

**Section 66 Inspectors' report**

**Irish Wildbird Conservancy CLG T/A  
BirdWatch Ireland**  
**Company Limited by Guarantee**  
**(Registered Charity Number 20008963)**

**Final Report**

**2022**

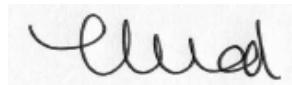
# Inspectors' Report

Irish Wildbird Conservancy CLG T/A BirdWatch Ireland (Registered Charity Number 20008963)

We have, in accordance with the provisions of Section 64 of the Charities Act 2009 ("the Act") carried out an investigation into the affairs of Irish Wildbird Conservancy CLG T/A BirdWatch Ireland.

We hereby submit our report to the Charities Regulatory Authority ("the Charities Regulator") in accordance with Section 66 of the Act.

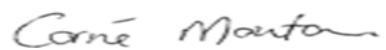
Signed:



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Thomas Mulholland  
Inspector  
Charities Regulator

Dated: 28<sup>th</sup> October 2022



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Corné Mouton  
Inspector  
Mazars

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# 1 Introduction

## 1.1 Background to the report

- 1.1.1 In August 2021 the Compliance & Enforcement Unit of the Charities Regulator sought the appointment of Inspectors as provided for in Section 64 of the Act to investigate the affairs of a charitable organisation – Irish Wildbird Conservancy CLG T/A BirdWatch Ireland (Registered Charity Number (“RCN”) 20008963) (“BirdWatch”) – and prepare a report thereon. This action was taken on foot of two concerns which had been opened by the Charities Regulator in relation to BirdWatch.
- 1.1.2 BirdWatch was established in 1968 and incorporated in 1986 and it is the largest independent conservation organisation in Ireland. BirdWatch is a member of Birdlife International and has 27 branches across the Republic of Ireland.
- 1.1.3 As per the Constitution of BirdWatch, the main objects for which the company was established are:
- (a) to benefit the community and the public generally by the conservation, protection and promotion of wild birds and their environment;
  - (b) and by promoting education, research and encouragement of field studies in that regard.
- The charitable purpose of BirdWatch as shown on the Register of Charities is the “advancement of education”.
- 1.1.4 BirdWatch is a private company limited by guarantee with no share capital. It is a registered charity with the Charities Regulator on the Register of Charities (RCN 20008963) and holds charitable tax exemption from the Revenue Commissioners (CHY Number 5703).
- 1.1.5 BirdWatch receives the majority of its income by way of government and EU grants and also from membership subscriptions and donations. There are currently six charity trustees of BirdWatch.
- 1.1.6 The first concern opened by the Charities Regulator was raised in 2016 regarding a potential conflict of interest where the Chairman of BirdWatch was also acting as the CEO. This concern was examined by the Charities Regulator and a satisfactory explanation was provided by BirdWatch. The concern was therefore closed.
- 1.1.7 A second concern was submitted anonymously to the Charities Regulator in March 2019 alleging that the CEO was using a BirdWatch credit card to pay for their wife’s car repairs, that cash withdrawals were being made on a BirdWatch credit card with no back up, that

expenses claim forms had no back up, and that donations were not allocated to the purpose for which they were raised.

- 1.1.8 Between August and October 2019, BirdWatch engaged with the Charities Regulator in respect of the various matters brought to the Charities Regulator's attention. In February 2021, as part of a review of outstanding concerns by the Charities Regulator's Compliance & Enforcement Unit, the documentation provided in October 2019 was reviewed. An analysis of the financial statements of BirdWatch for the year ended 31 December 2019 also showed that BirdWatch incurred a loss of €290,659 during that year and had net current liabilities of €427,759. The auditors had also included an emphasis of matter in relation to going concern in their auditors report in those financial statements. On foot of this review, correspondence was entered into with BirdWatch over a period of time, during which a copy of a Crisis Management Plan (dated June 2020) and a copy of a draft Cost Saving and Business Recovery Plan (dated September 2020) were provided to the Charities Regulator. The correspondence and information provided raised further issues of concern.
- 1.1.9 On 20<sup>th</sup> August 2021 the Charities Regulator, pursuant to the provisions of section 64 of the Charities Act 2009, appointed Mr Cornè Mouton of Mazars and Mr Thomas Mulholland of the Charities Regulator as Inspectors to investigate the affairs of BirdWatch and to report to the Charities Regulator under section 66 of the Act.
- 1.1.10 On 13<sup>th</sup> September 2021, a formal request was issued to BirdWatch under section 65(1) (a) of the Act to provide detailed information.

## **1.2 Basis of the Report**

- 1.2.1 This Report is based on investigation work undertaken in the period commencing August 2021 to March 2022. This report includes investigation findings in respect of issues and matters arising from January 2016 to the commencement of the investigation.  
The factual findings have been made in the context of these periods and have not been adjusted to take account of any matters arising in subsequent periods.
- 1.2.2 The investigation giving rise to this Report included:
  - (a) Establishing relevant facts in respect of all matters specific to the appropriate use of charitable assets or funds and the procedures for the recording and authorisation of payments e.g. ascertaining financial control policies and procedures in place, the nature of the use of charitable assets or funds, any evidence of authorisation and approval, including any involvement of the Board of Charity Trustees ("the Board"), management and/or staff and methods used to obtain use of charitable assets or funds;
  - (b) Reviewing governance processes operated by the Board with a specific focus on financial governance, reviewing Board oversight of CEO recruitment, performance and redundancy,

reviewing Board makeup and tenure in line with corporate governance best practice, assessing whether there were any circumstances, which in the view of the Inspectors, suggested that applicable principles of good governance had not been complied with in relation to the areas under review; and

- (c) Assessing whether, in the view of the Inspectors, there were documented operational controls and fund management policies in place to suggest that cost benefit/value for money analysis was undertaken in relation to grants and projects.

### 1.3 Investigation process

- 1.3.1 The investigation process, which this Report reflects, commenced in August 2021. The Inspectors issued a letter to the Board of BirdWatch on 1<sup>st</sup> September 2021 requesting the nomination of a person, 'nominated liaison(s)', to act as a point of contact for the Inspectors. The Inspectors then issued a description of the purpose of the investigation and an information request directing BirdWatch to produce documentation pursuant to section 65 (1) (a) of the Charities Act 2009 on 13<sup>th</sup> September 2021.
- 1.3.2 The investigation process included (but was not limited to) the following:
- Requesting detailed information and documentation from BirdWatch relating to its affairs for the period under review.
  - Obtaining and examining documents and information necessary for the purpose of the investigation, which included (but was not limited to) contracts, policies and procedures, correspondence, memoranda, Board minutes, internal and external reports, financial data, emails, records, external data (CRO, google etc.) and notes.
  - Detailed review of samples of credit card and expenses data.
  - Interviews with a total of seventeen (17) individuals who were identified as either past or present BirdWatch employees and past or present members of the Board of Directors i.e. Charity Trustees, all of whom agreed to co-operate and attend for interview. Such individuals were identified by the Inspectors as being of potential assistance to the investigation. Not all past employees and Directors were asked to attend for interview. The table below sets out the role and title of each individual referred to within the body of this report:

No.	Role	Title used in the body of this report
1.	Acting CEO (26/07/2021 to present)	CEO 1
2.	Interim CEO (18/04/2016 to 31/03/2020)	CEO 2
3.	Office Manager and Accounts Technician (1993 to present)	Accounts Technician

4.	Head of Development and Communications (2004 to present)	Head of Dev & Comms
5.	Accountant (20/01/2020 to 17/02/2021)	Former Accountant 2
6.	Head of Administration and Finance (10/04/2017 to 29/11/2019)	Head of Admin & Finance
7.	MarPAMM Project Manager (25/03/2019 to present)	Project Manager
8.	Chief Operating Officer (General Manager) (1991 to 03/02/2017)	COO
9.	Assistant Head of Surveys and Land Management (2007 to present)	Assistant Head of Surveys
10.	Former Board Member (17/06/2017 to 19/06/2021)	Former Board Member 1
11.	Board Member (17/06/2017 to present), Company Secretary (24/08/2017 to 15/07/2021) and Chairman (19/06/2021 to present)	Chairman
12.	Former Board Member and Audit & Risk Committee Member (16/06/2018 to 19/06/2021)	Former Board Member 2
13.	Former Board Member (12/08/2014 to 26/09/2020), Company Secretary (26/08/2014 to 25/06/2016) and Chairman (25/06/2016 to 26/09/2020)	Former Chair
14.	Former Board Member and Audit & Risk Committee Member (20/04/2016 to 15/06/2019)	Former Board Member 3
15.	Former Board Member (17/06/2017 to 19/06/2021)	Former Board Member 4
16.	Auditor (FYE 31/12/2020 to present)	Auditor
17.	CEO (01/04/2020 – 17/04/2021) Deceased	CEO 3
18.	Accountant (07/01/2002 to 29/09/2017)	Former Accountant 1
19.	Former Auditor (FYE 31/12/2014 to FYE 31/12/2019)	Former Auditor

- Interviews were recorded by way of a Dictaphone at each investigation interview meeting. The recordings were then sent by secure means to confidential typists who transcribed the interviews. A copy of each interview transcript was provided to each individual who had attended for interview and an opportunity was afforded to them to provide further comment if they so wished.
- At all times, the investigation was performed with regard to relevant legal principles and the requirements of fair procedures, including due process and natural justice.
- At all times, the Inspectors retained sole control of the procedures and process of the investigation and were the final decision-makers on all matters of procedure relating to the investigation.
- Preliminary reporting in line with fair procedures, included circulation of a draft report to those who may be subject to adverse findings.

## **1.4 This Report**

- 1.4.1 This Report is confidential and has been prepared solely for the Charities Regulator as per section 66(1) of the Act. We acknowledge the right of the Charities Regulator as per section 66(3) of the Act to publish this report in such manner as it considers appropriate and to furnish a copy of the report, if it considers it appropriate, to those listed in section 66(3) of the Act. We reserve the right to amend the layout, observations and conclusions set out in this report, prior to any submission to the Courts in any potential legal proceedings.
- 1.4.2 This report is based on work carried out and information provided to us to date. As new information may be made available in the future, we reserve the right to review and update our observations and conclusions as necessary prior to the issuing of an updated report.

## 2 Summary of Factual Findings

In summary the Inspectors found for the period under review from January 2016 to August 2021:

- Insufficient action taken by the Board of BirdWatch to ensure adequate financial controls and procedures were in place and adhered to within BirdWatch;
- A lack of sufficient Board oversight of the activities and finances of BirdWatch.
- A lack of timely action by the Board and management to address financial constraints / going concern issues.
- A lack of oversight, approval and review of costings for large projects by the Board.
- An inappropriate structure in BirdWatch for financial governance and oversight, where the person in the CEO role had most of the approval authority and responsibility for internal control.
- Inadequate oversight, approval and control by the Board in relation to loans to CEO 2.
- No consideration given by the Board as to how using charitable funds to provide loans to employees was in keeping with the obligation to promote the charitable purpose of Birdwatch only.
- Inadequate oversight by the Board of CEO 2's performance.
- Non-compliance with BirdWatch's Whistleblower Policy.
- Lack of disclosure of redundancy payments in the financial statements of BirdWatch.
- Inadequate oversight by the Board and the Audit & Risk Committee of credit card and travel expenditure, redundancy payments and salary increases at times of cash deficits.
- Payment of overtime and ex-gratia redundancy in the absence of a contractual obligation to do so and without a relevant policy in place.

- A lack of sufficient oversight of funding arrangements, contracts and budgets for projects and a lack of compliance with the terms of funding agreements, resulting in cash from restricted funds being spent outside of their designated projects.
- Evidence of the lack of provision of timely and accurate financial information to the Board.
- A lack of appropriate procedures for the recording, evidencing and authorisation of credit card expenditure.
- Lack of access to adequate financial expertise with a view to producing financial reports to the Board for extended periods of time.
- No evidence of formal Board training or induction processes in place in BirdWatch which would provide Board members with an understanding of the organisation's finances and funding model.
- Insufficient financial control procedures resulting in a payment redirection fraud which was not notified to the Charities Regulator as required by Section 59 of the Charities Act 2009.

### 3 Detail of Factual Findings

#### 3.1 Matters of Concern in relation to CEO 2 and Board

3.1.1 The Inspectors examined a number of matters relating to CEO 2 as follows:

- Whether the recruitment and performance reviews of CEO 2 were conducted appropriately.
- Whether CEO 2 had used a BirdWatch credit card to pay for his spouse's car repairs.
- Whether CEO 2 had received an unauthorised loan from BirdWatch.
- Whether a loan to CEO 2 was in keeping with the charitable purpose of BirdWatch.
- Whether CEO 2 had received inappropriate overtime and redundancy payments.

##### Recruitment & Performance Reviews

3.1.2 Based on information provided by BirdWatch, Index Partners, a recruitment agency, provided three candidates to the Board for the position of Interim CEO, and in addition a former colleague of the Chairperson was also invited to attend for interview. These candidates were interviewed by two members of the Board who, at the time, held the positions of Chair and Secretary. Interview minutes were not provided to the Inspectors. At a Board meeting on 23 March 2016, the Board approved CEO 2 be appointed through the agency. CEO 2 was employed through the agency from 18 April 2016 until 1 February 2017. In a Board meeting on 2 Nov 2016, the Board agreed to offer CEO 2 a one year fixed-term contract directly with BirdWatch to obtain cost savings. From 1 February 2017 to 31 January 2018 CEO 2 was employed directly by BirdWatch. An extension of CEO 2's contract was discussed and approved by the Board at a meeting on 29 August 2018 however no specific dates of extension were stated. BirdWatch was unable to provide the letter from 2018 extending the contract of CEO 2. This contract extension letter was subsequently provided to the Inspectors by CEO 2. The Board at a meeting on 20 February 2019 discussed and agreed an extension to CEO 2s contract from 1 February 2019 to 31 January 2020.

