

Chapter 4 Department of Justice, Equality and Law Reform

4.1 Provision of Accommodation for Asylum Seekers

The late 1990s saw a dramatic increase in the number of persons arriving in Ireland for the purposes of claiming asylum. Asylum seekers are entitled to remain in the country until their claims are processed which may take a considerable length of time. While awaiting the determination of their claims the Minister for Justice Equality and Law Reform (the Minister) is obliged to provide them with shelter and other basic needs. The Minister delegated this responsibility, initially to the Director of Asylum Support Services (Directorate) and subsequently to the Reception and Integration Agency (Agency) which replaced the Directorate in 2001. People seeking asylum, if successful in their application, attain the status of refugee, and in certain circumstances the Directorate/Agency may also have provided accommodation for those. In 1999 the Office of Public Works (OPW) acting as agents of the Directorate/Agency commenced a process of acquiring property, renting premises and recommissioning existing State property to provide accommodation to meet the demand.

The accommodation acquisition programme has to be viewed in the context of circumstances prevailing at the time.

- The unprecedented and unpredictable number of asylum seekers arriving in Ireland for whom accommodation had to be immediately available.
- The general unavailability of accommodation in the Irish housing market at the time.
- The Government Decision of 28 March 2000 approving an accommodation mix to meet the demands being placed on the State arising from the numbers claiming asylum.
- The need to find alternative approaches to conventional methods of securing accommodation which would reflect the emergency nature of the evolving crisis.
- The need to find practical and swift solutions to the challenges posed by planning legislation in responding to a demand for accommodation.
- The reality that many local communities vehemently opposed the location of asylum seekers in their area and the consequent implications for local consultation measures.

Since 1999 OPW has purchased ten properties, and leased one site with a view to converting or constructing suitable residential units for use by the Directorate/Agency for asylum seeker/refugee accommodation.

As I noted that four of the properties acquired and the leased site have never been used for their intended purpose of accommodating asylum seekers, I sought the views of the Accounting Officer of the Department of Justice Equality and Law Reform on the way in which the acquisition programme had been managed and in particular the measures that had been taken to ensure coherence and co-ordination in the strategies and decision making employed in relation to the programme.

The Department's Response

Management of Acquisition Programme

General Approach

It was clear from early 2000 that conventional approaches incorporating long lead-in times and extensive preparation would be problematic. Such approaches assume that demand levels can be predicted and that interim solutions are available to address the long lead-in times. Neither of these assumptions were valid ones for the Agency. From a management point of view procurement policy was focused on securing as many units as possible in the shortest time possible.

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In March 2000 the Government decided, inter alia, that the provision of accommodation for asylum seekers should be through a mix of 2000 places in the commercial sector, 1000 places in mobile homes, 4000 places in system-built accommodation, 4000 places in permanent built accommodation and 1000 places in flotels. While some of these proposals proved difficult if not impossible to implement in practice, they do illustrate the enormity of the problem and the urgent need at the time to maximise the number of accommodation units.

The plans made in March 2000 were based in part on the figure of 7,724 applications which had been received the previous year. However, in both 2000 and 2001 the number of applications received exceeded 10,000 – an unpredicted increase of approximately 30% over the 1999 figure. Against this background, every offer of accommodation and every offer of a site had to be pursued with the utmost vigour requiring difficult balances to be struck between conventional best practice and the pragmatic need to deliver on the Government's responsibility in this area. The Agency believes that this balance was carefully struck in all cases.

Planning Challenges

It was clear to the Directorate from the outset that compliance with normal planning permission procedures for the construction of either system built or permanent built accommodation units or where change of use issues might arise, was likely to be incompatible with the urgent nature of the Directorate's task and this view continued to be held subsequent to the Directorate being subsumed into the Reception and Integration Agency in April 2001. In practical terms, allowing for the processing of a planning application by the planning authority, possible appeal to An Bord Planála, court hearings etc, a realistic leadtime for the conventional planning process could take in the order of a year or more. When this period is added to the time needed to plan the development and to carry out any necessary construction alterations the resultant time frame would inevitably have resulted in the failure by the Directorate (and subsequently the Agency) to deliver on its mandate and could have given rise to asylum seekers being left homeless.

In February 2000, following discussions between representatives of the Directorate and planning officials in the Department of the Environment and Local Government on whether it was possible to avoid the planning process or to use a limited process in order to allow the conversion of certain buildings and the construction of others in order to accommodate asylum seekers, that Department sought the advice of the Office of the Attorney General. Having considered the issue, including the emergency nature of providing sufficient accommodation for the very greatly increased numbers of asylum seekers arriving in the State in an already closed market, that Office advised that the making of Ministerial Orders under Section 2(2) of the Local Government (Planning and Development) Act, 1993 (which provided that, where a development is proposed to be carried out by or on behalf of a Minister, the Minister concerned, may, if he or she is satisfied that the carrying out of that development is required by reason of an accident or emergency, by Order provide that the Planning Acts shall not apply to the development), was the most appropriate statutory vehicle to enable the change of use and construction to be carried out urgently. The Office of the Attorney General further indicated that as such developments were being carried out by or on behalf of the Minister for Justice Equality and Law Reform he should make the Orders and that the then Attorney General agreed that the provision of accommodation for asylum seekers in such circumstances constituted an "emergency" for the purposes of the Act. It was also his view that this provision was the most appropriate statutory vehicle to enable the change of use and construction to be carried out quickly. This legislative provision was subsequently replaced by Section 181 (2) (a) of the Planning and Development Act, 2000 which had similar effect. This provision was used in relation to the proposed construction of a system built accommodation centre at Leggetsra, Kilkenny in consultation with the Office of the Attorney General which also approved the text of the Ministerial Order. In an effort to further progress the provision of permanent built accommodation a number of hotels and other properties were purchased.

