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Office of the Ombudsman

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11 May 2010

Mr Johnny Brady, TD,
Chairman
Joint Oireachtas Committee for Agriculture, Fisheries and Food
Dáil Éireann
Dublin 2

Dear Chairman

I am writing to you in connection with the attendance of former Minister Frank Fahey at the Committee meeting held on 6th May 2010 in connection with the Lost at Sea Scheme.

At the outset I should say that I fully appreciate that it is now a matter for the Committee to reach its own conclusions on this matter based on the evidence presented to it by the various parties and I also wish to acknowledge that I was given ample time and opportunity to present my Office's views on the matter when I attended before the Committee on 21 April 2010. In addition, the Committee has before it my Special Report which clearly sets out my Office's conclusions on the case.

Clearly the Committee is being presented with various arguments as to the merits and substance of the Byrne family's case and it rests entirely with the Committee to form its own views on these. As you know, I attach huge importance to this case and given the time and effort being put into the examination of the matter by the Committee it is clear that the Committee is taking a painstaking and thorough approach to its examination of the case, which I very much welcome. Given the time and effort being put into the deliberations and not forgetting the importance of the matter from the perspective of the Byrne family, it is vitally important that when the Committee draws up its formal conclusions on the matter that issues of fact such as the eligibility criteria of the scheme and how they applied in individual cases are accurately reflected in any conclusions published by the Committee. No doubt you will recognise that this would be of as much importance to the Committee as to all the other parties concerned. This brings me to a matter of concern which has prompted me to write to you at this point.

As Deputy Fahey stated in his evidence, he had no direct involvement in vetting or adjudicating on individual applications once the Lost at Sea Scheme was launched back in June 2001. This process was administered by the then Department of Communications, Marine and Natural Resources. Notwithstanding this, Deputy Fahey put forward some explicit claims as to how the Scheme operated and was administered at the time. These

included the following statements, which I am quoting from the official transcript of the proceedings.

Firstly, in response to a question from Deputy Sherlock, Deputy Fahey stated, *inter alia* , as follows:

Deputy Frank Fahey: **Q** *The answer to that is simple. The scheme applied to people who were involved in the fishing industry in 2001.*

Subsequently, in response to a question from Ferris, Deputy Fahey stated, *inter alia* , as follows:

Deputy Frank Fahey: **Q** *The Byrne family was not involved in fishing for a long number of years before the Lost at Sea scheme was introduced. Consequently, it did not qualify for the scheme.*

At a later stage the following exchange took place between Deputy O'Sullivan and Deputy Fahey:

Deputy Christy O'Sullivan: **Q** *Has it been clarified that a member of the Byrne family was fishing during that period? Is Deputy Fahey now aware—*

Deputy Frank Fahey: **Q** *Again, the Byrne family application was received one year after the scheme's closing date. I was not involved at all, other than having been made aware since on foot of my inquiries that the Byrne family had left the fishing industry shortly after their boat sank in 1982.*

Deputy Christy O'Sullivan: **Q** *May I take it this would mean they were not fishing in 2001?*

Deputy Frank Fahey: **Q** *As far as I am aware, that was the situation.*

Deputy Christy O'Sullivan: **Q** *That point alone naturally would preclude them from qualification.*

Deputy Frank Fahey: **Q** *Yes. That was the entire point that was misunderstood by the Ombudsman's office, namely, the point of the scheme.*

I have serious concerns in relation to the accuracy of the foregoing statements having regard to the actual terms of the Lost at Sea Scheme and how it was applied by the Department following the receipt of applications. For ease of reference I have included the Lost at Sea Scheme as Appendix 1 to this letter.

You will note that the eligibility criteria of the Scheme are set out at items (a) to (g) of Appendix 1.