3.1.3 The Inspectors were provided with a copy of the fixed term part time contract commencing on 1 February 2017 and terminating on 31 January 2018 (dated 25 January 2017) between CEO 2 and BirdWatch as well as letters dated 12 March 2019, extending the contract to 31 January 2020, and 11 February 2020, extending the contract to 31 March 2020. As noted above a contract extension letter was provided to the Inspectors by CEO 2 covering the period from 1 February 2018 to 31 January 2019. The Inspectors found no evidence from a review of Board minutes of any discussion or approval of the extension to 31 March 2020. Per the contract of CEO 2 from 2017, CEO 2 was employed on a part time basis of 2.5 days per week (18.75 hours per week) at a salary of €78,000 (€156,000 per annum pro-rata). CEO 2's employment with BirdWatch officially ended on 31 March 2020.

- 3.1.4 The contract of CEO 2 states that appraisals of the Interim CEO “*will be conducted with the Executive at six-monthly intervals*”. At interview the Former Chair stated that performance reviews occurred annually, not every six months. The Inspectors established through review of performance appraisal documentation and minutes of meetings that annual performance reviews of CEO 2 for 2016 and 2017 were conducted. A performance appraisal for 2018 was not provided by BirdWatch. The Former Chair stated at interview that one performance appraisal was undocumented, which they believed to be for 2018, and that no performance appraisal was conducted in 2019. The Inspectors established through interview with several Board Members that the Board did not conduct performance appraisals of CEO 2 at six-monthly intervals as required by the contract.
- 3.1.5 The Inspectors found that the recruitment of the Interim CEO appears to have been conducted appropriately however the Inspectors found that the six monthly performance appraisals were not conducted as required by CEO 2’s contract which indicates a lack of sufficient oversight of CEO 2’s performance by the Board.

#### **Personal Use of BirdWatch Credit Card**

- 3.1.6 On 4 June 2019, a protected disclosure was made to Former Board Member 4 raising financial concerns relating to CEO 2 using the BirdWatch credit card for repairs to CEO 2’s personal car. At interview, Former Board Member 4 stated that as they had not received a protected disclosure before, they spoke to the Former Chair to ask for advice. The Former Chair appeared not to be aware of the transactions and advised them “*to contact (Former Board Member 3), who is the Head of the Audit and Risk Committee and discuss it with (them) because a formal response should issue from (them)*”. After Former Board Member 4 had spoken to Former Board Member 3, they received a phone call from the Former Chair to say that they were “*mistaken*” when they indicated that they were not aware of the transactions and that they had actually approved the payment because CEO 2’s wife’s car was being used by CEO 2 at that time for work.
- 3.1.7 Former Board Member 4 stated at interview that they spoke to the Former Chair a couple of times about the protected disclosure and were informed that the Former Chair had told CEO 2 about the disclosure. Former Board Member 4 stated that they were “*extremely unhappy*” with this as they understood that protected disclosures shouldn’t be discussed with the person against whom the disclosure was made. Former Board Member 4 stated that the Discloser was entitled to a formal response and in order for that to happen the Discloser would have to give their name. The Discloser told Former Board Member 4 they weren’t prepared to do this but after a few days decided they would provide their name, and Former Board Member 4 conveyed this to Former Board Member 3. Former Board Member 4 stated it was their understanding that a response was provided to the Discloser in writing but they did not see it at the time.

- 3.1.8 In interview, the Discloser stated that they reported the car expenses on the credit card after seeing who the invoices were addressed to. The Discloser reported their concerns to Former Board Member 4. The Discloser was dissatisfied with how the disclosure was handled as their understanding was that the Audit and Risk Committee would deal with it without involving the Former Chair, however the Discloser stated, "*the person I approached went straight to the Chairman*". The Discloser stated that they didn't receive a reply and when they followed up with Former Board Member 4, they were told that Former Board Member 3, who was the Chair of the Audit and Risk Committee, was waiting for the Discloser's home address in order to send the letter. The Discloser stated that no one had asked for their address and that when they provided their address the letter they received explained that CEO 2 had done extra hours work that they were not paid for and therefore this was compensation. The Discloser stated that in their opinion, this could be seen as avoiding employer's PRSI and also that there is no extra money or payment of repairs offered to other employees who spend all their time in the field. The Discloser stated these employees only get mileage.
- 3.1.9 At interview the Former Chair stated that although CEO 2 was being paid mileage, they "*were travelling a lot and we didn't have a company car as part of the package*", and their own car had let them down so they needed to use their wife's car, which "*also needed work*". Therefore, the Former Chair agreed with CEO 2 "*as part of a final settlement*" that they could get the work done on the cars. When the Inspectors queried what was meant by "*as part of a final settlement*", the Former Chair stated that CEO 2 had worked "*in the order of 130 extra days over and above what (their) normal employment contract would have said*" and that it was "*obvious at some point we were going to have to reflect that*" so they agreed the car repairs were part of that overall settlement. The Former Chair stated at interview that this occurred in February 2019. However, the Inspectors note that the expenditure on the wife's car commenced in December 2018. Regarding the overtime, the Former Chair stated "*I didn't verify it, but I accepted the hours*" on the timesheet. The Former Chair also stated that the payment and car expenses were made without the knowledge of the Board.
- 3.1.10 The Inspectors note that no accrual was recorded in the financial statements of BirdWatch to reflect the "*final settlement*" liability referred to by the Former Chair.
- 3.1.11 When the Inspectors asked about the protected disclosure, the Former Chair stated that they were contacted by Former Board Member 4 and that they had informed them that they had authorised the use of the credit card for the car repairs. The Former Chair informed Former Board Member 4 that they should contact Former Board Member 3 as they were part of the Audit and Risk Committee. When the Discloser requested a formal response, Former Board Member 3 had left the Board so the Former Chair obtained the draft letter and contacted Former Board Member 3 to ask would it be ok to send this off. The Former Chair then sent the letter to the Discloser. At interview the Former Chair stated that they helped draft the letter that was signed by Former Board Member 3.

- 3.1.12 At interview, Former Board Member 3 when presented with a copy of the letter to the Discloser dated 4<sup>th</sup> June 2019 which had their name as the sender they said that they vaguely remembered writing the letter. The letter stated that they had been designated by the Board with responsibility for administering the Whistleblower Policy and for the receipt, retention and treatment of complaints regarding accounting matters, and the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters. The letter also stated that they had fully reviewed the matter and "*I am pleased to report that the transactions are all in order and were agreed in advance as part of a settlement of monies owed to the individual in question. Any liabilities in relation to the transactions in question will be dealt with as part of a future settlement and tax return. In addition, there is a periodic process for sign-off of credit card statements.*"
- 3.1.13 The Inspectors note that this letter was accompanied by a covering letter from the Former Chair dated 28<sup>th</sup> July 2019 where he stated that the response from Former Board Member 3 was drafted before they stepped down from the Board but was pending receipt of the Discloser's home address in order to send the reply.
- 3.1.14 The Inspectors note that the treatment of the protected disclosure was not in line with the requirements of the BirdWatch Whistle-blowers' Policy as detailed in the Employee Handbook and the Governance Handbook, both of which emphasise confidentiality. The Governance Handbook states that the Chair of the Audit & Risk Committee (Former Board Member 3) is responsible for receiving, collecting, reviewing, processing and resolving concerns and reports by employees regarding questionable accounting or auditing matters. The Employee Handbook states that complaints against the CEO should be passed to the chairman who will nominate an appropriate investigating officer and that the allegations should be fully investigated by the investigating officer. The Inspectors note that it was inappropriate for the Former Chair to be involved in any capacity because the Former Chair was a relevant witness in key factual issues relating to the protected disclosure i.e. whether the credit card payments were authorised.
- 3.1.15 The Inspectors found no evidence of an investigation of the matter by Former Board Member 3, who had no memory of the protected disclosure. At interview the Inspectors pointed out to Former Board Member 3 that they found no evidence of the transactions being agreed in advance and that there was evidence from minutes of board meetings that the Board was concerned because they were not advised in advance of the expenditure but they found out about it afterwards. Former Board Member 3 could not explain this anomaly.
- 3.1.16 At interview the Inspectors asked CEO 2 about the car expenses being charged to the credit card at the end of 2018, and CEO 2 stated "*I can't give you any answer in that I don't have the invoices or the files in front of me... Just for clarity, there was absolutely no items submitted for any expenses... without prior approval from the Chair*".

3.1.17 The Inspectors reviewed the credit card transactions of CEO 2 and identified the following:

- Three line items were identified relating to CEO 2's spouse's car and two to CEO 2's car.
- The period covered by the line items was from 06/12/2018 to 28/02/2019.
- The total amount identified across the five line items was €1,835.58.
- There is no evidence on the credit card statements or receipts that they were approved by the Board. One receipt has CEO 2's signature stating "authorised". However, as stated in Section 2.2 of the BirdWatch Governance Handbook, the CEO's expenses and credit card statements should have been reviewed and signed off by the Board.
- Based on a review of documentation and interview statements the Inspectors found that CEO 2 had used a BirdWatch credit card to pay for his spouse's car repairs without the approval or knowledge of the Board of BirdWatch. It would appear that the Former Chair had authorised the expenditure, but this was not done in writing and due to conflicting witness statements it is not clear whether this was done in advance of the expense being incurred or after the expense was incurred.

#### **Loan to CEO 2**

3.1.18 At interview, CEO 2 stated that they approached the Former Chair and requested a loan in "*March or April 2019*". CEO 2 also stated that it was "*probably a telephone request... or a discussion with the Chair but it was documented. Everything is documented about that, absolutely*". This documentation was requested but not provided to the Inspectors.

3.1.19 The Inspectors reviewed an email exchange between CEO 2 and the Head of Admin & Finance dated 21 February 2019. This shows a request from CEO 2 for the Head of Admin & Finance to arrange payment to CEO 2 of €4,000. The email states that "*this is a loan which has been approved by (the Former Chair) and will be settled in December this year*". The Inspectors note that the Former Chair was not included on the email. The Head of Admin & Finance responds querying whether it will be settled with a salary deduction or by direct payment to BirdWatch, to which CEO 2 states it will be a direct payment in December. The email chain includes an email from the Head of Admin & Finance to the Accounts Technician stating the loan was released on 21 February 2019. No formal agreement was provided by BirdWatch for the loan to CEO 2 and no evidence showing approval from the Former Chair has been provided. No evidence of any consideration by the Board as to how loaning charitable funds to an employee advanced the charitable purpose of BirdWatch was provided to the Inspectors.

3.1.20 In interview, the Head of Admin & Finance could recall the loan but not the specifics such as the amount.

3.1.21 The Inspectors reviewed the bank statements of BirdWatch and identified the following transactions:

- On 22 February 2019, €4,000 was transferred to CEO 2.
- On 26 November 2019, a repayment was made by CEO 2 of €6,933.

3.1.22 The Inspectors reviewed emails between CEO 2 and Accounts Technician and identified the following:

- On 18 November 2019, CEO 2 informed the Accounts Technician that they were to be paid two once off payments, €12,500 payroll arrears and €298 benefit-in-kind, which had been approved by the Board and the Former Chair, who was copied on the email.
- They further stated that once their payroll arrears were received, they would pay €6,933 back to Birdwatch.
- The breakdown of the figure of €6,933 was as follows:
  - Staff loan €4,000
  - Motor expenses €2,500 (The Inspectors note it is unclear how the figure of €2,500 was calculated. The amount identified from a review of credit card transactions was €1,835.58). BirdWatch were unable to provide evidence for the full amount.
  - Interest €433
- Following the above email, CEO 2 stated in a further email that the payroll arrears due to them were now finalised at €13,862 rather than the original €12,500 due to the higher tax band. The Former Chair was copied on this email.
- The Accounts Technician then sent CEO 2 a copy of their payslip and asked them to review it. CEO 2 responded stating that the €12,500 to be paid to them needed to be revised to €15,760. The Former Chair was not copied on this email. The actual gross salary figure paid to CEO 2 on 20 November 2019 was €17,457.57. It is not clear how this figure was arrived at.

#### **Loan in Keeping with Charitable Purposes**

3.1.23 As noted above no formal agreement was provided by BirdWatch for the loan to CEO 2 and no evidence showing approval from the Former Chair has been provided. No evidence of any consideration by the Board as to how loaning charitable funds to an employee advanced the charitable purpose of BirdWatch was provided to the Inspectors.

#### **Overtime & Redundancy Payments**

3.1.24 The Inspectors reviewed CEO 2's overtime and redundancy payments. The following payments were made to the CEO through BirdWatch bank accounts:

- On 20 November 2019, gross salary of €17,457.57 was put through payroll for CEO 2 resulting in a net payment of €8,663.90 being paid from the bank account.
- On 2 April 2020, two separate payments were made to CEO 2 from the bank account of €12,257 and €4,392.
- A further gross salary of €7,200 was put through the payroll for CEO 2 on 9 April 2020. This resulted in a net payment of €4,049.35 being paid from the bank account.