The Agency's evaluation of how to proceed in any individual case was critical not only to that particular case but also to the many other projects being undertaken by the Agency at that time. The implications of a Ministerial Order being successfully challenged and any court ruling that a particular development needed planning permission would have grave consequences for the entire accommodation plans of the Agency. As events transpired, extensive, difficult and lengthy negotiations became major factors in delays to urgent accommodation projects. The Accounting Officer pointed out that Ministerial Orders had been made in relation to 10 projects without challenge and that their use had only been challenged on two occasions both of which remain the subject of court proceedings. In this regard, Ministerial Orders have been used successfully without legal challenge in relation to the construction of 3 system built accommodation centres (Balseskin, Co. Dublin, Knockalisheen, Co. Clare and Kinsale Road, Co. Cork) and 3 mobile home sites: Kildare, Athlone and Tralee.

Community Consultation

The Agency has, and always had, a deep understanding and appreciation of the value of community participation and involvement in successful reception strategies. That understanding has been deepened by its experiences since 1999 which, in the main, have had successful outcomes though often traumatic at the time both for the Agency and the local community. The Agency's consultation strategies did, however, have to reflect the reality that asking communities beforehand about their preparedness to accept centres for asylum seekers was tantamount to abandoning the planned accommodation programme. The Agency's experience proved that most communities were not prepared to accept the arrival of asylum seekers in their midst and indeed some were prepared to take physical action in support of their feelings in the matter.

Accordingly, rather than seeking prior approval, the Agency's consultation strategy was focussed on local discussions and information provision in the context of firm proposals to locate in any particular area. Commitments to contracts both for land and property were, therefore, necessary so that the Agency did not simply find itself having sets of fruitless discussions with one community after another. In this environment, it was inevitable that delays occurred in persuading communities to accept the proposals or a version thereof, which was compatible with the Agency's accommodation objectives.

The Accounting Officer pointed out that, despite such difficulties, the Agency currently operates 71 accommodation centres in 24 counties throughout the State.

Strategy Co-Ordination

The Agency's strategy in relation to accommodation procurement and placements has always been to ensure, in as much as possible, the maintenance of a sensitive, balanced and proportionate approach nationwide. The success of this strategy is illustrated by the distribution of direct provision asylum seeker accommodation across Health Board areas. In no case do the numbers exceed one third of 1% of the population of a Board's area.

The Agency believes that it exercised as much coherence and coordination as was possible under very difficult circumstances. The Government decision of 28 March 2000 reflected the broad strategic approach to providing accommodation for asylum seekers under what was clearly an emergency situation. Certain constituents of that strategy were not feasible in practice and so even further pressure was placed on the need to maximise responses from the commercial sector. In a situation of limited availability of accommodation units, strategy and decision making had to necessarily focus on seeking to capitalise on every offer of accommodation, with particular emphasis on getting sites and premises up and running in the shortest time possible. Specifically, this involved:

- Issuing of Ministerial Orders where planning issues were likely to arise
- Maintaining ongoing and close connection with the State's legal advisers

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- Avoiding the creation of legal precedents which would jeopardise the Agency's accommodation programme
- Negotiating and where possible adjusting its proposals to accommodate local objections
- Respecting the existence of pending judicial proceedings
- Working to secure alternative or temporary uses for properties where the immediate use for asylum seeker accommodation could not, for whatever reason, be secured.

The Agency reiterated that it did not control many of the factors governing successful accommodation outcomes. Planning issues and constant local opposition had to be addressed on a pragmatic basis so that the State's responsibilities for asylum accommodation could be addressed.

The Agency has as part of its co-ordinated nationwide accommodation strategy been developing regional accommodation centres which offer a more integrated solution to the needs of the asylum seekers with accommodation, health, welfare, recreation, education, occupational and other ancillary services available on site.

The development of regional centres has greatly enhanced the delivery of services to asylum seekers by the various agencies (Health Boards, Refugee Legal Service, VEC, GPs, Public Health Nurses, Psychologists etc.) charged with providing services to asylum seekers in a more co-ordinated and professional manner. The position in this regard is set out in Table 4.1.

Table 4.1

Region	Regional Centre
Eastern	Balseskin Reception Centre
North Eastern	Mosney
North West	Agency currently examining proposals for facility in Sligo*
Western	Under consideration*
Mid West	Knockalisheen accommodation centre
Midland	Athlone accommodation centre
Southern	Kinsale Road accommodation centre
South Eastern	Kilkenny accommodation centre*

*Indicates not yet operational.

Issues Relating to Unused Properties

As expenditure on the acquisition, maintenance and security of the five unused properties could ultimately result in poor value for the Exchequer I also sought the views of the Accounting Officer on the circumstances in which these assets were not used for the purposes for which they had been acquired. Since OPW acted as agents for the Department in procuring the properties by purchase or lease and obtained technical assessments and a professional evaluation of each property prior to purchase/lease I also sought the views of the Accounting Officer of OPW on the transactions.

Devereux Hotel - Rosslare

This property comprising a 25 bedroom hotel together with a three bedroom bungalow to the rear, was brought to the attention of the OPW by the Directorate for Refugee and Asylum Seekers Services on 10 March 2000. The Directorate viewed the property as being particularly suitable for the purpose of accommodating asylum seekers, given its location in Rosslare. A public auction was scheduled for 15 March 2000.

The OPW obtained a professional valuation of the property and entered into negotiations with the vendor. A negotiated price of €2.74m which was within the valuation range was agreed prior to the auction.

