

Department of Communications, Energy and Natural Resources

An investigation found that the Department of Communications, Energy and Natural Resources breached the statutory language obligation which is confirmed in subsection 18(1) of the Official Languages Act 2003 in respect of the implementation of its language scheme, insofar as it concerned a provision in Chapter 2 of that scheme, which concerns Gaeltacht placenames.

The Minister for Communications, Energy and Natural Resources, Alex White TD, launched the new Irish postcode system, Eircode, on 13 July 2015. It was advised at the time that the new postcodes would be issuing to every building in the country. Shortly afterwards, commencing in July 2015 and for the following two months, complaints were made to my Office on the subject.

The complaints my Office received concerned three main subjects:

- that letters with the new Eircode were being received by members of the public and that the Gaeltacht placenames in use on those letters were not in accordance with the Placenames (Ceantair Ghaeltachta) Order
- that letters with the new Eircode were being received by members of the public and that the version of their address which they usually used, that is the Irish version, was not used, and
- that letters with the new Eircode were being received by members of the public with their name and surname in English, when they only ever used their name and surname in Irish or when they did not normally use the name and surname in English.

When the Office receives any complaint that services are not provided in the Irish language, I need firstly to assess if it constitutes a possible breach of any part of the Official Languages Act. I can also include any provision of any other enactment concerning the use or status of an official language.

The responsibility for providing a postcode falls to the Department of Communications, Energy and Natural Resources and we understood that a contract was awarded to a private company to distribute the postcodes. The Department of Communications, Energy and Natural Resources comes under the auspices of the Official Languages Act 2003 and it has agreed a language scheme which contains statutory commitments in respect of providing certain services in Irish.

Under the terms of the Official Languages Act commitments given by a public body in its language scheme encompass services provided directly or indirectly.

It was therefore apparent that the same scheme obligations are placed on private companies acting under contract to a public body under the auspices of the Act as are placed on the body itself under the Official Languages Act.

There was a commitment given in the most recent language scheme which the Department of Communications, Energy and Natural Resources agreed in 2014 in respect of the use of Gaeltacht placenames, as follows:

Gaeltacht Placenames

The Department has put in place the necessary arrangements to ensure that official Placenames of Gaeltacht areas as declared by the Minister in the (Ceantair Ghaeltachta) Placenames Order 2005 will continue to be used as the default for corporate purposes, including, where appropriate, legislative, corporate and statistical purposes.

I thought that this commitment could be relevant to some of the complaints submitted to me. There was no similar relevant commitment in respect of the use of addresses outside the Gaeltacht or indeed in of the use of names and surnames in Irish. I decided to undertake further enquiries on the subject and at the same time I decided to refer the complaints to the Department of Communications, Energy and Natural Resources.

My Office attempted to resolve this question and the various complaints informally with the Department but those attempts were unsuccessful. In fact, I should mention that this Office had raised the question of the use of placenames for the new postal codes with the Department of Communications as far back as February 2008.

As complaints had been made to me by members of the public on this question and as I was unable to reach a satisfactory resolution with the Department in that respect, I decided that it was necessary to launch an investigation for the avoidance of doubt. Basically, I wanted to be able to say as a result of the investigation whether or not the provision in the Department's scheme was being appropriately implemented.

I launched the investigation on the 5 October 2015 by issuing a letter, as a first step, to the Minister for Communications, Energy and Natural Resources seeking particular information and responses to certain questions, as well as any information, record or any such thing which was relevant to the subject of the investigation.

I requested that the relevant information be provided to me on or before 27 October 2015. I was sent a response in an e-mail dated 28 October 2015. No accompanying documents were provided.

In that e-mail the Department denied that there had been any breach of its statutory language obligations in this case. The Department contended that the contract to design, distribute and maintain the postcode system was awarded to a private company and that it was of the opinion that the contractor was not a public body under the Official Languages Act 2003.

The Department referred to another section in its statutory language scheme that related to informing third parties working on behalf of the Department about commitments in the language scheme and encouraging them to embrace the spirit of the scheme. The Department claimed that that had been done in this case. To support this case the Department informed me that the contractor had engaged with Conradh na Gaeilge and Foras na Gaeilge to provide certain materials on a bilingual basis as part of the project.

The Department said that Eircode had provided bilingual promotional material and bilingual notice letters relating to the postcodes as well as developing a bilingual website. The investigation was informed that Eircode had recruited bilingual staff for its central phone centre and that it had developed a Code of Practice where it was specified how the National Postcode System would be provided to the public.

It should be noted, the Department stated, that the addresses, including addresses in Irish, were included on the Eircode Address Database solely from the GeoDirectory data base. The Department stated that this database was being provided under licence by An Post and GeoDirectory (APG) to Capita, and that An Post is responsible for its own scheme as a specified company under the 2003 Act. It was said that APG had informed the Department that it looks to include official Gaeltacht placenames on the database when they are available and “to use translations from Logainm and the Ordnance Survey of Ireland.” It was confirmed that certified placenames were available for APG, and that they were included on the Eircode database.

The Department confirmed that, as a result of a number of problems identified in relation to the Irish language translations of addresses in the GeoDirectory database, “Logainm” was working in conjunction with APG to resolve any differences in their databases.

A draft report (without findings and recommendations) was presented to the Department on 24 November 2015 to give the public body concerned an opportunity to illustrate if I had misconstrued the information that was provided to the investigation. After that draft report was issued the Department requested more time to provide an answer, as information had come to light in the draft report that it hadn’t noticed in the original investigative documents. A time extension until Monday 21 December was permitted to reply to the draft report. A reply was presented to me by e mail on 22 December 2015.