- 3.1.25 At interview, CEO 2 stated that the payment in December 2019 (the Inspectors presume this refers to the 20 November 2019 payment) was compensation for hours worked, the next payment on 2 April 2020 was their redundancy, and the final payment on 9 April 2020 was holiday pay. The Inspectors noted that none of these payments were recorded as redundancy payments in the 2019 or 2020 Financial Statements of Birdwatch.
- 3.1.26 The Inspectors queried why the payments were not recorded as redundancy payments in the 2020 Financial Statements with the auditors. The auditors stated that the responsibility for the preparation of the financial statements lies with the Directors. They also noted that CEO 2 was not a Director and therefore they did "*not believe that the company has a statutory requirement to separately disclose redundancy payments to employees*". However, the auditors also recognised that the individual was acting as CEO 2 and therefore would have been considered a member of Key Management.
- 3.1.27 The auditors stated that they would discuss the non-disclosure of the redundancy payment with the directors with a "*view to incorporating the appropriate disclosures in the comparative figure notes of the 2021 financial statements*".
- 3.1.28 The Inspectors reviewed the contract of CEO 2 and confirmed that it states, "*subject to prior agreement with the Chairperson or nominated delegate of The Board, time off in lieu (as opposed to any payment) shall accrue... subject to prior agreement by the Company*". The Inspectors were not provided with evidence of pre-approval of overtime worked by CEO 2, nor was it accrued for as a liability in the financial statements.
- 3.1.29 The Inspectors noted from a review of the Employee Handbook that there is no reference to overtime being payable and that the policy on time off in lieu is that it "*must be taken within 3 months of additional working hours being incurred. If it is not taken off within this time, it cannot be carried forward into the next quarter unless with the express permission of your Line Manager for circumstances which may have prevented it being taken earlier. All TOIL from a given year must be expunged by February of the following year*".
- 3.1.30 In September 2019, the Board were presented with an Exit Proposal for CEO 2 which the minutes state was to provide extra compensation "*to reflect a considerable amount of overtime worked in 2017*". This was prepared by the Former Chair. The Board minutes for September 2019 state that the auditors had confirmed that the advance payments of €2,500 and the loan of €4,000 had to be dealt with in the current financial year. The minutes also state "*the advance payment was a salary advance and should be processed via payroll before the end of the year. The loan should be repaid and BIK charged on the interest. The proposed mechanism to achieve this was to make a payment of c.€14,000 to (CEO 2) via payroll by December 2019... this would yield a net amount sufficient to repay the €6,500 plus the BIK. A redundancy payment of €16,000 would then be paid in January 2020...no firm*

*conclusion was reached on this topic*". The Inspectors note this is the first mention in the Board minutes of CEO 2 loan and expenses payments.

- 3.1.31 In October 2019, a revised Exit Proposal was prepared and presented to the Board. The minutes state that "*the Exit Proposal addresses the additional time worked in 2017 and there is no additional liability in respect of 2018 – 2020*". The Board minutes state that an agreement was reached to make the "*special payment*" in two payments. The first payment was to be made before the end of 2019 and calculated so that the net payment would be €6,500 and this was to be repaid to BirdWatch. The second payment was to be made in early 2020 and the figure would be determined once they had received HR advice.
- 3.1.32 In October 2019, the Former Chair requested HR advice from an external source, on whether the payment to CEO 2 could be considered a redundancy payment. The HR advice received stated that "*fixed term employees are entitled to more or less the same rights as permanent employees, including redundancy*". The Former Chair stated that CEO 2 no longer had the skill set required for the role of CEO, and as such the HR advice agreed that the payment could be considered a redundancy. The HR advice received did not contain details of the amount that should be paid.
- 3.1.33 A timesheet detailing the hours worked by CEO 2 between 2017 and 2019 was provided to the Inspectors. This was also presented to the Board in October 2019. This timesheet shows a calculation of the overtime worked for these three years and states it amounts to €142,169 (when using a daily rate of €650). While there are details of the work completed for each of those days, the descriptions are vague and were not verified. Former Board Member 1 stated that "*it was completely generated by (CEO 2). I confirmed that at the time. That it was not vouched in any way and that there was absolutely no way to verify any of these hours, or indeed (their) presence in the office*".
- 3.1.34 In November 2019, the Board minutes state "*the HR opinion in relation to departure of CEO 2 was reviewed and adopted. The Board will therefore proceed as outlined in the CEO Exit Proposal outlined at the October meeting*". However, the Exit Proposal attached in the Board minutes contains three calculations and two payment mechanisms, none of which appear to match the actual payments made. The actual amounts to be paid were not documented in the Board minutes and therefore it is unclear whether the payments made were actually approved.
- 3.1.35 The Inspectors found based on documents reviewed and interview testimony that expenditure of €1,835.58 by CEO 2 on their spouse's car had been paid by a BirdWatch credit card between 06 December 2018 and 28 February 2019, and that a loan of €4,000 had been provided from charitable funds to CEO 2 on 21 February 2019. The Board were not advised of the loan or expenses payments to CEO 2 until September 2019. The Inspectors also found

no evidence of a loan agreement between CEO 2 and BirdWatch in relation to these monies. It is not clear when approval for these transactions was provided by the Former Chair.

- 3.1.36 The Inspectors also found that the payment of time in lieu to CEO 2 was contrary to their employment contract and the Employee Handbook of BirdWatch, and the overtime worked was not validated or approved in advance as required. The Inspectors therefore found that the payments to CEO 2 may be considered an improper use of the assets of BirdWatch.

### **3.2 Restricted Funding**

- 3.2.1 The Inspectors reviewed the policies and procedures of BirdWatch and confirmed that there are no policies on the treatment of restricted funds. However, the Governance Handbook states that BirdWatch must have appropriate internal financial and management controls.
- 3.2.2 The Audit Management Letter to Birdwatch from the auditors for the year ended 31 December 2016 stated that “*income and expenditure should be separated between “Restricted and Unrestricted Funds”*”. Management responded stating that their accounting systems will need to be updated to ensure that income can be separated and that this was to be completed in 2017. The Inspectors reviewed the accounting system and queried this with the Accounts Technician. The Inspectors have found no evidence that this update to the accounting systems has taken place.
- 3.2.3 The Inspectors received a copy of a draft Business Recovery Plan dated August 2020. This draft Business Recovery Plan was prepared by an external reviewer and stated that BirdWatch had spent approximately €504,000 in restricted funds contrary to their contractual obligations and that €144,000 would have to be repaid to a funder. The external reviewer did not receive all the information they had requested from BirdWatch in order to finalise their report and confirm the figures, therefore, that Business Recovery Plan is still in draft format.
- 3.2.4 The Inspectors requested BirdWatch to provide the calculation of the €504,000 that was given to the external reviewer. BirdWatch were unable to provide documentary evidence totalling this amount. Through discussions with the external reviewer it appears that they did not receive documentary evidence of the €504,000 being inappropriately spent. The external reviewer informed the Inspectors that they were informed of this amount verbally via telephone call by CEO 3.
- 3.2.5 The draft Business Recovery Plan identified the following projects and amounts as being related to the inappropriate spending of restricted funds:
- Cooperation Across Borders for Biodiversity (“CABB”) – €260,000
  - Marine Protected Area Management and Monitoring (“MarPAMM”) – €144,000
  - Rockabill Roseate Tern Project (EU LIFE) - €100,000
- 3.2.6 In a letter to the Charities Regulator dated 11 May 2021, BirdWatch stated that the funders who they identify as the Royal Society for the Protection of Birds (“RSPB”) and the Agri-Food and Biosciences Institute (“AFBI”), were informed in April 2020 that the funds that they had provided to Birdwatch had not been ring-fenced in the records and bank accounts of Birdwatch in accordance with the contracts. The Inspectors requested but were not provided with copies of the correspondence with the funders. The letter to the Charities Regulator also states that funds “*were not misappropriated but were used for other conservation projects and general BirdWatch expenditure*”. From our review it is clear that the incoming funds were

placed in main BirdWatch bank accounts and not properly ringfenced or segregated, resulting in the funds being utilised for general expenditure rather than being spent specifically on the projects for which they were provided.

#### CABB

- 3.2.7 An agreement in place with RSPB NI dated 17 May 2018 was provided to the Inspectors. The amount agreed to be paid to BirdWatch according to the agreement was €266,000. A second agreement dated 27 November 2020 was also provided. The amount documented in this agreement is €155,666.66. The Special EU Programmes Body (“SEUPB”) are the funder for this project and stated that €266,000 of a pre-financing agreement was paid in May 2018 to RSPB NI (lead partner), who then transferred the amount to BirdWatch.
- 3.2.8 As part of the conditions of the funding, the funds were to be kept in a ring-fenced bank account. This did not occur with the funds received in May 2018 which were instead lodged into a general bank account.
- 3.2.9 On 11 September 2020, RSPB NI contacted the SEUPB to report cash-flow issues being faced by BirdWatch, which had the potential to impact on the delivery of the CABB project. Following this initial notification, the SEUPB and the RSPB NI agreed a series of mitigation measures to ensure the ongoing viability of the project, while minimising risk of loss of the public funds managed by the SEUPB. This included ensuring that the partner, BirdWatch, maintain a separate bank account or cost centre for the project, which is a programme requirement.
- 3.2.10 The Inspectors note from a review of the certified expenditure reports approved by the funder that there was a four to seven month delay between the expenditure on this project by BirdWatch and the repayment of that expenditure by the funder during the lifetime of this project. This led to cash flow issues for BirdWatch. We also note that expenditure was being appropriately receipted to the satisfaction of the funder and that the advance payment was being recouped by BirdWatch providing receipts for approved expenditure but claiming for less than receipted.

#### MarPAMM

- 3.2.11 An agreement with AFBI dated 12 June 2019 documenting an advanced payment of €144,000 was provided to the Inspectors. The conditions in the agreement state that funds were to be used solely for this project.
- 3.2.12 On 14 September 2020, AFBI (lead partner) and SEUPB (funder) were informed by BirdWatch that they had financial issues. BirdWatch indicated that cash flow issues would necessitate the project being paused until the later date of July 2021. AFBI communicated

with SEUPB following a meeting with BirdWatch senior management on 23 September 2020 and informed them that BirdWatch project work would be suspended effective from 28 September 2020. BirdWatch returned to programme work on 5 July 2021. As at 21 December 2020, €275,716.37 had been received from SEUPB.

- 3.2.13 The Inspectors were provided with confirmation from AFBI that BirdWatch had advised them that due to the 4-5 month delay between project expenditure and claims being paid, they had cashflow issues and they would need to pause the work on this project. AFBI also confirmed that they had entered into an arrangement for the appropriate receipt of approved expenditure relating to the cash advance provided of €144,000 by the first quarter of 2022. This is achieved by BirdWatch providing receipts for approved expenditure to account for the €144,000.

#### Roseate Terns

- 3.2.14 An agreement in place with RSPB dated 11 March 2016 was provided to the Inspectors. The agreement stated that BirdWatch was to provide expenditure reports to RSPB every three months. The total to be funded per the agreement was €386,537. This was to be supplied in three tranches; 30% on signing the agreement (€115,961), 40% after the approval by the European Commission of the mid-term report (€154,615), and 30% after approval of the final report (€115,961).
- 3.2.15 The funders RSPB have confirmed to the Inspectors that the first two payments were provided to BirdWatch totalling €270,576 however the final 30% has been withheld as BirdWatch could not deliver the outstanding work. RSPB took over BirdWatch's obligation on the project. RSPB advised the Inspectors that they permitted BirdWatch to retain stg£25,000 - stg£30,000 of RSPB unrestricted funds in order to assist with their cash flow issues.
- 3.2.16 The Roseate Terns project is now complete and RSPB records show that BirdWatch can now claim €11,294.17 of outstanding expenditure on the project from RSPB.
- 3.2.17 Board minutes up to 2020 include an agenda item for Restricted/Unrestricted Funding. However, the only note under this heading for each meeting is "*this was kept under constant review*". Based on the minutes, there does not appear to be any further discussion on the control of restricted funding.
- 3.2.18 At a Board meeting in May 2019, concerns were raised over BirdWatch's involvement in the MarPAMM and CABB projects due to their scale and associated cash flow issues. The minutes also state that "*an advance paid in respect of MarPAMM had been repaid. CABB was deemed less problematical. The level of risk with these projects was noted and it was agreed that we should reduce our involvement if payment issues persist*".

- 3.2.19 In April 2020, the Board meetings note that CABB and MarPAMM were large and complex projects that demanded significant resources and there was a concern that BirdWatch were incurring costs that could not be reclaimed. The minutes also note that cash advances of €240,000 (CABB) and €144,000 (MarPAMM) would now have to be repaid and that further analysis would be required to figure out how the money had been spent. The Board stated "*it was possible that the cash had just gone into the one big "pot" and had been used for day-to-day expenditure*". They also noted that there had been an upfront payment received of €50,000 for the Roseate Terns project.
- 3.2.20 Board minutes from May 2020 state that the crisis appears to have been compounded by a *"lack of proper financial procedures and controls which led to expenditure being incurred by project managers without due reference to status of cash availability, a lack of a centralised invoicing process, project cash advances being used to deal with general cash shortages and projects not being rigorously and regularly monitored versus budget leading to possible cost over-runs, etc"*.
- 3.2.21 A Crisis Management Plan (dated June 2020) was prepared by CEO 3. This plan notes that in May 2020, there were not sufficient funds in the BirdWatch bank account to pay the salaries of all staff and that in order to cover the cost, a temporary transfer of €18,000 was made from the Curlew EIP project account to BirdWatch's main bank account. The plan states that "*this procedure directly breached the written agreement in place covering the management of the Curlew EIP project funds*". The amount was repaid three days later according to the plan.
- 3.2.22 In July 2020, the Board of BirdWatch agreed to a forensic analysis of the financial situation to determine the cause of the cash flow issues. Board minutes of October 2020 state that since the forensic audit would take up a considerable amount of the finance team's time, it was "*not feasible*" to complete this before early 2021. There is no evidence that this forensic audit has been carried out to date.
- 3.2.23 At interview, CEO 2 stated that "*restricted funding didn't apply in any of the projects until 2019*". They stated that there were only two projects that had restricted funding requirements on them and specifically named MarPAMM. CEO 2 also stated that "*the funds would have been spent on the projects... Because of working capital for any organisation, those funds would not have been segregated... there weren't any restrictions applied with the exception of the two large ones I think in 2019*".
- 3.2.24 The Inspectors noted that per the financial statements for 2018 there was €1,491,000 classified as Restricted Funds and queried whether the use of these funds was actually restricted. CEO 2 stated that "*it wasn't kept in a separate bank account... it was used as part*

*of working capital...".* They also stated that funds were spent for the purpose of delivering the projects and the purposes of the contracts.