In May 2000 the Minister received written objections from a solicitor acting on behalf of the Rosslare Harbour Community Association to the proposed usage of the property for Asylum Seekers. In the letter he stated that planning permission was required before the accommodation could be used to house Asylum Seekers, and maintained that any Exemption Order made by the Minister pursuant to section 2(2) of the Planning and Development Act 1993, to exempt the Directorate from having to seek planning permission to have the building used to accommodate Asylum Seekers, would be unlawful, and threatened to apply to the Courts for an injunction to quash any such Order.

In November 2000 the Directorate informed the Association that the hotel would not be used to accommodate Asylum Seekers, would be sold by 1 May 2002, and that in the interim it would be used to process applicants for asylum. On 7 September 2001 OPW wrote to the Directorate stating that because a commitment had been given to sell the hotel by 1 May 2002, and as no State Agency had given a firm commitment to use the property, it was considered best to sell it. The Directorate replied on 25 September 2001 stating that circumstances had changed in that the number of applicants claiming asylum in Rosslare had fallen from 1466 in 2000 to 39 in the first eight months of 2001, and that they had no objections to the sale. The legal registering of title in the name of the OPW was completed on 1 May 2002. The property was put on the market at the end of 2002. After a tendering competition the property was sold for €1,859,590. The closure of the sale was effected on 21 July 2003. The security and other costs on the building since its acquisition up until 21 July 2003 are €452,590.

Department's Response

The period between the purchase of the property in April 2000 and an undertaking in November of that year to dispose of the hotel by May 2002 did not represent an inactive gap in the Agency's activities. Rather, an intensive series of difficult negotiations involving, inter alia, local politicians took place where the Agency sought to resolve the conflict between the total opposition of the local community in a highly charged atmosphere and the need to maximise the use of the property. This negotiating environment was characterised by:

- Intense local and political opposition
- Threats of court action over alleged lack of planning permission (with its consequent implications for the Agency's general accommodation programme)
- 24-hour pickets and a blockade which continued for many months
- Blockading of adjoining premises involving health and safety issues.

Against this background compromises were necessary and these took place over six formal meetings and correspondence with local residents and politicians. The use of the centre for accommodation rather than reception and its additional use by the Garda and the Health Board were among these compromises proposed. In the final analysis, to avoid a complete standoff which would deny any added value to the Agency or the State, it was considered necessary to undertake to dispose of the property at some time in the future. The particular date agreed was May 2002 and this was subject to market value being realised. This had nothing to do with any revised needs assessment or the general suitability of the premises. It was a pragmatic decision by the Agency geared towards ensuring that its accommodation objectives could be met.

As regards the ultimate sale of the property, throughout the first half of 2001, the Agency continued to endeavour to implement the other proposed uses of the premises but this did not work out in practice. As already pointed out, events were overtaken by a sudden drop in requirements for accommodation in Rosslare. Following a final trawl of all Government Departments and a review of space within the OPW,

the Agency notified the OPW in September 2001 that the premises were no longer required and that the Refugee Legal Service had indicated that it had no longer an interest in using the Hotel and the Health Board had only identified a use for a small part of it. It was further indicated that if it was OPW's considered opinion that the time was then opportune to dispose of the property so as to maximise its market value then the Agency would have no objections. The ultimate sale of the premises was then a matter for OPW.

OPW Response

The disposal price of €1.86m reflected a number of negative factors including (i) the absence of a special purpose purchaser (ii) the effects on the tourism industry of the Foot and Mouth crisis, which peaked during the period between the purchase and disposal of the hotel; (iii) a general deterioration in the market for this type of property, reflecting a downturn in the tourism industry and (iv) the effects of the loss of goodwill and trade during the period when the property was not used as a hotel.

Site at Leggetsrath Co. Kilkenny

This site was leased by OPW on 8 March 2002 under a licence agreement at a monthly rent of €15,332, with a pull out clause in favour of OPW if the project could not proceed. The site was leased in order that system built accommodation to house about 250 asylum seekers could be constructed on it. A lease agreement for a period of 4 years and 9 months at an annual fee of €184,000 per annum was also agreed which would commence after the system built accommodation had been erected.

On 11 March 2002 the Minister made an Order in exercise of his statutory powers under the Planning and Development Act 2000, to dispense with the requirement to obtain planning permission for the development. A letter accepting a tender from the contractor for the construction of system built accommodation in the sum of €6.56m (including VAT) was signed by an OPW Commissioner on 14 March 2002.

On 19 March 2002 OPW received written correspondence from a solicitor, acting for local residents, objecting to the proposed development, and on 20 March 2002 the same solicitor sought an explanation as to why the Exemption Order had been made and threatened to go to the High Court to halt the development.

At a meeting on 21 March between the Chief State Solicitor's Office (CSSO), OPW, and the Agency, it was agreed to defer commencing site work until 27 May 2002 to allow time for the Agency to meet and consult local people.

Following the meeting the CSSO wrote to the objectors' solicitor informing him that work would not commence on site until after 27 May 2002. The solicitor replied on 22 April 2002 stating that the Ministerial Order was unlawful and gave seven days for it to be revoked or that otherwise it would be challenged in court. In May 2002 the High Court found merit in the objector's case and granted leave to bring an application for Judicial Review.

On 9 May 2002 the CSSO advised OPW that the Attorney General had directed that the Agency should not use Exemption Orders under sections 181(2)(a) of the Planning and Development Act 2000 in any future cases without his prior approval, and that OPW should not enter into agreements or contracts on foot of such Orders unless he had first approved the use of the Order.

