have a record of having received the required statutory declaration and tax clearance certificate from Dr Kelly. The Commission decided at its meeting of 25 February 2022 to formally initiate an investigation into the potential contravention.

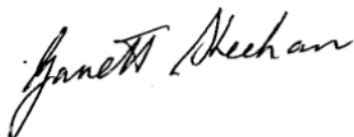
A letter issued to Dr Kelly on 25 April 2022, advising him of the Commission's decision to launch an investigation into the possible contravention, providing a statement of contravention and giving him the opportunity to respond by 9 May 2022. A reminder letter was issued to Dr Kelly on 28 June 2022. An email was received on 11 July 2022 from Dr Kelly requesting an extension due to personal circumstances which was granted by the Commission until 9 September 2022 on an exceptional basis. Dr Kelly was advised that, if he had not complied with his obligations by this date, then the Commission will issue a report on the matter.

Findings and determinations

The Commission is of the view that Dr Kelly has failed to comply with his obligations under section 23(1) of the 2001 Act to furnish the specified original documents to the Commission.

The Commission considers that the requirement that holders of senior office in public bodies must provide evidence of compliance with their obligations in regard to taxation matters is intended to ensure confidence in the probity of persons appointed to such positions. The Commission is therefore of the opinion that a substantive contravention of the legislation, as in this case, is a serious matter that requires appropriate action.

This report has been prepared in accordance with sections 23(2) and 23(3) of the 2001 Act. A copy of the report will be sent to St. Brigid's Hospital - HSE, as the employing public body of the senior office holder. The Commission will also present copies of the report to both Houses of the Oireachtas and the report will be published on the Commission's website.



Garrett Sheehan
Chairperson
Standards in Public Office Commission
21 October 2022

Appendix 1

Section 23 Standards in Public Office Act 2001:

Evidence of compliance with Acts by holders of senior office

23. (1) A person who is appointed to a senior office after the commencement of this section shall, not more than 9 months after the date on which he or she is so appointed (“the appointment date”), furnish to the Commission—
- (a) (i) a tax clearance certificate that is in force and was issued to the person not more than 9 months before, and not more than 9 months after, the appointment date,

or

(ii) an application statement that was issued to the person and was made not more than 9 months before, and not more than 9 months after, the appointment date,

and
 - (b) a statutory declaration made by the person not more than one month before, and not more than one month after, the appointment date to the effect that, at the time of the making of the declaration, the person is, to the best of his or her knowledge and belief, in compliance with the obligations specified in subsection (1) of section 25 and that nothing in subsection (2) of that section prevents the issue to him or her of a tax clearance certificate.
- (2) If a person contravenes subsection (1), the Commission shall investigate the matter and shall draw up a report in writing of the results of its investigation and furnish a copy of it to the public body concerned.
- (3) The Commission shall cause copies of a report under subsection (2) to be laid before each House.