- 3.2.25 The Inspectors queried how the restricted funds for particular projects were no longer available in 2020 to pay the salaries of staff on those projects. CEO 2 stated that "*not all the clients paid on time and that created an ongoing challenge for BirdWatch Ireland...*".
- 3.2.26 The Inspectors spoke to the Chairman regarding the cash flow difficulties and they stated that a major problem was that the cash advances received for MarPAMM and CABB had not been used for the restricted purpose for which they were provided, they were used as "*general funding*". The Chairman stated that the Board "*was not aware that cash advances had been provided by MarPAMM and CABB. They were aware that these were problematic... and they had a difficult cash flow profile... but they weren't aware that cash advances had been provided and not directed as they should have been*". The Inspectors note that CEO 2 contends that the Chairman's comments are false.
- 3.2.27 The Inspectors queried the cash flow issues with Former Accountant 2. Former Accountant 2 stated that the cash flows prepared prior to their tenure didn't make sense so they produced new ones and it was then that the issues with project funding were noticed. Former Accountant 2 stated that BirdWatch got advanced funding of approximately €480,000 for projects (CABB, MarPAMM and Roseate Terns) that hadn't incurred any costs yet, but the money was not in the bank account. Former Accountant 2 stated that "*it was just a lack of financial control*" that had allowed this money to be used for other purposes even though it should have been ring-fenced.
- 3.2.28 Former Board Member 1 stated that "*restricted funds were flowing around the organisation in a way that they probably shouldn't have been... We thought, on the Board... that these restricted funds were being correctly accounted for. But they weren't. We only found that out afterwards*". The Inspectors note that CEO 2 contends that the Board Member's comments are incorrect.
- 3.2.29 Former board Member 4 was asked what their understanding of restricted funding was and stated "*it was reported on at every Board meeting and I'd be honest, I don't know what it means. I mean, I have a broad understanding. It is restricted as in not allocated to a particular funding. Not allocated to a particular project*". The Inspectors queried whether Former Board Member 4 recalled a discussion around inappropriate spending of restricted funding. Former Board Member 4 stated "*yes. Money was taken from a project and used to pay for staff...That it shouldn't have happened, and that the funder needed to be made aware... It was a time there was a cash flow issue is what we were told...*".

- 3.2.30 The Inspectors queried who made the decision to use the restricted funds to pay staff salaries. Former Board Member 4 stated that it was CEO 2 and that they did not go to the Board for prior approval.
- 3.2.31 At interview, the Former Chair was asked what their awareness of restricted funding was and the inappropriate spend that was noted in the Board minutes. The Former Chair stated "*I'm not aware of any inappropriate spend*". The Inspectors asked what they understood restricted funds to be and how BirdWatch treated them. The Former Chair stated "*restricted funding is when a donation or monies are given for a specific purpose and they must be used for that purpose...My understanding of what was done was that they would basically debit the bank and credit the restricted fund account for that cost centre*".
- 3.2.32 The Inspectors asked whether the Former Chair was aware that funding that should have been spent on particular projects was spent elsewhere in BirdWatch. The Former Chair stated that the cash was received and used somewhere else but "*that's not necessarily the same thing*" because it would still have been recorded as restricted in the balance sheet. The Former Chair was of the understanding that every project has a restricted income account in the accounting system.
- 3.2.33 The Former Chair stated that as far as they were aware, funding for a project would only be spent on that project. The Inspectors highlighted the MarPAMM, CABB and Roseate Terns projects specifically, that the funds designated to those projects were spent elsewhere and that the terms of some of those projects actually required separate bank accounts to be set up. The Former Chair stated that as far as they were concerned, it was isolated in the financial systems and they trusted that this was the case. The Former Chair also stated "*I guess it was down to cash flow. We needed funds*".
- 3.2.34 At interview, the Head of Admin & Finance stated "*from a financial perspective, when we receive money for Project 1, we use that money to pay expenses for many other projects... I had no choice...*" and that for a lot of the time, they were worried whether they could afford to pay salaries and suppliers as they were always short of cash.
- 3.2.35 The Inspectors also spoke to the Head of Dev & Comms who acted as Officer in Charge when CEO 3 was on long term sick leave from November 2020 until CEO 1 was appointed in July 2021. The Head of Dev & Comms stated that before they took on the role of Officer in Charge, they were not aware of the financing of the CABB, MarPAMM and Roseate Terns but would have known about the projects and who was working on them. They were then informed that "*there were huge deficits in terms of the money*" for these projects. The Head of Dev & Comms stated they were involved in meetings with the Assistant Head of Surveys and the funders. After these meetings the Head of Dev & Comms saw the contracts for the

projects and saw that the money should have been ringfenced and paid into separate bank accounts.

- 3.2.36 The Head of Dev & Comms stated that “*the big meetings were all for MarPAMM. I think with CABB, one of the main reasons it was a little easier on us was because one of the main partners is the RSPB... who work with us closely, and they obviously wanted to assist us... I know with AFBI we came to an arrangement...*”. The Head of Dev & Comms stated that the MarPAMM project was put on hold and then restarted because AFBI said “*you have to continue this project because the only way you can pay the money back is to submit claims for your expenditure and then we will retain some of that money*”.
- 3.2.37 The Inspectors queried how it was established that there was a deficit in relation to the funds. The Head of Dev & Comms stated that their understanding was that there was no money left in the bank accounts, it was in overdraft, and it wasn’t possible to pay the ongoing expenditure costs of the projects. The Head of Dev & Comms stated “*I don’t know how the figures came about. By the time that I saw them they had been agreed*”.
- 3.2.38 The Inspectors spoke to the Project Manager for MarPAMM. The Project Manager stated that there was about six months where they had to withdraw from the MarPAMM project due to cash flow issues. During that period of six months the Project Manager was taken on as agency staff member by AFBI to keep the project going until such a time as BirdWatch could recommence their work.
- 3.2.39 The Inspectors spoke to the Assistant Head of Surveys who was in charge of the budgets for CABB, MarPAMM and Roseate Terns. The Assistant Head of Surveys stated that they would be responsible for forecasting the budget and spend but didn’t have “*oversight of the bank accounts*”. As an example, the Assistant Head of Surveys stated “*So for the projects CABB and MarPAMM, for example, SEUPB, who are the overall managers of those projects, they have a reporting system... whereby all the spend for the quarter is uploaded onto their electronic management system (EMS) and we claim the spend retrospectively every quarter. So I would have been in charge of overseeing the EMS process whereby we are declaring what we have spent on a line-by-line basis and then the SEUPB carry out an audit of the spend for the project every quarter and then they reimburse us or they deduct any spend that was ineligible from the claim and then we will get the money back via the lead partner in the SEUPB, SEUPB pay the lead partner and the lead partner pays us basically... CABB is a 5-year project for example. MarPAMM is a 4-year project... So yes, you have got a clearly defined amount of money allocated to you at the start which is profiled out per year. So you know exactly when the project is coming to an end and when your large chunks of spend are occurring over the course of that project*”.

- 3.2.40 The Assistant Head of Surveys also stated that it is possible to request an advance from the Lead Partner and they request it from the funder. Also, any contracts are signed by the CEO of BirdWatch who also receives the budgets for the projects in order to plan for the year. The Assistant Head of Surveys also stated that there is an “*automatic allocation of 15% of your salary costs as overheads*” in the budgets dictated by the funder.
- 3.2.41 The Assistant Head of Surveys stated that for CABB and MarPAMM BirdWatch were allowed to drawdown “*20% of the total budget as an advance*”. They added that for MarPAMM this was €140,000 and this was received in two quarters in 2018 or 2019. However, the Assistant Head of Surveys stated that as part of the grant conditions “*either you had to have a separate bank account or you had to have a system of management such as cost centre codes and... it was my understanding that we operated this system of cost centre codes so I was absolutely shocked whenever that decision was made to suspend CABB and MarPAMM*”. The Assistant Head of Surveys stated that they didn’t know the funds were not ringfenced.
- 3.2.42 At interview, the Inspectors asked the Former Auditor how restricted funding was dealt with in the accounts. The Former Auditor stated that the information was provided to them and categorised by BirdWatch. The Inspectors queried whether BirdWatch was able to track the spending of restricted funds. The Former Auditor stated yes, because “*they were certified*”. The Former Auditor stated that BirdWatch had to provide certificates of the expenditure in order to draw down the funds. The Former Auditor stated that they used the nominal accounts from BirdWatch’s financial system for posting the financial statements.
- 3.2.43 The Inspectors found that due to a lack of appropriate financial controls, insufficient oversight of funding arrangements, contracts and budgets for projects and a lack of compliance with same, restricted funds were not ring fenced for their designated projects but were utilised as general funding for BirdWatch overheads. This was in breach of contractual conditions and resulted in significant impacts on these projects.

### **3.3 Recruitment and Redundancies**

#### **Recruitment**

- 3.3.1 The Inspectors reviewed the BirdWatch Employee Handbook, dated July 2016. Section 8 of this handbook documents the procedures for recruitment. The procedures include the following requirements:
- Posts over three months or less than three months but planned well in advance should be advertised on the BirdWatch website and through free job listing sites.
  - Posts under three months or short-term contracts should be advertised internally and by contacting known external candidates.
  - A minimum of two weeks should be given for candidates to apply.

- All applications should be assessed using a scoring system by the recruiting project officer with interview candidates being approved by their line manager. However, a scoring system or template for use in interview is not provided in the procedures.
  - The interview panel should include no less than two staff at a higher level than that of the incoming role.
  - Senior posts may require individuals from the Board or the CEO to be present on the panel.
- 3.3.2 The Inspectors note the absence of any policies or procedures relating to the storage and safe-guarding of personnel files for staff. The Inspectors also note that there is not a centralised or consistent method of maintaining and accessing personnel files.
- 3.3.3 The Inspectors sampled six employees who were employed in the period under review. For these employees, the Inspectors requested contracts, the advertisement of the role, the scoring system used at interview, evidence of interviews and Board minutes relating to the recruitment. Out of these six employees, the Inspectors noted the following:
- Contracts for three employees could not be provided.
  - The advertisement of roles for four positions could not be provided.
  - The scoring system used for applications was not provided for four applicants.
  - Evidence of interview was not provided for four applicants.
  - Board minutes do not show the approval of employment for one of the six positions.
- 3.3.4 The Inspectors specifically considered resourcing of the accountant role within BirdWatch, due to its importance to the recording of accounting transactions and the implementation of financial controls in a charity with turnover in excess of €1.5m per annum. The Head of Admin & Finance employed in BirdWatch between 10 April 2017 and 29 November 2019 did not hold an accountancy qualification from any recognised accountancy body. They were replaced by a qualified accountant on a part time basis (two days per week) until 19 December 2019. Thereafter, another accountant was in place for 11 days until 20 January 2020. Former Accountant 2 was then employed for 2.5 days per week on a fixed term contract from 20 January 2020 until 17 February 2021.
- 3.3.5 Since 17 February 2021, BirdWatch has not had a qualified accountant employed. CEO 1 confirmed at interview that they have an external accounting firm assisting at present with producing quarterly accounts. The Chairman stated at interview that BirdWatch needs an accountant but that it's an issue because they can't afford an accountant and that the Board took the view that it was more important to have a CEO.

### **Redundancies**

- 3.3.6 The Inspectors reviewed the policies and procedures available from BirdWatch and confirmed that there are no policies for redundancies or the calculation of ex-gratia payments. Statutory redundancy payments are dictated by the Redundancy Payments Act 1967, as amended.

- 3.3.7 During the period 1 January 2016 and 23 August 2021, four staff were paid redundancy payments. CEO 2's redundancy is dealt with in Section 3.1 of this report.
- 3.3.8 The three remaining staff who were paid redundancies in that period are the COO, the Head of Admin & Finance and Former Accountant 1. The Inspectors reviewed the accounting records, bank statements, financial statements, redundancy calculations and Board minutes for each redundancy.
- 3.3.9 The COO was made redundant on 3 February 2017. In July 2016, Board minutes stated that it was agreed that CEO 2 would enter into discussions with the COO regarding a redundancy package. Board minutes of 21 September 2016 state that "*a severance agreement with (the COO) has now been agreed and signed...*". The Board minutes do not provide any details of the package or the amount that was agreed upon.
- 3.3.10 Through review of the accounting system and bank statements, the Inspectors confirmed that €40,000 was paid to the COO on 3 February 2017. This was calculated as €31,584 statutory redundancy and a €8,416 ex-gratia payment. BirdWatch were unable to provide evidence of the calculation of the ex-gratia payment. This amount is documented in the 2017 Financial Statements for BirdWatch as a redundancy.
- 3.3.11 A letter to the COO, dated 3 February 2017, confirms their redundancy payment of €40,000 and also states that they received a car and laptop belonging to BirdWatch as part of their redundancy. Under FRS102 Section 28, redundancies should be recognised as an expense in the profit and loss immediately at the best estimate of the expenditure that would be required to settle the obligation. The cost to BirdWatch associated with the inclusion of the car and laptop in the redundancy were not included in the 2017 Financial Statements. It has not been possible to establish what the cost of these assets was as the fixed asset register at that time was incomplete.
- 3.3.12 The Inspectors note that the 2016 Audit Management Letter states that a tangible Fixed Asset Register ("FAR") needs to be implemented and maintained. The 2017 Audit Management Letter states that the FAR requires greater detail. The 2020 Audit Management Letter states that there is a detailed fixed asset register maintained and they recommend that BirdWatch review this and ensure all assets owned by BirdWatch are on the FAR. The detailed FAR register provided to the Inspectors does not include the previously held assets (including motor vehicles) that were disposed of or provided as redundancy. The FAR for 2020 only contains details of the 2020 assets, rather than any historic data. Therefore, it is unclear what the depreciation charges were and what the disposal values were.