On 10 May 2002, the contractor requested clarification as to when site work might commence. In response, OPW initiated discussions with the contractor, which led to a settlement figure of €2,026,970 inclusive of VAT being agreed in full and final settlement of costs incurred by the contractor on the project.

Other costs incurred in the project were Quantity Surveying €176,091, rent €275,777, storage €53,361 and legal costs €4,041, bringing total costs incurred on the project up to 22 August 2003 to €2,536,240.

Department's Reponse

The Agency and its predecessor were in almost continuous contact with the Office of the Attorney General in relation to the use of emergency planning orders by the Minister. As with other accommodation projects, a decision on the Kilkenny site was informed by detailed legal advice on all aspects of the use of such Orders. In keeping with this approach the Office of the Attorney General was consulted in relation to its use of a Ministerial Order for this proposed project and the text of the Orders were cleared by that Office. The Agency had to balance any risk of the Orders being challenged against the opportunity to increase the accommodation portfolio. From the Agency's point of view, the balance of advantage lay clearly in favour of the use of the Order and it was duly signed in March 2002.

The signing of the contract for the system built accommodation was a matter for the Office of Public Works.

OPW's Reponse

The advice of the Attorney General dated 21 February 2000 to the Department of the Environment and Local Government, was to use Section 2 (2) of the 1993 Planning and Development Act which provides that where a development is proposed to be carried out by or on behalf of a Minister, the Minister concerned may, if he or she is satisfied that the carrying out of the development is required by reason of accident or emergency, by order, provide that the Act shall not apply to the development.

Similar Orders had been made by the Minister for Justice to allow construction works to be undertaken in Athlone, Tralee and Kildare prior to the siting of mobile homes at those locations for the accommodation of asylum seekers.

Orders under the 1993 Act were also signed by the Minister for Justice in the case of the system-built construction at Knockalisheen, Co. Clare and Kinsale Road, Cork, where units identical to those planned for Kilkenny had been constructed. A similar Order was signed in the case of Baleskin site near Dublin Airport. The legal advice was therefore clear and consequently there was no basis to seek further advice from the Attorney General prior to signing the contract for Leggetsraught.

The decision not to commence work on site until 27 May 2002 was taken on 21 March 2002 on the recommendation of Reception and Integration Agency. The Accounting Officer stated that he was satisfied that the contractor was immediately informed following the meeting on 21 March 2002 of the decision to defer commencement until 27 May.

The accommodation in Kilkenny was intended to be temporary and the units were all demountable which meant that in the event of a change in circumstances, (such as a demand for an excessive rent increase in the event of an extension of the lease) they could be transferred to another site.

The costs involved in the event of the buildings having to be moved to a new site or sold off after expiry of the lease would depend on many factors i.e. new site condition, condition of buildings, availability of services etc.

The cost of re-instating the site in question after five years is estimated at €140,000 approximately as of 24 July 2001.

Broc House - Donnybrook, Dublin

This property, which consists of a three-storey block of purpose built accommodation on one and a half acres, was purchased on 30 June 2000 for €9,205,601.

The sale tender documents describes the area on which the property is situated as being zoned to permit such uses as Residential, Training Centre, Medical and Related Consultants, Embassy and Education.

In September 2000, solicitors, acting on behalf of local residents, wrote to the Directorate objecting to Broc House being used as a reception centre for asylum seekers, on the grounds that it constituted a change of use and that this required planning permission.

In October 2000 the Agency requested OPW to proceed with the necessary works to get the building ready for asylum seekers as a matter of urgency and provided a copy of favourable legal advice which it had received from the Attorney General to the effect that the project could proceed without planning permission.

In February 2001 the residents were successful in their court application to have Judicial Review Proceedings held to determine if the property could be used to house asylum seekers without planning permission being first obtained. The matter is due for hearing in the High Court on 20/21 November 2003.

In January 2001 it was decided that the refurbishment work needed to make the building suitable to accommodate asylum seekers should be deferred until the Judicial review process was completed.

In August 2002, St Vincent's Hospital wrote to OPW seeking to rent the property as accommodation for its nursing staff. No decision had been taken on whether or not to accede to this request by June 2003.

The security and other costs incurred on the building since its acquisition up to 22 August 2003 are €432,189.

Department's Response

Prior to their successful court application, Solicitors acting for the residents had advised that any attempts to house asylum seekers in the hostel would be met with injunction proceedings. They also advised that if the Department entered into any contracts with third parties it did so in the full knowledge that such proceedings would be brought. In these circumstances the Agency did not consider it prudent to seek to force the issue by occupying the premises particularly having regard to the collateral risk to the Agency's accommodation objectives should the residents obtain an injunction. In all the circumstances, the Office of the Chief State Solicitor advised the solicitors representing the residents that they would be informed in good time of the intention to use the premises.

OPW's Response

The initial request was received from St. Vincent's Hospital in mid-August 2002, but details of the proposed usage were not received until January 2003. The OPW sought legal advice on the proposal. The advice was obtained in March 2003. At that stage it was decided not to proceed further with the proposal as the Judicial Review was expected to be heard during the Summer law term – which would not have permitted a viable lease period.

Ionad Follain – Myshall, Co. Carlow

This property, which consists of a two storey Glebe building with 6 self contained apartments and other ancillary accommodation situated on 5 acres, was acquired by OPW in July 2000 for a consideration of €1.3m.

There were objections from local residents to the use of the property to house asylum seekers.

In March 2001 the Directorate informed OPW that in response to representations from the South Eastern Health Board (SEHB) and the Irish Society for Autism, it would not object to the property being made available to the SEHB as a facility for children with disabilities. OPW agreed to the transfer request.