In its response to the draft report the Department said that the reason a contractor working under contract with the Department comes under the Official Languages Act wasn’t clear in the original investigative documents.

The Department said it understood the position of An Coimisinéir Teanga and recognised that a contractor working under contract with the Department could come under the language scheme of the Department according to the interpretation of the Coimisinéir.

The Department reiterated that APG and Brainse na Logainmneacha had meetings to ensure that confirmed placenames were included in the GeoDirectory database.

SUMMARY

This investigation arose from a substantial number of complaints made by members of the public on the matter to my Office. In total, the Office received over 70 complaints from the public relating to the delivery of the Eircode letters. 17 of those complaints related to official Gaeltacht placenames being in English or inaccurate.

It is true, as the Department said in its response, that Capita Business Support Services Ireland Limited – the private company that was awarded the contract to design, distribute and maintain the system – is not a public body for the purposes of the Act.

But a company providing a service under contract on the Department's behalf need not come under the Act itself for it to come under the auspices of the legislation – it is enough that any company or organisation provides a service under contract on behalf of the Department for the same obligations in the language scheme to apply to it as apply to the Department. Those obligations include the commitment regarding the use of official Gaeltacht placenames for corporate purposes.

Whilst the language scheme includes a section relating to the providers of services being encouraged to comply with the “spirit of the scheme”, the provision in the Act itself relating to this matter overrides that commitment. A legal provision in legislation passed by the Oireachtas has supremacy, and no commitment in a language scheme can amend, dilute or cancel a direct provision in the Act.

The provision in the Act placed a specific obligation on the public body to ensure that the contractor operating on its behalf adhered to the provisions in its language scheme in relation to services being provided under contract.

The Department confirmed that a service was being provided on its behalf when it said in its response to the investigation that *“the contract to design, distribute and maintain the postcode system was awarded to a private limited company, Capita Business Support Services Ireland Limited, in December 2013.”* (trans).

It was clear to the investigation that the development of the country's postcode system was a policy of the Department, and there was no doubt that a contract was awarded to a private company to provide that service. Since that service was being provided indirectly by the Department the commitments under the scheme followed on.

It was clear that care was given to providing certain materials and services through Irish, with support from Foras na Gaeilge and Conradh na Gaeilge, as part of this project. In spite of this it is a basic requirement that statutory language obligations are upheld and no other arrangements can replace those obligations or diminish them in any way. The basic requirement in this instance was that due regard be given to the commitment regarding the use of Gaeltacht placenames.

The Department of Communications, Energy and Natural Resources said that “Logainm” and GeoDirectory were working together to resolve the differences between various placenames. This indicated to me that the problem relating to the use of Gaeltacht placenames could have been avoided if the correct planning had been carried out beforehand.

The question relating to the obligation of contractors working on behalf of the Department, to comply with terms of the language scheme was raised with the Department as a result of a complaint years previously. The Department confirmed at the time that it understood the obligation in question. It couldn't be claimed, therefore, that there was any question of ignorance especially since the Department had been reminded of the obligation during a monitoring meeting six weeks prior to the launch of the Eircode service. It surprised me then that the Department didn't accept at the outset that the obligations of the language scheme applied to the contractor undertaking this project on its behalf.

Whilst this investigation related to the use of Gaeltacht placenames I couldn't turn a blind eye to the anger those who contacted my Office felt because their names on the Eircode delivery letters were in English. It upset people deeply that, as they saw it, an organisation had taken it upon itself to translate their names to English for official purposes, without their knowledge. My Office received 48 complaints on this matter alone. I referred to this matter in my correspondence with the Department and in the official letter that was issued when the investigation was launched.

The Department addressed this matter when answering the draft report. It said that An Post used 'building identifiers' to overcome the challenges of ensuring that the correct postcode was identified with each individual address and that the correct postcode was delivered. It said that the only objective was to deliver an accurate postcode and that it seemed that the English version of the homeowner's name was used for 'building identifiers' in some instances. No explanation was given as to why the translations to English took place nor was any apology offered that the translations occurred.

I accept that there is no language legislation at present that ensures the State has an obligation to accept the choice of the citizen regarding his/ her name and because of that it wasn't included as a statutory question for which findings had to be made as part of the investigation. However, one's name and surname is integral to one's identity. There is no excuse for any person, company or organisation, not to mention an agency of the State, to anglicise that identity by registering people's details in English when that is neither their wish nor their choice.

I feel this is an important question and what happened during the issuing of the postcodes shows the manifest need for legislation that protects people's right to use their name and surname in either official language. My Office recommended such a measure as long ago as 2011 as part of the review of the Act and at Oireachtas committees subsequently. I have also recommended that the Irish versions of addresses outside the Gaeltacht be given a statutory standing as part of the same provision in the Act.

For some years now arrangements are being made in law which prevent citizens from using any version of their name except that which is on their birth certificate, without presenting evidence to the State that another version has been in use for at least two years. It mystifies me, therefore, that a state organisation would be allowed to use an English translation of a person's name for official purposes.

There may be a question in relation to data protection where incorrect personal information was being retained in a data base by a state body without the knowledge of those to whom the details applied. I referred that general question to the Data Protection Commissioner.

Investigation launched: 5 October 2015

Report issued: 31 December 2015