- 3.3.13 At interview, the COO was asked whether the laptop belonging to BirdWatch was cleansed before it was handed over to remove any confidential information and BirdWatch files. The COO stated that everything was removed from it by an external company.
- 3.3.14 The Inspectors queried the COO's redundancy package with CEO 2 at interview. CEO 2 stated that "*the Board agreed both the process and the payments to be made...*".
- 3.3.15 The Inspectors also queried the car and laptop belonging to BirdWatch with the Former Chair who stated "*I guess those were... additional elements to reflect the work (they) had done over the years...*" and that they didn't know whether the laptop had been cleansed but it should have been.
- 3.3.16 The Head of Admin & Finance was made redundant on 30 November 2019. The Board minutes of 25 September 2019 state "*it was agreed that the role of Head of Finance and Administration be made redundant as key elements of this role form part of the Job Specification for any incoming CEO... It was noted that the statutory redundancy would amount to approximately €3,800. However, (CEO 2) was duly authorised to negotiate an ex-gratia redundancy payment of up to €15k, subject to agreement that this would represent settlement in full*". The Board minutes from 23 October 2019 state that the Head of Admin & Finance would be leaving in November 2019 with a payment of €10,000 being agreed.
- 3.3.17 Through review of the accounting system and bank statements, the Inspectors confirmed that €10,000 was paid to the Head of Admin & Finance on 29 November 2019. BirdWatch were unable to provide evidence of the calculations of the statutory and ex-gratia payments. This payment of €10,000 is documented in the 2019 Financial Statements for BirdWatch as redundancy.
- 3.3.18 In interview, the Inspectors queried the redundancy payment to the Head of Admin & Finance with the Former Chair. The Former Chair stated that initially they were receiving results from the Head of Admin & Finance, but over time it became clear they weren't getting what they needed "*so we authorised (CEO 2) to come up with a severance package so we could get another accountant on board...*". The Former Chair also stated at interview that the Head of Admin & Finance was a qualified accountant. However, the Inspectors confirmed that the Head of Admin & Finance did not hold an accountancy qualification from any recognised accountancy body but was in their own words "*qualified by experience*".
- 3.3.19 At interview, the Chairman stated that "*the Board felt it was a redundancy situation because we felt we could not afford to replace (the Head of Admin & Finance) as a full-time professional accountant*". The Chairman also stated that the Head of Admin & Finance was replaced by Former Accountant 2 who was employed four days a week. However, the contract for Former Accountant 2 provided by BirdWatch states they were employed for 2.5

days a week. In interview, Former Accountant 2 stated they were originally employed full-time and then moved to part-time.

- 3.3.20 At interview, the Head of Dev & Comms stated that the redundancy of the Head of Admin & finance was “*strange*” because as far as they were aware, the position wasn’t redundant, BirdWatch needed an accountant and one was employed “*immediately afterwards*”.
- 3.3.21 The Head of Admin & Finance stated their redundancy was due to BirdWatch reducing their role to a part-time position.
- 3.3.22 Former Accountant 1 was made redundant on 29 September 2017. The Inspectors were unable to identify any discussions regarding the redundancy of Former Accountant 1 in the minutes of Board meetings.
- 3.3.23 Through review of the accounting system and bank statements, the Inspectors confirmed that €5,306.40 was paid to Former Accountant 1 in two transactions on 27 September 2017 and 11 October 2017. This was calculated as €5,306.40 statutory redundancy. This amount is documented in the 2017 Financial Statements for BirdWatch as redundancy.
- 3.3.24 CEO 2 stated at interview that Former Accountant 1’s redundancy “*was based purely on statutory redundancy*”.
- 3.3.25 The Former Chair stated that Former Accountant 1 “*was a part time employee...so we felt we could probably create space for a full-time accountant...*”.
- 3.3.26 The Inspectors found a lack of documented redundancy policies and procedures, and insufficient documentation of redundancy packages agreed. A redundancy can only arise where a position no longer exists. It is not clear if redundancy situations actually arose as the positions where people were let go were subsequently filled. The Inspectors also noted a number of ex-gratia payments made by BirdWatch as part of redundancy arrangements, but were unable to determine the basis for these payments or any evidence of the relevant calculations.

## **3.4 Financial Position**

### **Going Concern**

- 3.4.1 An anonymous concern was received by the Charities Regulator in September 2019 stating that BirdWatch was insolvent. The Charities Regulator reviewed the audited financial statements of BirdWatch for the year ended 31 December 2019 and noted that the auditors

had included an emphasis of matter in relation to going concern. A letter was sent to BirdWatch by the Charities Regulator on 7 April 2021, querying the emphasis of matter in the auditors' report, requesting a copy of the Crisis Management Plan and also with some queries regarding vehicle ownership and petty cash expenditure. On 26 April 2021, BirdWatch responded stating that they were aware of the financial difficulties and had initiated a Crisis Management Plan and a Cost Saving and Business Recovery Plan.

- 3.4.2 The Inspectors reviewed the financial statements for the year ended 31 December 2019. The audit report stated, "*there is a material uncertainty related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern...*". The financial statements showed that BirdWatch incurred a net loss of €290,659 in that year and had net current liabilities of €427,759.
- 3.4.3 Note 4 to the financial statements for the year ended 31 December 2019 states that the "*directors acknowledge the poor financial performance*" and were "*alerted in May 2020 to underlying financial challenges within the organisation*".
- 3.4.4 The Inspectors reviewed the financial statements of BirdWatch from 2016 to 2020 and noted the following:

<b>Financial Year Ended</b>	<b>Income</b>	<b>Direct Costs</b>	<b>Surplus/Deficit</b>	<b>Net Assets</b>
<b>31 December 2016</b>	€1,990,186	€1,636,453	€353,733	€1,775,619
<b>31 December 2017</b>	€1,749,803	€1,727,920	€21,883	€1,797,502
<b>31 December 2018</b>	€2,058,778	€1,899,074	€159,704	€2,077,206
<b>31 December 2019</b>	€1,672,273	€1,962,932	- €290,659	€1,786,547
<b>31 December 2020</b>	€1,783,423	€1,864,093	- €80,670	€1,705,877

- 3.4.5 Between 2018 and 2019, the inspectors noted significant increases in expenditure in:
- Wages and salaries – 40% increase
  - Printing, postage and stationery – 88% increase
  - Development and event costs – 63% increase
  - Computer costs – 34% increase
  - Leasing of office equipment – 41% increase
  - Data preparation – 99% increase
  - Legal and professional – 69% increase
- 3.4.6 The Inspectors reviewed a sample of the management accounts provided to the Board. Three months were selected from each year between 2016 and 2020, and the following were noted:

- In March 2016 there were no management accounts or cash flows presented to the Board. In July 2016, while management accounts were presented to the Board, the minutes contain no evidence that these were discussed.
- Management accounts were presented to the Board for the three months sampled in 2017. The Board noted in July 2017 that BirdWatch was still experiencing serious cash flow issues. The Bank of Ireland overdraft was to be converted to a loan and short-term financing was discussed with AIB.
- In March 2018, no cash flow was included in the management accounts and the Inspectors noted that large variances in the budget vs actuals were not documented as discussed by the Board. In October 2018, the Board minutes stated that the deteriorating financial position gave rise to serious concern and that BirdWatch needed to stop spending and start earning. The Board minutes stated that easily controllable costs like travel and subsistence needed to be curtailed.
- In 2019, management accounts were presented to the Board for the three months sampled. In May 2019, the Board minutes noted that the figures presented were seven weeks old. The Inspectors noted there were also significant variances in the income against the budget projections, with €187,000 less received in income as against what had been budgeted. The minutes do not contain evidence that these variances were discussed.
- In 2020, management accounts were not available for some Board meetings. In October 2020, the Board noted that there had been no management accounts presented since April 2020. No further management accounts were presented to the Board in 2020. The management accounts for April 2020 did not contain cash flows. The Board also stated in the April Board minutes that the budget had been overly optimistic and that some grants had not been billed. At interview when queried about the Board's response to the lack of financial information one Board Member noted that they were voluntary board members "*trying to do the best we can*".

- 3.4.7 Section 2.2 of the Governance Handbook of BirdWatch documents the financial controls related to budgeting and management accounts. Section 2.2c states that monthly management accounts are to include income, expenditure, cash flows and investments. Appendix E of the Governance Handbook also notes the responsibilities of the Board in relation to ensuring adequate accounting records and the approval of management accounts and that these responsibilities cannot be delegated by the Board.
- 3.4.8 During 2019, the management accounts presented to the Board showed a small surplus in January and then proceeded to show Year To Date ("YTD") income v. expenditure deficits to September 2019 of €151,000. In November of that year, there were no monthly accounts presented to the Board and the Head of Admin & Finance left at the end of November. In their CEO report for December 2019, CEO 2 noted an updated cash flow report was presented to the Board that showed a cash balance of €175,000 less than reported two weeks previously. CEO 2 stated there was "*no supporting explanation*" for this. The actual loss for the year ended 31 December 2019 per the audited financial statements was €290,659.

- 3.4.9 On 1 April 2020, CEO 2 was replaced by CEO 3. The CEO report from April 2020 stated that a new accountant was appointed in January 2020. CEO 3 stated that the ledgers for the year ended 31 December 2019 contain “extensive analysis and balance errors” and the bank account “contains unreconciled errors”. CEO 3 also stated that the audit would have to be deferred until July / August due to the errors. The Board agreed to a forensic analysis of the financial situation to determine the cause of the “current predicament”. However, the Inspectors found, this has not occurred to date.
- 3.4.10 The Inspectors found that issues which could have alerted the Board to possible going concern issues such as management accounts not up to date, lack of timely provision of financial information and discrepancies in cashflow information were not sufficiently challenged by the Board.

#### **Crisis Management Plan and Business Recovery Plan**

- 3.4.11 The Inspectors were provided with a Crisis Management Plan dated June 2020. This plan was developed by CEO 3 in order to present to the Board a range of options to address the cash flow situation. The introduction in the document notes that in May 2020, BirdWatch’s bank account did not have the funds necessary to pay the full amount needed for staff salaries and a transfer of €18,000 from the Curlew EIP account was made. The Plan noted that this was in breach of the written agreement of the project and also that it was repaid three days later.
- 3.4.12 The Crisis Management Plan listed 25 options for boosting income, including the following:
- Securing more projects with higher margins
  - Enhanced credit control with debtors
  - Review of direct debit payments payment of invoices rather than paying in full immediately
  - Regularising incoming payments and revising the bank accounts used
  - New Purchase Order (“PO”) system
  - Paying down the Bank of Ireland overdraft facility
  - Revised payment procedures for CABB Project cash advances
  - Tighter controls on credit card usage and expense claims
- 3.4.13 The Crisis Management Plan listed four options for cutting costs, including the following:
- Restricting and monitoring expenditure
  - Postponing selected activities or full projects
  - Closing down specific projects
  - Staff options including voluntary severance, reducing staff to a three / four-day week, temporarily reducing salaries, temporary lay-off of selected staff and redundancies.
- 3.4.14 The Crisis Management Plan noted that an interest free loan was applied for with the RSPB to ensure financial liquidity until mid-September 2020. Board minutes from 26 August 2020

state that a bridging loan was received from the RSPB. The Inspectors had sight of a signed letter of intent from the RSPB agreeing to advance one hundred thousand pounds (stg£100,000) by 12 August 2020 to BirdWatch Ireland. However, the Inspectors note that €100,000 was received into BirdWatch's bank account on 11 August 2020 from RSPB. This loan was secured against a bequest from the United Kingdom that was expected to be received. BirdWatch committed to fully repaying the loan when the bequest was received.

- 3.4.15 The Board minutes of 26 August 2020 also state that a further stg£100,000 loan was available from the RSPB depending on two pieces of work being carried out by an external reviewer. The work would be Recovery Planning, Financial Modelling and Projections for 2020 and 2021, and a Financial Forensic Analysis 2016 to 2019. The RSPB advanced an initial stg£10,000 on 11 August to pay for this. A financial analysis was not completed by the external reviewer due to the issues with the provision of financial information and this requirement was removed from the loan agreement. Instead, the external reviewer was engaged by BirdWatch to devise a Business Recovery Plan.
- 3.4.16 The Business Recovery Plan drafted by the external reviewer and dated September 2020 was provided to the Inspectors. The Inspectors note that this is in draft format as further information required to finalise the report was not provided to the external reviewer. The external reviewer also noted six limitations in their report including not having access to the accounting software, restricted access to Former Accountant 2 and outstanding queries from 31 August 2020.
- 3.4.17 The Business Recovery Plan contained the following initial findings:
- The projected cash flow for BirdWatch to December 2020 showed a deficit of €927,000.
  - The current overdraft position of BirdWatch was approximately €150,000.
  - Restricted advances of approximately €504,000 had been spent contrary to the contractual obligations.
  - Spending controls appeared to be weak.
  - Adherence to budgets on projects appeared to be weak and unsanctioned spend went unchallenged.
  - Restricted income controls appeared to be weak.
  - BirdWatch had an unclear management structure and there was a lack of performance reviews.
- 3.4.18 The Business Recovery Plan made seven recommendations. From these recommendations, CEO 3 developed a Cost-saving Plan to present to the Board. The Cost-saving Plan recommended seven actions including introducing a four-day week for staff, the shutdown of projects for a period of at least six months, the termination of projects and the sale of land.