The property was transferred to the Department of Health and Children for no consideration on 22 August 2002. That Department was requested to provide security with effect from September 2002, as the OPW security contract would cease on 31 August 2002.

The security and other costs incurred on the property since its acquisition up to the date of its transfer to the Department of Health and Children were €176,510. Costs incurred by that Department up to 31 December 2002 were €18,605. The property remained vacant as at 1 September 2003.

Department's Response

In early 2000 this property was offered to OPW following a public advertisement. Following an examination of the facilities, the Agency decided to use it as an accommodation centre for asylum seekers. OPW indicated to the then Director for Asylum Support Services that contracts for the purchase of the property were signed by them on 14 April 2000. Strong opposition was expressed by local residents at a public meeting held on 14 April 2000 and on 17 April, the Directorate was informed by OPW that the owner had been assaulted, threatened with being shot and was under Garda protection.

The proposed use of the property by the Directorate and public perception that its purchase by OPW had dislodged a bid by the Irish Society for Autism became the focus of sustained negative local, political and media reaction.

Faced with this new and unforeseen dimension, the Directorate commenced discussions with the Department of Health and the South Eastern Health Board to explore the issues. Initial discussions in September/October 2000 suggested that a comprehensive needs assessment was needed before the use of the premises by the Irish Society for Autism would be appropriate. At this stage, the Directorate were considering the short-term use of the premises for asylum seekers pending the outcome of further deliberations by the Department of Health and Children and by the SEHB.

These deliberations culminated in a letter from the Department of Health on 13 March 2001 informing the Agency that the SEHB had confirmed the suitability of the premises as a residential facility for the children with autism. While the Agency continued to operate against a backdrop of a severe shortage of asylum seeker accommodation, it took the view that such accommodation should not be sourced to the detriment of indigenous vulnerable groups such as children with disabilities. In those circumstances and particularly having regard to the depth of local hostility, the Agency by letter of 21 March 2001, advised OPW that, in all the circumstances, it would have no objections to the property being made available for use by the South Eastern Health Board subject to the usual requirements of the OPW.

The decision not to use the property was based on the foregoing considerations. It was not related to any inadequacy in needs assessment or unsuitability as an accommodation centre. The Agency had to be in a position to continue to meet ongoing urgent need for asylum seeker accommodation against a backdrop

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of a chronic shortage of accommodation of all tenures throughout the State and hostile public opinion and the decision on the use of the property reflected this.

OPW's Response

The property was regarded as very suitable for use as accommodation for asylum seekers and the Directorate for Refugee and Asylum Support Services directed that OPW should actively pursue acquisition. The Accounting Officer was satisfied that a proper evaluation was carried out by OPW and the need for its requirement at that time was properly established prior to the purchase of the property.

The subsequent decision not to use the property as accommodation for asylum seekers was made by the Directorate. The OPW had no other State requirement for this property and had no objection to its transfer to the Department of Health and Children.

The Department of Finance sanctioned the transfer of the property to the Department of Health and Children. The question of bringing the facility into productive use is a matter for that Department. The delay in completing the transfer of title to the Department was due to pressure of conveyancing work in the Chief State Solicitor's Office.

Lynch's Lodge Hotel - Macroom, Co. Cork

This property, which comprises a modern two-storey 33-bedroom hotel, was acquired by OPW in October 2000 for a consideration of €3.5m.

In September 2000 (after the sale of the property had been agreed but prior to closure) the Department received a letter of objection from a solicitor, acting on behalf of local residents, which stated that the proposed usage was in contravention of the planning laws and that unless there was an undertaking that planning permission would be sought he would seek a court injunction to prevent the property being used to accommodate asylum seekers.

In response the Department stated that the hotel would provide a full range of services to the public, but the residents stated that if the property were to be operated as a hotel in this way, that the Department and the OPW would be acting unlawfully.

The residents pursued their case and were successful in their court application on 18 December 2000 to have Judicial Review Proceedings progress on the grounds that any change of use of the premises from a motel or hotel to a reception centre for the accommodation of asylum seekers was not exempt from planning.

The security and other costs incurred on the building since its acquisition up to 22 August 2003 are €448,439.

Department's Response

In the light of the residents' successful application Counsel for the State in the case advised the CSSO that it was likely that the applicants or the Court might require an undertaking not to commence use during the adjournment of the case. The CSSO shared that view and instructed Counsel to give such an undertaking.

OPW's Response

The property was purchased with the approval of the Directorate for Asylum and Support Services, who had anticipated having asylum seekers accommodated there by mid-October 2000. The OPW was not involved in the later decision not to use these premises to accommodate asylum seekers.

4.2 The Management of Sick Leave in Prisons

Background

In my Report on the Appropriation Accounts for 2001 I drew attention to the high level of overtime payments in the Irish Prison Service (€55.4m in 2001). The Prison Service estimates that the cost of replacing officers on sick leave amounts to about 15% of total overtime payments per annum.

The sick leave rules governing Prison Officers are similar to those applying in the civil service generally. As with most occupations, there is an entitlement to a limited amount of uncertified sick leave. Civil service sick leave rules set this at a maximum of seven days in any twelve-month period. Sick leave in excess of this requires the officer to submit a medical certificate to the prison authorities on an ongoing basis while on such leave and on returning to work. Full pay is allowed to a prison officer (as it is to civil servants) up to a maximum of six months in any one-year period and half-pay thereafter, subject to a maximum of twelve months sick leave in any period of four years or less. On reaching this limit, the staff member may be taken off payroll and awarded unpaid sick leave¹⁷.