Yet the clear implication of the foregoing statements is that the Byrne family could not have qualified for the Scheme as they were not involved in fishing in 2001. This is not correct. I would make the following comments on this claim:

- 1) The Scheme does not include any such condition;
- 2) My Office engaged with the two Departments over a considerable period of time, obtained detailed reports and interviewed the key officials. The Departments never claimed that the Byrne family had to have been involved in 2001 as part of the eligibility criteria. Indeed, as will be clear from my Special Report the Departments identified two difficulties with the Byrne family's application i.e. Condition (c) and the application being received after the specified deadline;
- 3) The application forms issued to all potential applicants does not request any information seeking to verify that they were involved in fishing in 2001;
- 4) None of the departmental records examined by my Office, which included records relating to the vetting of some of the applications, suggested that applicants had to be fishing in 2001 in order to qualify;
- 5) My Office is aware of an application which was successful and where tonnage was granted to a widow who lost her husband when his boat sank in 1986. While she was granted the tonnage she could not use it as she had no immediate family member involved in fishing to use the tonnage. You will note that a narrative follows the eligibility conditions in the Lost at Sea Scheme which states as follows:

The capacity of a fishing vessel lost at sea will be accepted as replacement capacity for licensing purposes only if it is to be used for the purposes of sustaining or maintaining a family tradition of sea fishing. Any capacity accepted as replacement capacity must therefore be used for the purposes of introducing a replacement for the lost vessel which will be owned and skippered by the applicant or by an immediate relation of the applicant.

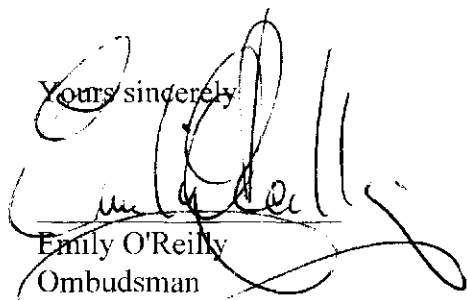
It seems clear to me that the foregoing narrative relates to a restriction on the way tonnage granted under the scheme (if conditions (a) to (g) are met in any given case) can be used by

the successful applicant and this is the basis for the decision in the case of the widow who applied.

I hope I have clearly clarified here why I have concerns in relation to the relevant statements and I trust that the Committee understands the reasons why I felt it necessary to place these concerns on the record.

The Committee may consider it appropriate to explore this issue further when the Secretary General of the Department of Agriculture, Fisheries and Food appears before it tomorrow.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Emily O'Reilly', written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Emily O'Reilly
Ombudsman

Appendix 1

Fishing Vessels Lost at Sea - Criteria for Considering Applications for Replacement Capacity

The capacity of a vessel which was lost at sea before the coming into operation of the Register set up by the 1989 Regulations will, as an entirely exceptional measure, be accepted as replacement capacity provided that the Department is fully satisfied, by reference to appropriate documentary evidence that:

- (a) the applicant was the owner and skipper of a registered Irish sea fishing boat which was lost at sea
- (b) the boat in question was lost at sea after 1 January 1980 as a result of an accident, and as such loss has been verified by the emergency services or another independent source acceptable to the Department
- (c) the boat in question is shown, by reference to logsheet returns or other appropriate records, to have been in active and continuous use for a considerable period of years by the person concerned for sea fishing of a category now covered by the replacement policy rules, until its loss at sea
- (d) the lost vessel was the sole means (i.e. the only vessel) of the applicant for engaging in sea fishing
- (e) the applicant was unable, for verified financial or related reasons, to acquire a replacement vessel, or any other registered vessel before the introduction of the new register pursuant to the 1989 regulations

(f) the applicant has been unable also, for verified or related reasons, since the inception of the new registered system, to acquire a fishing vessel to engage in sea fishing of the same class or description as was carried out by the vessel lost at sea, or any other sea fishing vessel which is subject to the replacement policy regime

(g) the applicant did not receive any financial benefit from the loss

The capacity of a fishing vessel lost at sea will be accepted as replacement capacity for licensing purposes only if it is to be used for the purposes of sustaining or maintaining a family tradition of sea fishing. Any capacity accepted as replacement capacity must therefore be used for the purposes of introducing a replacement for the lost vessel which will be owned and skippered by the applicant or by an immediate relation of the applicant. Any capacity from a lost vessel so used may not be sold or otherwise disposed of.

Applications under the scheme must be received by 31 December 2001.