- 3.4.19 These recommendations were discussed at the Board meeting on 9 September 2020. The minutes for this meeting state that while they considered the Business Recovery Plan worthwhile, the Board didn't believe it told them anything that they didn't already know. The Board were disappointed "*that it lacked prescriptive recommendations*". The Board agreed to implement a four-day week for all staff, terminate three staff members, and suspend the CABB and MarPAMM projects.
- 3.4.20 The Board minutes of 23 September 2020 state that the four-day week "*would not apply to all staff*". The minutes state that staff whose salaries were fully covered by external sources would not be included and that Former Accountant 2 worked part-time and had voluntarily offered to reduce their salary by 20%. At this same Board meeting, two employees of BirdWatch, on behalf of all staff, read out a statement to the Board regarding the financial situation wherein they stated it was their belief that "*the Boards lack of financial oversight has brought us to the brink of insolvency*". CEO 3 also informed the Board that the request for a second bridging loan from the RSPB had been declined.
- 3.4.21 At interview, the Head of Admin & Finance stated that they prepared a reporting system for each department so that every month they would be aware of their spending and their budget. This information was provided to CEO 2 to present to the Board. The Head of Admin & Finance stated that they also created a cash flow projection every month for CEO 2 and CEO 2 managed the communication with the Board. The Head of Admin & Finance stated that it was clear there were cash flow issues as the overdraft was increasing over time but no action was taken until 2019.
- 3.4.22 At interview, Former Accountant 2 stated that when they joined in January 2020, they discovered that BirdWatch had underpaid their Revenue PAYE liability from 2019 to the tune of about €85,000 and that the BirdWatch shop VAT returns had not been completed for the previous three years. Former Accountant 2 clarified that regarding the PAYE liability, the calculations and returns had been submitted to Revenue, but no payments were made. Former Accountant 2 stated that they negotiated with Revenue to arrange a phased repayment schedule.
- 3.4.23 Former Accountant 2 also stated that they noticed issues with the cash flows not tying back to the bank statements so they developed cash flows from scratch to show a more accurate reflection of funds. Former Accountant 2 stated that once they completed this exercise they noticed that some of the advance payments had been utilised for purposes other than those designated by the funders.
- 3.4.24 Former Accountant 2 stated that they attended Board meetings from March to October 2020 and they stopped going as they were the only one there to discuss the finances, the heads of projects were not involved.

- 3.4.25 The Head of Dev & Comms stated at interview that they would prepare budgets for their area and they were “*taken aback*” when a budget they prepared had been changed to include extra income of €30,000 that wasn’t approved by them.
- 3.4.26 CEO 2 stated that the lack of financial reports presented to the Board in 2019 was due to the workload of the Head of Admin & Finance. The Inspectors queried whether the Board were provided with information during 2019 that would have indicated the state of the finances. CEO 2 stated that they would have informed the Board that the “*organisation was extremely tight on cash. That matter was constantly brought up by the actual Board…*”. CEO 2 stated that the Board would question what was being done about the financial situation and “*how many weeks do we actually have left before funds come in*”.
- 3.4.27 The Inspectors asked CEO 2 at what point in 2019, were the Board made aware of the loss they were facing. CEO 2 stated they would have informed the Board of a loss of approximately €95,000 in about September or October 2019. Although CEO 2 remained in their post until March 2020, CEO 2 stated they couldn’t comment on the fact that a loss of €290,000 was recorded in the financial statements for 2019 without knowing the background to the figure.
- 3.4.28 The Inspectors asked the Former Chair whether, during the course of 2019, they were aware that BirdWatch was heading for a loss of almost €300,000. The Former Chair stated that they were aware in 2019 “*there were cashflow considerations*” but that the figure presented to the Board was a loss of €100,000 so they “*were shocked*” when they discovered the extent of the losses. The Inspectors note that management accounts for the seven months ending 31 July 2019 which were circulated in advance of the 25 September 2019 Board meeting showed a year to date deficit of €113,500
- 3.4.29 Former Board Member 4 stated at interview that the Board was shocked and that this loss of €290,000 “*hadn’t been brought to the Board’s attention before that*”. The Inspectors note from a review of minutes of the Board meeting held on 19 February 2020 that CEO 2 “*also indicated that the outturn for 2019 would, hopefully, be better than the loss of €90k originally envisaged*”.
- 3.4.30 The Inspectors note from review of Board meeting minutes that at the Board meeting of 22 July 2020 CEO 3 reported that “*Despite early indications from the CEO’s predecessor of a small surplus, the final outcome (for 2019) indicated a significant loss of €336k, the largest ever suffered by BWI*”. The Inspectors note that CEO 2 contends that they provided CEO 3 with handover notes on 1 April 2020 which stated that the 2019 results should be a loss of less than -€50k.

- 3.4.31 The Inspectors found that the Board did not respond in a timely manner to the Crisis Management and Business Recovery plans, and that they did not have proper financial controls and reporting in place at the time to make them aware that BirdWatch was incurring a loss of €290,659 in 2019.

#### **UK Bequest**

- 3.4.32 In April 2019, BirdWatch was made aware of a potential donation in the form of a bequest. A letter provided by the Former Auditor to the Inspectors from a solicitor based in the UK, dated 11 April 2019, stated that BirdWatch was a named beneficiary of a UK will and that BirdWatch was entitled to a 10% share of the estate worth “*in the region of £187,000*”. The letter also states that the assets of the deceased “*are mainly held in bank accounts*”.
- 3.4.33 A further letter, dated 27 August 2020, states that “*the bequest to BWI (Birdwatch) is expressed as a 10% share of the residue for BWI's general purposes and is likely to be in the region of £187,000*” and also that the funds had been gathered by the executors, “*who expect to make an initial distribution of £100,000 to BWI in roughly the next two weeks*”.
- 3.4.34 This bequest was included in the 2018 Financial Statements as income of €209,945. The Former Auditor stated that under FRS102 a donation should be recognised at the time the beneficiary becomes entitled to it and that they received technical guidance from ACCA at the time confirming this. They received the April 2019 letter from a solicitor based in the UK as part of the audit confirmation. The second letter (of August 2020) from the same UK based solicitor was received in relation to the 2019 Financial Statements as the bequest had not been received by BirdWatch at that stage. The 2019 Financial Statements were signed off on 3 September 2020 so it was expected, as stated by the UK solicitor, that the first monies would be received shortly after that.
- 3.4.35 There is a handwritten calculation on the letter received from the UK solicitor stating that stg£187,803 at an exchange rate of 1.1179 would give a value of €209,945 for the bequest. It is unknown who wrote this calculation or where the amount of stg£187,803 came from.
- 3.4.36 The bequest is noted in the CEO Report to the Board in April, May and August 2019. The March 2019 CEO report states that the bequest is currently being processed by the UK solicitor and the Board will be kept informed of the progress. The same was stated in the May 2019 CEO Report.
- 3.4.37 In the August 2019 CEO Report, it states that the bequest is expected to be received in November and that it is proposed that this will fund the position of an Agricultural Policy Officer for two years, as well as working capital and reserve work.

- 3.4.38 Although the bequest is mentioned in the CEO Reports, there does not appear to be any discussion of the bequest in the Board minutes.
- 3.4.39 The Inspectors received screenshots of BirdWatch's accounting system showing that €135,981.50 was received by BirdWatch on 25 September 2020 and €56,495.98 was received on 21 April 2021. The Inspectors also confirmed receipt of these amounts through review of the bank statements.
- 3.4.40 The Former Auditor stated at interview that the UK bequest provided a "*significant contribution*" towards the 2018 Financial Statements presenting a positive situation, showing as they did a surplus of €159,704. Without the inclusion of the bequest, the 2018 Financial Statements would have shown a deficit of €50,241.
- 3.4.41 At interview, the Inspectors queried what role the Head of Dev & Comms had in the bequest process. The Head of Dev & Comms stated that the bequest was based on the sale of various properties and that "*the actual amount of that was fairly speculative*". The Head of Dev & Comms stated that every time CEO 2 mentioned the amount of money, "*it would increase*".
- 3.4.42 CEO 2 stated that the bequest first came to their attention in December 2018. They received advice from the accountancy body in Ireland and the Former Auditor to confirm the amount could be included in the accounts for 2018. They also stated that by the time they had left, the money had not been received.
- 3.4.43 The Inspectors noted that without this bequest being included in the 2018 Financial Statement, BirdWatch would have made a loss and asked the Chairman whether this raised any alarm with the Board. The Chairman stated that CEO 2 had received advice from an accounting body that stated it was correct to include it, and that they were of the impression that it was a cash based bequest. The Chairman stated that had they realised it was property based they "*would have been apoplectic at the thought of it being included in the accounts.*"
- 3.4.44 The Inspectors found that as the bequest was property based the amount could not have been measured reliably as is required by FRS102, therefore it should not have been recognised in the financial statements. It is noted however that the information provided by the UK solicitor led BirdWatch and their auditors to understand that the bequest was cash based.

### **Christmas Party**

- 3.4.45 The Charities Regulator identified receipts of €880 for a Christmas party in December 2019. This was paid for on a BirdWatch credit card. At the time of the Christmas party, BirdWatch was running at a deficit and the 2019 Financial Statements show a loss of €290,659.
- 3.4.46 The Inspectors reviewed the credit card statements and receipts for CEO 2 and confirmed that on 13 December 2019, €880 was spent at a restaurant. These credit card statements were not approved by the Board as required by the Employee Handbook.
- 3.4.47 The CEO Report from December 2019 states that "*the staff Christmas party was held last Friday night. Many thanks to (the Chairman) who attended, and also to (the Former Chair) who was unable to attend...An enjoyable night was had by all and it was a nice opportunity to just relax and chat informally with everyone*".
- 3.4.48 CEO 2 stated at interview that they felt it was appropriate for a Christmas Party to happen and that it was motivational for staff.
- 3.4.49 The Former Chair stated that they thought "*the Board did agree that there should be a Christmas party, that people had worked hard and it was a modest outlay...*".
- 3.4.50 The Chairman stated at interview that a Christmas party costs €1,000 to €1,500 but it would cost a lot more to give pay increases to staff and a Christmas party was "*a cheap way of saying thank you but we can't give you a pay increase*".
- 3.4.51 The Inspectors found that the expenditure on the Christmas party was not an appropriate use of charitable funds at a time of cash flow difficulties.

## **3.5 Governance and Financial Control**

### **Financial Control Policies and Procedures**

- 3.5.1 The Inspectors reviewed the Governance Handbook and Employee Handbook of BirdWatch. There are no other policies or procedures in BirdWatch that cover financial controls or processes.
- 3.5.2 The Governance Handbook states the following:
- Section 2.2 Making sure there are appropriate internal financial and management controls:
    - It is the policy of BirdWatch to prepare monthly management accounts detailing income, expenditure, cashflows and investments as part of reporting against the agreed Operational Plan. Income and expenditure are reported versus the agreed budget.
    - The following financial management procedures, systems and controls are in place:
      - Annual budget signed-off by the Board
      - Monthly Management Accounts including income, expenditure, cashflows and investments
      - Annual Audited Accounts
      - Review and report on draft Audited Accounts by Board Audit & Risk Committee
      - Sign-off of all grants and donations by the Board
      - Sign-off of all salaries, including weekly, fortnightly and monthly payrolls, by CEO
      - Sign-off of all payments for goods, services and expenses by the CEO
      - Sign-off of all credit card statements by CEO
      - Authorisation of all Capital Expenditure or payments in excess of €5,000 by the Board
      - Review and sign-off of any new full time permanent staff member by the Board
      - Review and sign-off of CEO expenses and credit card statements by the Board
      - Review and sign-off by the Board of any Tender or Contract in excess of €50,000 or requiring appointment of more than two Fixed Term contract staff.
    - Appendix E Schedule of Matters Reserved that cannot be delegated by the Board:
      - Financial reporting and controls
      - Approval of the Annual Report and audited accounts, management accounts and periodic reports, and approval of any significant changes to accounting policies.
      - Ensuring an adequate system of internal control and risk management.
    - The role and duties of the Audit & Risk Committee is set out in the Section on Board Committees which states:
      - The Audit & Risk Committee will consist of not less than three members. A quorum will be two members. In the interests of good governance, the Chairperson will not be a member of the Audit & Risk Committee. No one other than the audit committee members shall be entitled to attend audit committee meetings. The Chairperson, Board member, CEO, representatives of the external auditor, or other persons shall attend meetings at the invitation of the committee. Meetings shall be held not less than once a year. The external auditor may request a meeting if they consider one is necessary

- The duties of the Audit & Risk Committee include to :
    - Monitor and review the accuracy of the financial statements of the organisation;
    - Monitor and review control/risk management systems
    - Monitor and review the effectiveness of the organisation's internal audit role
- 3.5.3 The Inspectors note from documents provided by BirdWatch that during the period under review, only two meeting minutes of the Audit & Risk Committee were held on 10/04/2018 and 10/04/2019. BirdWatch confirmed that no other formal meetings were recorded for this committee. From BirdWatch Board minutes in October 2020, the Inspectors note this committee was disbanded on the basis that such a committee could easily be formed in early 2021 in advance of the preparation of the financial accounts for 2020.
- 3.5.4 The induction process for newly appointed Board members stated that every new Board member is obliged to read and declare familiarity with the following:
- BirdWatch Ireland Memorandum and Articles of Association
  - BirdWatch Ireland Governance Code Statement
  - BirdWatch Ireland Governance Handbook
  - BirdWatch Ireland Strategy.
- 3.5.5 The Inspectors saw no documentary evidence that Board members completed this induction process.
- 3.5.6 The Employee Handbook of BirdWatch states:
- The procedure for claiming expenses including, obtaining line manager approval for expenses, obtaining receipts as evidence, and that expenses should be claimed no later than two weeks after the end of the month.
  - Expense claim forms should not be used for items over €200.
  - BirdWatch credit cards should be used before personal funds are used and paper work must be kept as evidence of spending.
  - Staff are requested to complete separate claim forms for each project.
- 3.5.7 The Inspectors note that there is no separate credit card procedure or policy and that credit card expenditure is not accompanied by an expense claim form.
- 3.5.8 The Inspectors note that there is no policy or procedure for the recording and management of restricted funding.
- 3.5.9 The Inspectors also note that there is no policy or procedure relating to the operation of bank accounts which covers:

Roles and responsibilities, access rights and permissions, authorisation to add or amend bank details, the bank reconciliation process and authorisation to open or close a bank account.