The Accounting Officer in responding to this report stressed that despite the levels of sick leave and the associated costs, the Prison Service cannot unilaterally introduce measures that are inconsistent with the terms of the Circulars applicable to all civil servants. He also noted that Prison Officers, notwithstanding the high level of absenteeism in the service, maintain they are being treated more harshly than other civil servants. In addition to raising this issue through the normal industrial relations mechanisms, the Prison Officers Association (POA) had sponsored a High Court challenge to management's right to withdraw the privilege of paid sick leave in a particular case. The Department successfully defended this claim and subsequently intensified its efforts to improve the situation as set out later in this report.

The prison authorities roster operational staff to provide continuous 24-hour cover at all prison locations. Any gaps in the provision of operational cover which arise from officers on sick leave must be covered by calling in officers who are not scheduled to work during the period in question. This results in additional payments at overtime rates to the officers deployed to cover the gaps.

In a report to the Minister for Justice, Equality and Law Reform in February 2001, the Prison Service Staffing and Operations Review Team (SORT) identified, *inter alia*, the management of sick leave as of considerable importance because of the substantial cost of replacing officers on sick leave. The team recommended that Prison Governors should have authority to support individual members of staff and, where warranted, to impose appropriate sanctions. It also recommended that managers should have the skills necessary to make a determination as to any likely root cause of absenteeism and that details should be recorded and placed on file.

The Accounting Officer in commenting generally on the SORT recommendations noted that some were vague and could not be implemented without legislative changes. For example, Prison Governors do not have the power to dismiss civil servants. He also said that many of the recommendations are presently the subject of intensive negotiations with the POA, and that while it would be inappropriate for him to pre-empt the outcome of such negotiations by responding in depth to some of the issues raised in this report, he was nonetheless hopeful that many of the principles underlying the SORT recommendations would be implemented in the near future.

¹⁷ With the exception of officers whose service would entitle them to sick pay at pension rate, if retired on grounds of ill health.

Audit Objectives and Scope

The principal objective of my examination was to set out the extent and cost of sick leave in prisons and to determine the authorities' responses to the issue.

Prison Service records relating to the management and control of sick leave were examined. Audit visits were made to the Prison Service Headquarters in order to gain an understanding of the systems and procedures in place to manage sick leave. The National Audit Office in Great Britain (NAO) and the Audit Office of New South Wales (Australia) have produced recent reports on managing sick leave absences in prisons in their respective jurisdictions, and these were reviewed in the course of the examination.¹⁸

Audit Findings

The staff complement of the Prison Service, working from sixteen prison establishments¹⁹, at the end of each of the years 2002, 2001 and 2000 was 3,318, 3,235 and 3,200 respectively. These figures exclude those working in administration, management, a dedicated stores unit and a staff Training Centre.

The Incidence of Sick Leave

According to the database maintained by the Prison Service, the total sick leave taken over three years 2000-2002 was 178,679 days. Absences of not more than five days duration accounted for 30% of these, absences of between five and fifty days made up 34% and the balance 36% comprised absences of fifty days or longer.

Sick Leave over Time

Table 4.2 sets out the available statistics for 1997 to 2002. It should be noted that, in the same period, prison officer numbers increased from 2,495 at the end of 1997 to 3,318 at the end of 2002.

Table 4.2 Sick Leave taken in the Period 1997-2002

Year	Total Days	Days per Staff Member ²⁰	Certified	Uncertified
1997	42,875	17.2	n.a	n.a.
1998	42,104	15.4	n.a.	n.a.
1999	46,221	15.0	n.a.	n.a.
2000	56,952	17.1	86%	14%
2001	61,183	19.1	85%	15%
2002	60,544	19.0	83%	17%

Comparisons With Other Employments

In order to put prison officer sick leave in context, my examination included a request for annualised statistical information in respect of the entire Civil Service. The latest full year statistics available was for the period 1 July 1996 to 30 June 1997. From the data collated, 213,429 days were taken in that year by 22,869 civil servants²¹, giving an average 9.3 days per person. An analysis of certified and uncertified leave was not available. The civil service statistic of 9.3 days is computed on the basis of total numbers serving. The comparable figures for prison officers were 17.8, 18.9 and 18.0 for each of the three years 2000, 2001 and 2002. The closeness of these averages to the averages per prison officer shown in Table 4.2 reflects the very high number of prison officers who avail of sick leave.

¹⁸ Respectively, the NAO Report by the Comptroller and Auditor General, 30 April 1999, "Managing Sickness Absence in the Prison Service" and the Auditor General of New South Wales, July 2002, "Managing Sick Leave: NSW Police and Department of Corrective Services".

¹⁹ On the basis of non-materiality, the prison institution Beladd House has been excluded from the examination, except in the case of Table 4.2.

²⁰ Availing of sick leave.

²¹ Data in respect of the Department of Social Welfare was not available.

The available statistics for Primary Teachers show that persons in this occupation take approximately nine days per teacher employed, or fourteen days per teacher who takes sick leave.

In the case of Secondary Teachers (including Community and Comprehensive), the equivalent number of sick days per teacher employed stands at an average of just over eight days. Due to the way in which the Department of Education and Science maintains records for this category of teachers, it is not practicable to determine the average days taken only by teachers on sick leave.

In its report, the NAO reported that, taking into account the level of underrecording of sickness absence, the average number of working days lost to sickness absences by prison officers in the UK Prison Service was between 14.6 and 16.7 days per officer in 1997-8. It also found that prison officers took more days than police officers nationally.

In the same report, the NAO showed manual workers generally in Britain to take just under ten days sick leave per annum. The UK average for all workers was just over eight days per annum. Non-manual staff lost about seven days per year due to sickness. It is important to bear in mind, when making comparisons between prison officer sick leave statistics, and those for other employments that much prison officer employment is based on rosters, which include twelve hour shift work. In broad terms, such comparisons should be reasonably valid. However, the Prison Service states that shift work gives entitlement to three or four off duty days over alternate weeks. In the civil service, and other comparable employments, off duty days may be generally considered to be Saturday and Sunday. The Accounting Officer is of the view that cross comparisons with other public service employments is inadvisable in view of the rostered nature of much prison employment.

Sick Leave by Prison

Certain prisons show a markedly higher incidence of sick leave taken per prison officer employed than others, as displayed in Table 4.3.

Table 4.3 Analysis of Average Days Sick Leave 2000-2001 by Prison²²

Prison	2000		2001		2002	
	Days	Average Days per Officer	Days	Average Days per Officer	Days	Average Days per Officer
Arbour Hill	1,681	14	1,468	13	1,330	12
Castlerea	2,715	19	3,075	23	2,748	19
Cloverhill	3,404	12	4,602	14	4,910	13
Cork	8,172	37	9,053	40	7,836	34
Curragh	1,199	18	1,350	19	1,750	25
Fort Mitchell	1,868	21	1,102	12	1,210	12
Limerick	6,268	32	5,783	31	5,162	25
Loughan House	1,048	27	597	14	345	9
Midlands ²³	223	3	4,578	16	5,944	17
Mountjoy	11,657	16	10,457	16	10,543	18
Portlaoise	8,261	22	7,445	23	8,071	24
Saint Patrick's	3,458	18	3,273	18	2,676	14
Shanganagh	772	20	624	17	465	11
Shelton Abbey	454	14	595	18	489	16
Training Unit	907	11	1,235	16	830	13
Wheatfield	4,854	15	5,906	20	6,222	19
Total²⁴	56,941	19	61,143	20	60,531	19

Table 4.3 allows comparisons of prisons on the basis of total days lost or average days taken in sick leave. However, since sick absences are measured from first day of absence to date of return to work, in the case

²² The average days taken in each year are in respect of those officers who took sick leave in the year. The Prison Service was unable to provide the overall number of officers serving in each prison in order that the overall average per prison officer employed could be computed.

²³ The Midlands prison opened in November 2000.

²⁴ The totals in this Table do not fully match those in Table 4.2 due to the exclusion of Beladd House.

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of a member of prison staff working on a rostered basis, a two week absence on sick leave would include seven days on which the officer was not due to attend, and seven days on which the officer was rostered to attend. In such a case replacement on overtime only arises when the officer on sick leave was due to attend.

It is clear from the analysis that Cork Prison's average number of days taken per officer is consistently about double the overall average of prisons. Limerick Prison's average is one and a half times the overall average. While not significantly above, Portlaoise Prison remains consistently over the average with 23 or 24 days per officer.

Some prisons showed quite low levels of sick leave, compared to the average for the service as a whole. Excluding the Midlands Prison, which is a new institution, Arbour Hill stands out as being significantly below the average. This raises the question as to whether there are specific institutional or management factors at work in this prison which contribute to the relatively low rate of sick leave. If so there may be useful lessons to be learned by the Prisons Service from studying any such factors with a view to bringing about a climate in other prisons conducive to lower levels of sick leave.

Further analysis of the available statistics shows that, in a number of prisons, a large number of days are taken by a relatively small number of officers. For example, Cork Prison had the highest number of individual officers (sixteen) with a continuous period of sick absence in excess of one hundred and eighty three days. Limerick Prison had thirteen such officers. Seventy-five officers, throughout the Prison Service, who had been continuously absent on sick leave for hundred and eighty three or more days accounted for 27,600 of the total days (179,000) lost in the three-year period.

Table 4.4 gives an analysis of the data, which shows that a relatively small number of officers in Cork and Limerick, but also in some other prisons, who commenced sick leave in the period examined, contributed disproportionately to the total recorded for those prisons, when viewed over the three years.

Table 4.4 Prison Officer Sick Leave in excess of 183 days during 2000 - 2002

Prison²⁵	No. of Officers taking over 183 days in the period²⁶	Total Sick Leave Involved	Total Sick Leave by Prison²⁷	As a % of Prison Total
Cork	41	13,679	25,061	55%
Limerick	22	8,208	17,213	48%
Loughan House	2	752	1,990	38%
Curragh	5	1,540	4,299	36%
Castlerea	10	2,997	8,538	35%
Training Unit	4	1,000	2,972	34%
Portlaoise	22	7,624	23,777	32%
Fort Mitchell	3	1,231	4,180	29%
Cloverhill	13	3,584	12,916	28%
St. Patricks	7	2,350	9,407	25%
Mountjoy	21	7,332	32,657	22%
Shanganagh	1	306	1,861	16%

²⁵ Midlands Prison is excluded from the analysis as it only commenced operation in November 2000.

²⁶ The days taken would not necessarily be continuous absences, hence the figures differ from those given above for continuous absences.

²⁷ Excluding the Midlands prisons.

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Arbour Hill	3	613	4,479	14%
Shelton Abbey	1	209	1,538	14%
Wheatfield	7	2,160	16,982	13%
Totals	162	53,585	167,870	

In commenting on these findings, the Accounting Officer noted that a small number of officers in Cork, Limerick and Portlaoise prisons have made a disproportionate contribution to the total sick leave recorded for the institutions concerned for the period in question. There are specific reasons why a small number of officers in each of the three institutions might be absent on sick leave for a prolonged period of time.

In Limerick, he stated that officers' homes were attacked and their families intimidated by criminal elements leading to some officers being absent from duty for prolonged periods because of the stress and trauma associated with such attacks. There was also an incident in Limerick Prison which gave rise to very substantial levels of sick leave during the period covered by this Report. This subsequently resulted in some officers retiring on ill-health grounds.