#### **Lack of Timely Financial Information and Lack of Review of Overspending**

- 3.5.10 The Inspectors reviewed the financial information presented to the Board and the minutes of Board meetings between January 2016 and August 2021 and identified the following:
- Minutes from 25 September 2019 state that “*the case for more timely accounts was reiterated*” as the current accounts pack was almost seven weeks after the relevant period end.
  - In November 2019 no management accounts were presented to the Board due to a bereavement in the Head of Admin & Finance’s family.
  - In February 2020 the minutes state that the next management accounts would be available in March. The Board stated “*that it was unacceptable that the Board should have to go for five months without seeing updated key financial schedules such as the P&L and a balance sheet*”.
  - In March 2020, no financial schedules were available. The Board stated that they “*must see regular monthly management accounts*”.
  - Minutes from October 2020 state “*the Board was very unhappy with the lack of concrete financial figures; there was no revised cash flow and there had been no management accounts since April 2020*”.
  - In December 2020, there was no up-to-date financial information as Former Accountant 2 was on sick leave.
- 3.5.11 The Inspectors queried members of the Board at interview on their reaction to the lack of timely financial information. The Former Chair stated that they tried to get management accounts at every meeting but that in 2019 it was difficult to get a budget. The Former Chair also stated that when they received the cash flows that showed negative balances, the Former Chair couldn’t believe that they were so pessimistic, and they didn’t “*believe they were accurate*”.
- 3.5.12 The Chairman stated “*the Board was alarmed. I’d like to think that the minutes would reflect the fact that the Board were anxious to get a grip on information*”. They also stated that they weren’t seeing management accounts or cash flows and when they did receive them, they were alarming. The Chairman stated that they were trying to address the situation by communicating with CEO 3 and the Head of Dev & Comms who was Officer in Charge when CEO 3 was on sick leave.
- 3.5.13 CEO 2 stated at interview that the “*reports were taking slower than expected to produce*” and that it wasn’t possible to have the financials on time every month. They also stated that it was

due to the work load of the Head of Admin & Finance and it meant that the financial reports took longer to produce.

- 3.5.14 Former Board Member 3 stated that the management accounts were not provided on time and were a couple of months behind, so the figures presented were already irrelevant. They stated that this did improve but initially these were not timely. They also noted that cash flow was very tight while they were on the Board.
- 3.5.15 Former Board Member 2 stated that there was "*poor communication*" during their time and they couldn't get proper accounts and data. They also stated that when the Former Accountant 2 started they received more details as Former Accountant 2 had a better grasp of it.
- 3.5.16 Former Board Member 4 stated at interview that the Board were very unhappy with the lack of information being provided and that "*there seemed to be constant problems getting accounts from the staff via the (CEO 2)*". Former Board Member 4 stated that at the start of their tenure, the Board received detailed accounts and they were gone through by the Board at every meeting and then when the Head of Admin & Finance left, they received "*sporadic updates*". They stated that they weren't always complete or on time and that Former Accountant 2 stated they spent a large amount of time trying to fix the accounts.
- 3.5.17 Former Board Member 1 stated that the last cash flow they received was in April 2020 (which indicated an ability to continue paying salaries, taxes and operational costs for the remainder of the year) and that if they had been provided with further information "*it would have been immediately obvious that there was a huge hole*". They also stated they weren't given a cash flow projection by CEO 2.
- 3.5.18 As is noted in our detailed review in the Going Concern section above, the Inspectors reviewed a sample of the management accounts provided to the Board and selected three months from each year between 2016 and 2020. The inspectors noted the following:
- At the March 2016 Board meeting, no management accounts were prepared. In July of the same year, the minutes only states that CEO 2 presented the management accounts pack. There does not appear to be any discussion by the Board of the financial details.
  - In 2017, the Board discussed the cash flow issues and short-term financing possibilities and converting the Bank of Ireland overdraft to a loan.
  - In 2018, the Inspectors noticed large variances in the reported actuals vs. budget and found no evidence that these were discussed or queried by the Board. However, in October 2018, the Board noted serious concern regarding the deteriorating financial position.
  - At two of the Board meetings sampled for 2019, the Inspectors noted significant decreases in income vs. the budgeted income. The Inspectors found no evidence that these issues were discussed or queried by the Board.

- The Inspectors also noted that in September 2019, the cash flow projections showed a year end deficit of €50,500. However, in October 2019 the cash flow projections showed a surplus of €119,300. The Inspectors found no evidence that this discrepancy was discussed or queried at the Board meetings.
- In 2020, management accounts were only available for some Board meetings. Therefore, the Inspectors sampled two months and noted that cost of sales were over budget for March and in May income was down against budget by €361,000 for one division. The Inspectors found no evidence that this was discussed by the Board.

- 3.5.19 From 2016 to 2018, the Inspectors noted a consistent overspend compared to budget in the management accounts. The Inspectors found no evidence that this was appropriately challenged by the Board.
- 3.5.20 The Inspectors also noted that in the months where management accounts were presented, the Board minutes did not show that a thorough discussion was had by the Board. The Inspectors noted that in some months, the minutes only stated that the Board “*acknowledged*” the accounts.

#### **Payment Redirection Fraud**

- 3.5.21 The Charities Regulator identified through a review of Board minutes that BirdWatch was the victim of a payment redirection fraud. The fraud is noted in the Board minutes of 22 April 2020. The fraud was reported to An Garda Síochána but BirdWatch did not notify the Charities Regulator as required by Section 59 of the Charities Act 2009.
- 3.5.22 The Inspectors reviewed the Board minutes of 22 April 2020 and noted that they state that a roofing contractor had carried out work at Kilcolman Reserve at a cost of €4,800. The contractor’s email had been hacked and BirdWatch were provided with fraudulent bank details to pay for the service. The payment was made to the fraudulent bank account and the payment to the contractor had to be made again, resulting in a loss for BirdWatch. This matter was reported to An Garda Síochána and BirdWatch’s bank.
- 3.5.23 The minutes also state that “*new procedures were now in place to verify a creditor’s bank details before payment as the existing process was clearly defective in security terms*”.
- 3.5.24 An email from Former Accountant 2 to CEO 3 and the Former Chair stated that “*there is almost no prospect of recovering the funds*” as the majority of the funds were transferred to Canada.

- 3.5.25 At interview, the Inspectors queried why this was not reported to the Charities Regulator. The Former Chair stated that the Board “*didn’t consider that at the time. I guess we just felt the Guards were appropriate to report it to*”.
- 3.5.26 The Chairman stated that the Board “*weren’t aware that it was a notifiable event*” and that they introduced tighter controls after the incident.
- 3.5.27 CEO 2 stated at interview that there was not any discussion with the Board about whether it should be reported to the Charities Regulator. They stated that “*nobody was happy about it and it was a genuine oversight not to report it to the Charities Regulator... I mean we had a much bigger issue at that particular point in time, one was where did the money go and the second thing was that there was a very unhappy supplier...*”.
- 3.5.28 Former Board Member 4 stated that they couldn’t recall if there was a discussion about reporting the incident to the Charities Regulator but that they wouldn’t have been aware that that was a requirement.
- 3.5.29 Former Accountant 2 stated that there wasn’t a discussion about reporting it to the Charities Regulator.

#### **Alleged Misappropriation of Subscription**

- 3.5.30 The Charities Regulator received an email from a member on 30 August 2021 stating that they had information that there was a possible misappropriation of subscriptions and misuse of members data. The member provided further information on the transactions where funds were taken from their account.
- 3.5.31 Through review of the evidence provided, the Inspectors confirmed that on 27 July 2021, €50 was deducted from the member’s account with the description ‘Bird Conservation’. A further €50 was taken from their account on 25 August 2021 with the same description. The member stated that they expected only €40 membership subscription to be deducted by BirdWatch.
- 3.5.32 On 25 August 2021, the member rang BirdWatch to query the deductions. The member received a response from BirdWatch on 26 August 2021 stating that the second payment would be returned.
- 3.5.33 The member noted that the IBAN for the deductions was for Deutsche Handelsbank Munich and they received a repayment on the 27 August 2021 from PPRO Payment Services, a Luxemburg company.

- 3.5.34 The Inspectors queried this incident with BirdWatch. The Head of Dev & Comms checked with the Former Chair, who assists on IT issues, and they stated “*the membership status changed from Active to Expired on 08/08/2021. The fact that the transaction associated with the original DD from 23/07/2021 is still 'On Hold' (#144481) suggests that the 'webhook' process that sends updates from Stripe to WooCommerce may have failed for some reason somehow causing the system to retry in collecting the DD and therefore causing a duplicate. However, this is speculation on my part and would really require further technical investigation by Total Digital*”.
- 3.5.35 BirdWatch also stated that “*the reconciliation process provides a control that ensures that every payment/pay out made on the web site and processed through Stripe is matched to a transaction in Dynamics. Similarly, any transaction entered directly into Dynamics GP for which a payment/pay out does not exist is also picked up. This ensures that nothing is missed or double counted*”. However, CEO 1 noted that this should not have happened and they need to get to the root cause.
- 3.5.36 In March 2022 the Inspectors were provided by CEO 1 with a report into the incident which had been conducted by Total Digital. The report explained how the issued had occurred, how it had been remedied and what actions had been taken to prevent such incidents from occurring again. From the report it would appear this was what could be termed a “technical glitch” and no intention to defraud was found.
- 3.5.37 The Inspectors queried how membership subscriptions are dealt with. The Inspectors were advised that historically, incoming payments were lodged to either of two bank accounts seemingly at random. BirdWatch stated that the plan was to have membership subscriptions and donations lodged to a single bank account. BirdWatch have notified debtors to make all future payments into a specific bank account and they have revised the bank details on the BirdWatch sales invoices.
- 3.5.38 BirdWatch stated that members have access to their own accounts to renew or take out new memberships themselves. Individuals can also sign up to membership via telephone and are processed directly via a customer online account with a credit or debit card. BirdWatch also receives membership subscriptions by cheque and credit cards via post. Cash is also received occasionally, but this has decreased dramatically since Covid.
- 3.5.39 The Inspectors queried where membership data is held and the protections associated with this. BirdWatch responded that member names are held in the accounts system and online payments system. Membership rates are set according to different categories which are documented on the BirdWatch website. Payments are generally made via debit or credit card, direct debits or cheques. Standing orders are rare but do occur for legacy members.

- 3.5.40 BirdWatch stated that member bank details are not stored. Stripe is the online payment facility used by BirdWatch. The accounts system and online payments system are password protected and only six individuals have access to these, including the Accounts Technician and the Former Chair in their capacity as a technical volunteer.
- 3.5.41 The Inspectors noted that there was no mention of the subscription misappropriation in the CEO report for September 2021.
- 3.5.42 The Inspectors note the report on the incident from Total Digital was provided by CEO 1 to the Board by email in March 2022.

#### **Trustees Resigning**

- 3.5.43 Through review of the list of trustees, the Inspectors noted that four out of the nine Board members resigned on 19 June 2021.
- 3.5.44 The Memorandum and Articles of Association of BirdWatch defines ‘term’ as “*the period from the date of his appointment until the fourth annual general meeting held next after his date of appointment...*”.
- 3.5.45 Former Board Member 1 served four years on the Board and stated that they ended up in a minority, arguing with other Board members about what was going on and that there were “*two attempts to oust*” them from the Board.
- 3.5.46 Former Board Member 2 served three years on the Board. When the inspectors queried why they resigned, Former Board Member 2 stated “*well I had just done my stint. My four years – I always planned on doing four years and there was no other reason other than that*”.
- 3.5.47 Former Board Member 4 served four years on the Board. When the Inspectors queried why they resigned, Former Board Member 4 stated that the Memo and Arts state the period Board members should be in office. Former Board Member 4 explained that they thought it was three years and that they had already “*done one extra year*”.
- 3.5.48 The final Board member who resigned was not interviewed by the Inspectors. The Inspectors confirmed that they served two years on the Board of BirdWatch.

## Communication with the Board

- 3.5.49 The Inspectors were informed at interview that communication between staff and the Board was actively discouraged.
- 3.5.50 The Assistant Head of Surveys stated at interview that communication with the Board was very “sporadic” and that there was an attempt to establish a yearly meeting between the Board and the Senior Management Team but this did not occur. They also noted that it was a *“bone of contention”* with the staff, and for a period of time when CEO 2 was in charge the Board were not allowed to talk to the staff. The Assistant Head of Surveys stated that they could not recall exactly how that was communicated but that it became the culture.
- 3.5.51 Former Board Member 2 stated that staff were not discouraged from talking to the Board, *“quite the contrary actually”*. They stated that the Board were very eager to facilitate conversations with staff and find out the issues.
- 3.5.52 Former Board Member 1 stated that interactions between the Board and staff were *“specifically forbidden”*. They stated that they were told this at their first Board meeting in August 2017 by the Former Chair and CEO 2.
- 3.5.53 Former Board Member 4 stated at interview that communication between the Board and staff was *“actively discouraged”* by CEO 2. They stated that there was a system in place where all communication had to go through CEO 2 and Board members were not to speak to staff.
- 3.5.54 The Former Chair stated that when they joined the Board they *“felt there was a lot of breaches of confidentiality happening between Board business and staff business”* and they felt that was inappropriate. The Former Chair stated that they felt that the *“chain of command should be quite clear from the Board through the Chair to the CEO to the staff”*. They also stated that they introduced a Code of Conduct and confidentiality agreements that the Board had to sign at their first meeting.
- 3.5.55 CEO 2 stated that they thought that *“the staff had a good relationship with the Board”*. However, they also stated that the Board have their role and staff have theirs so that the organisation can perform in the best way. They stated that *“staff were not forbidden to speak with Board members”* but that the Board were asked to only deal with staff on a personal basis, not business related.
- 3.5.56 The Inspectors found that the majority of persons interviewed stated that during the tenure of CEO 2, communication between the staff and the Board was mainly via CEO 2.

3.5.57 The Inspectors found that there was an absence of a culture which actively encouraged senior management to communicate directly with the Board. This contributed to a lack of transparency and inhibited the Board's capacity to oversee the activities of BirdWatch.

#### **Oversight of Funding Arrangements and Cost Benefit Analysis of Projects**

3.5.58 The Inspectors reviewed the Board minutes during the period in question to identify the Board's oversight of funding arrangements, projects and budgetary oversight of these projects.

3.5.59 Appendix P of the Governance Handbook sets out the conditions for Project Review. This section states that all new projects undertaken by BirdWatch will be subject to review and before submitting a bid for a new project it must be approved by the Board prior to submission if any of the following criteria are met:

- If the project value is greater than €25,000.
- If it involves multiple partners.
- If the timeframe is great than one year or is multi-annual.
- If it requires a new hire.
- If it is not consistent with the objectives of BirdWatch as set out in the Memo and Arts.
- If it requires matched funding of greater than €5,000.
- If it requires a negative cash flow at any point greater than €10,000.

3.5.60 Otherwise, Appendix P states that the project need only be presented to the Board for approval before signing of the final contract. The Inspectors note that this information was added to the Governance Handbook as part of an update on 15 March 2019. Prior to this, there was no documented project approval process in place.

3.5.61 The Inspectors were not provided with evidence of policies and procedures relating to the consideration of cost benefit analysis of grant applications made by BirdWatch prior to their submission to funders.

3.5.62 CEO 2 stated at interview that they brought a proposal to the Board to have a risk register and out of that would have been the management of projects. CEO 2 stated that the Board adopted their project management system. They also stated that prior to 2016, the Board had no oversight of projects being entered into and any staff member could enter into a contract for a project.

3.5.63 The Inspectors queried what procedures were in place for ensuring adherence to grant conditions. CEO 2 stated that they would be familiar with the documents, see what the main risks were and what obligations were agreed at the time of signing the contract.

- 3.5.64 The Former Chair stated that prior to a formal approval process being brought in “*the projects would be brought to the Board by the CEO essentially and discussed but we formalised that much more in late 2018 / early 2019*”. This process was formalised as projects were costing BirdWatch money as “*the rates that were being used to charge out to staff members were not high enough and that working capital considerations were not being taken into account....*”. The Former Chair also stated that the system wasn’t good enough prior to it being formalised.
- 3.5.65 The Chairman stated that the project costings were a big issue and they felt there wasn’t enough concentration on a sensitivity analysis or basic projects costings. They stated that the Board is supposed to approve the projects and that the Chairman and other Board members became aware that this wasn’t happening. The Chairman stated that for very small projects, “*there would have been discretion at CEO level*” but that projects that were multi-annual had to go to the Board for approval, and this didn’t always happen.
- 3.5.66 The Head of Admin & Finance stated at interview that they were involved in a cost benefit analysis for the Curlew EIP project. They stated that they were there mainly to check that the figures were correctly recorded but that they did not provide any approval for the project. They stated this was mainly managed between the Assistant Head of Surveys and CEO 2.
- 3.5.67 The Inspectors noted in 2019 that there was discussion in the Board minutes regarding the MarPAMM and CABB projects due to their scale and associated cash flow issues. Further minutes from March 2020 discussed a revised project review process and a need for an appropriate financial buffer of cash reserves to ensure BirdWatch had the ability to pay their staff.
- 3.5.68 The Inspectors were provided with an Excel template of a Project Register that listed 74 projects. This was circulated to the Board in March 2020 with projects categorised by their level of risk. The Former Chair stated at interview that not all of the projects may have been active at the same point in time. The Inspectors found no evidence of this Project Register being updated and no evidence of the Project Register being provided to the Board subsequent to March 2020.

#### **Motor Vehicles**

- 3.5.69 The Inspectors requested BirdWatch to provide them with a copy of their fixed asset register, a list of the pool cars in operation and confirmation of whether cars are owned or leased.
- 3.5.70 From the documentation provided including the fixed asset register, the online pool car booking system, fuel card receipts, log books and car delivery dockets, the Inspectors identified 18 cars that BirdWatch previously had, or currently have, use of.

3.5.71 The Inspectors noted the following regarding the motor vehicles:

- Only five of the cars identified were listed on the fixed asset register.
- The Inspectors were not provided with details of all cars.
- The owned or leased status of ten cars could not be established.
- Four cars are leased based on information received from BirdWatch. The value of these cars was €128,740 at the time of the review. These four new cars costing €128,740 were leased in 2019 during a time when BirdWatch was encountering severe cash flow difficulties and recorded a loss of €290,659 for the year.

3.5.72 The Former Auditor stated that there were three car leases posted in the nominal codes and they “*went into the conservation’s costs*”. The Inspectors queried why they would be put in these costs rather than separated out as leasing costs, and the Former Auditor stated that they could “*only assume that they were because they were directly attributed to particular projects...*”. The Former Auditor also noted that they are “*fairly confident*” that the leased cars were treated as operating leases and not as fixed assets, with the payments going directly to the profit and loss account.

3.5.73 The Inspectors found the fixed asset register as it related to motor vehicles to be inadequate and incomplete.

#### **Expenses and Credit Card Records**

3.5.74 As noted in Section 3.4.3, the Employee Handbook documents the policies and procedures relating to expenses. However, there is no policy or procedure specifically for credit card expenses.

3.5.75 In March 2019, a concern was raised with the Charities Regulator regarding BirdWatch expense forms that had no back up. In May 2021, BirdWatch stated in a letter to the Charities Regulator that all expense claim forms were fully vouched and authorised by line managers.

3.5.76 The Inspectors discussed the process for credit cards with the BirdWatch Finance Team and confirmed that they do not require pre-approval for credit card expenditure and credit card expenditure is not accompanied by an expense claim form.

3.5.77 The Inspectors requested a list of all credit cards that had operated previously in BirdWatch and all credit cards currently in use. The Inspectors were provided with details of six credit cards held in the names of BirdWatch employees.

- 3.5.78 The Inspectors selected a sample of 252 line items from the credit cards with a total value of €68,610.57. Of the 252 line items, issues were identified with 172 items (totalling €44,084.12: 64%).
- 3.5.79 No evidence was provided for seven line items, mainly relating to cash withdrawals. This totalled €1,988.66.
- 3.5.80 The Inspectors noted 38 cash withdrawals using BirdWatch credit cards from May 2017 to March 2020 totalling €6,830.73 with the general description of petty cash. We note none were approved and only 17 were receipted. The Inspectors consider the use of credit cards to make cash withdrawals to be inappropriate as this incurs charges from the moment of withdrawal.
- 3.5.81 157 line items (€41,536.73) were not approved in line with the expense policies. CEO 2 signed the majority of credit card statements from 2016, 16 credit card statements from 2017, none from 2018 and four credit card statements from 2019. However, CEO 2 also appears to have signed off on their own credit card expenditure. The Governance Handbook states that the Board are responsible for sign-off of all credit card statements by the CEO. Through interviews, the Inspectors identified that this did not occur.
- 3.5.82 The Inspectors identified 32 line items (€5,767.86: 8%) that were not accompanied by the appropriate receipts.

- 3.5.83 The Inspectors reviewed the expenses figures from the accounting system and noted the following total credit card expenditure for each year:

2016	€108,126.42
2017	€112,083.39
2018	€116,937.35
2019	€124,494.40
2020	€63,677.69

- 3.5.84 Through review of the expenses and credit card documentation, the Inspectors identified an employee who became an independent contractor after their employment had ended. The employee in question finished their employment with BirdWatch on 29 September 2017. However, the Inspectors noted that a credit card was held in the former employees name until July 2021. While no purchases were recorded on this credit card, bank charges were incurred and maintaining the credit card was an example of poor financial governance.

- 3.5.85 The Inspectors also noted an employee who is receiving payments through expenses relating to rent, internet and utilities. This was queried with BirdWatch who followed up with the employee in question. BirdWatch advised that their information was that there was no formal agreement in place for this as it was a verbal agreement with the previous CEO in 2011. The agreement was for 25% of the full cost of rent, internet, electricity and oil incurred by the employee to be refunded by BirdWatch. CEO 1 stated that historically this was done as there was no office in Galway where this individual worked. However, CEO 1 stated that this arrangement would be reviewed in line with the new working from home requirements. It is not an acceptable procedure for a charity to pay for the personal expenses of an employee.
- 3.5.86 Former Accountant 2 also advised at interview that another employee was claiming for home utility bills by way of monthly expense claims rather than as a taxable allowance through payroll. CEO 2 was queried on this matter at interview and stated that this agreement was in place prior to them coming on board and they agreed to honour it. It is not an acceptable procedure for a charity to pay for the personal expenses of an employee.
- 3.5.87 Through interview with the Project Manager, the Inspectors noted that they did not submit their expenses in line with the policy. At interview, the Project Manager stated that they submitted a claim with two years' worth of expenses attached to it which was paid. This is outside the policy of BirdWatch.
- 3.5.88 Through review of the expense claim forms submitted by CEO 2, the Inspectors confirmed that the expense claim forms were approved by the Former Chair. Through interview, the Inspectors established that these were not brought to the Board as required by the Governance Handbook.
- 3.5.89 From a review of the Board minutes, the Inspectors noted that there was not a thorough discussion on the finances at every meeting. Line items, including expense related items and other costs, were discussed on occasion and questions were posed within the Board minutes. However, the Inspectors could not find any evidence of these questions being followed up on at subsequent Board meetings or evidence that the queries had been resolved.

#### **Use of Charitable Funds**

- 3.5.90 The Inspectors considered whether BirdWatch's assets are only used to carry out its charitable purposes as set out in BirdWatch's governing document and that any private benefit was reasonable, necessary and ancillary for that purpose, whether the funds of BirdWatch have been misappropriated or misused, and whether any expenditure incurred was wholly and exclusively for the purposes of BirdWatch achieving its charitable purpose, supported by sufficient documentation.

- 3.5.91 The Inspectors have detailed a number of issues in this report relating to inappropriate expenditure, inappropriately authorised loans, redundancies and a general lack of financial controls which the Inspectors believe indicate that the funds of BirdWatch have not been properly safeguarded.
- 3.5.92 Prior to CEO 2 finishing in their role they gave salary increases to two staff members of 25% each (€39,999 to €50,000). These increases were noted in the CEO Report for February 2020, stating "*the budget includes pay increases for two senior managers to bring their pay into line with their performance and closer to market rates*". However, the amount of the increase is not detailed, and the Board minutes do not state any approval for this. It is noted that CEO 2 left in March 2020 and back dated these payments to January 2020 prior to their departure. The Inspectors found this was a further example of lack of appropriate oversight and financial control by the Board.

## 4. Conclusions

- 4.1.1 Charity Trustees have a duty to carry out their functions with due skill and care. There was no proper supervision by the Board of BirdWatch in overseeing the performance of CEO 2 in accordance with CEO 2's contract of employment.
- 4.1.2 The Trustees have a duty to carry out their functions with due skill and care. The Inspectors found the Board did not adhere to their own Whistle-blowers' Policy as detailed in the Employee Handbook when dealing with a protected disclosure.
- 4.1.3 Charity Trustees have a duty to ensure that charitable assets/funds are used to further the charity's charitable purpose only. The Board of BirdWatch failed to ensure there was adequate oversight, approval and control in relation to loans which resulted in an inappropriate loan being provided to CEO 2. The assets of a charity can be used to promote the charitable purpose of the charity only. Providing a loan to CEO 2 was not a proper use of the charitable assets of BirdWatch.
- 4.1.4 Charity Trustees have a duty to manage a charity's resources responsibly. Due to inadequate oversight by the Board of BirdWatch restricted funds were spent for purposes outside of contractual obligations. Approximately €504,000 was received by BirdWatch for specific projects and these funds were used as working capital within BirdWatch and not ring fenced for the projects for which the funds were granted.
- 4.1.5 Charity Trustees have a duty to carry out their functions with due skill and care. The Board of Birdwatch did not operate in accordance with governance best practice. There was no formal Board training or induction process which would have provided new Board members with an understanding of the organisation's structure, finances and funding model. Also, employment contacts for a number of employees could not be provided, and there was an absence of documentation of staff roles and responsibilities.
- 4.1.6 Charity Trustees have a duty to manage a charity's resources responsibly. Due to inadequate oversight by the Board of BirdWatch it has not been possible to determine the basis on which a number of ex-gratia payments were made or obtain evidence as to how the relevant amounts were calculated.
- 4.1.7 One of the key duties of Charity Trustees is to ensure that they manage the resources of a charity responsibly. The Board of BirdWatch did not obtain timely financial information or follow up with management on the provision of such information. The Board also failed to review in detail the financial information that was available and question discrepancies or overspending compared to budgets.

- 4.1.8 Charity Trustees have a duty to carry out their functions with due skill and care. The Board of BirdWatch failed to respond in an appropriate or timely fashion when the issues of concern set out in the Crisis Management Plan and Business Recovery Plans were brought to their attention. The Inspectors also note that the forensic analysis of the financial situation that led to BirdWatch experiencing significant losses in 2019 that was discussed at Board level, was subsequently not undertaken. As the Board had been made aware that there were issues of concern, in order to act in the best interests of BirdWatch and to carry out their functions with due skill and care, the Board should have obtained an understanding of how the negative financial situation had arisen in order to rectify matters.
- 4.1.9 Charity Trustees have a duty to carry out their functions with due skill and care. There was insufficient oversight and control of financial matters by the Board of BirdWatch, and a financial governance structure whereby the person in the CEO role had most approval authority and responsibility for internal control. This was compounded by an ineffective Audit & Risk Committee which only met on two occasions during the period under review and which did not therefore fulfil its duty to monitor and review the control or risk management systems.
- 4.1.10 Charity Trustees have a duty to manage the resources of a charity responsibly and to carry out their functions with due skill and care. The Board of BirdWatch did not have sufficient financial controls and procedures in place to prevent a payment redirection fraud and they also failed to notify same to the Charities Regulator as required by Section 59 of the Charities Act 2009.
- 4.1.11 Charity Trustees have a duty to manage the resources of a charity responsibly. The Board of BirdWatch did not have adequate internal financial controls, or oversight of, petty cash expenditure, credit card expenditure, cash withdrawals from credit cards, travel and subsistence expenditure, overtime payments, ex-gratia redundancy payments, recording of income, salary increases and recording of fixed assets within BirdWatch, which was inconsistent with key governance principles. Such weaknesses in financial controls created significant financial and reputational risk for BirdWatch.