As regards Portlaoise the Accounting Officer stated that a high security prison presents particular problems and risks for the officers employed there. Furthermore, the age profile of prison officers in this prison (and Cork) is considered to be a factor in the level of sick leave in both institutions.

The Accounting Officer pointed to encouraging signs that the Prison Service's efforts to control sick leave more effectively may be paying off. In the first five months of 2003, there has been a 20% reduction in total sick leave in Limerick, Cork and Portlaoise prisons when compared with the same period in 2002.

In relation to the relatively low levels of sick leave pertaining to Arbour Hill Prison, the Accounting Officer said that the main reason for the lower levels of sick leave in this prison is the type of prisoner housed there. There are approximately one hundred and forty prisoners in Arbour Hill, one hundred sex offenders and the remainder "ordinary" criminals who have been convicted of crimes other than sex offences. Sex offenders are generally less problematic and easier to manage. The majority of prisoners in Arbour Hill are older and more mature, serving longer sentences and, therefore, there is a more relaxed regime operating there. The incidence of assaults by prisoners on staff is extremely low. There were no injury-on-duty related absences recorded for Arbour Hill in 2001 and 2002. This contrasts with Cork and Portlaoise prisons combined, which had seventy-five injury-on-duty absences in the same two-year period. The Accounting Officer accepts that specific institutional factors may contribute to lower rates of sick leave but he is not convinced that it is possible to replicate such factors throughout all sixteen institutions.

When considering institutional factors acting on levels of sick leave, the SORT team had noted that the system employed to record sick leave was deficient in that, in the case of any one institution, it did not exclude sick leave of staff which had accrued in another institution, from which the staff member had been transferred. The SORT team considered that this made it difficult to accurately determine the record of individual institutions, which is of particular relevance in examining environmental or cultural factors leading to the taking of sick leave. The team recommended that this system be reviewed. However, the Prison Service states that the SORT Examinations were carried out between 1998 and 2000 and practices in this area may have changed since then.

As part of their general review of sick leave, the Prison Service has noted certain demographic patterns emerging. For example, older prison officers show much higher levels of sick leave than their younger counterparts. The Prison Service states that newer recruits who are on probation do not avail of as much sick leave as older officers. In addition it believes that older officers appear to make themselves more available for longer overtime and unsociable working assignments.

Medical Factors Giving Rise to Sick Leave

The nature of illnesses giving rise to sick leave is recorded in most cases in the Prison Service sick leave database. However, the examination found that in a considerable number of cases the stated cause was not entered. The Accounting Officer suggests that this may be due to an officer availing of uncertified sick leave simply stating that he was “sick” on the day in question. Local prison management have confirmed this. There was also some variability in the way illnesses could be described and entered. Staff entering the details frequently used different descriptions to describe the same basic complaints.

The Prison Service could not supply a definitive breakdown of the causes of sick leave over the three-year period. Audit analysis, allowing for some uncertainty in the way in which descriptions of illnesses could be entered, showed that the most common causes of sick leave were injuries and respiratory problems. A significant number (78%) of the days lost to sick leave could be readily identified and classified under general headings as shown in Table 4.5. These do not purport to be formal medical descriptions. They are merely used as a convenient method of grouping and illustrating the records on the Prison Service database.

Table 4.5 The Causes of Sick Leave 2000-2002²⁸

Sickness Cause	%
Injury	24
Respiratory Problems	22
Musculo-skeletal Disorders	18
Psychological	12
Heart and blood Disorders	2
Other (Dental, Headaches, Fatigue, Pregnancy, Surgical Operations, Hospital Visits etc.)	14
No Cause Stated	8

Research into Underlying Factors Giving Rise to Sick Leave in Prison Staff

When reviewing the experience of other jurisdictions in relation to management of sick leave, it was noted that in New South Wales Australia, the authorities had modified rostered activities, duties and shifts which were historically prone to higher levels of sick leave.

To date the Prison Service has not carried out research in this area. However the Accounting Officer informed me that the Prison Service is at present drawing up terms of reference for research to be undertaken in this area. Such research is expected to identify whether certain rostered activities, duties and shifts are prone to higher levels of sick leave and why there is recourse to a greater level of absenteeism on certain days of the week and during certain months of the year. The proposed survey/research will also be expected to examine other issues giving rise to sick leave including

- The effect of shift work and routine overtime working
- The nature of the working environment
- Injuries sustained on duty.

The Cost of Sick Leave

The prison authorities do not make provision in the roster system to cover periods of absence of staff on sick leave. Where sick leave arises, staff members, who are not on duty, are recalled to the prison to cover for the absence. Overtime is payable in these circumstances.

Prison management have maintained statistics since 2001 that show the impact of sick leave on overtime costs. In 2002 the cost was over €8.6m. This was just under 15% of the overtime bill and slightly over

²⁸ Source: Office of the Comptroller and Auditor General.

4% of payroll costs. Table 4.6 shows, by prison, the cost of overtime attributable to sick absences for the years 2000-2002. Overtime costs by prison for 2000 are not available, and a three year comparison is not possible. The table also shows that overtime costs arising from sick leave have been consistent over a number of years.

Table 4.6 The Cost of Sick Leave in Overtime 2000-2002²⁹

Prison	2000	2001		2002	
	€	€	As % of Overtime	€	As % of Overtime
Arbour Hill	153,587	136,344	8.43	123,006	7.77
Castlerea	242,364	322,449	11.85	248,349	8.48
Cloverhill	339,236	584,108	10.44	567,749	8.98
Cork	715,350	1,025,630	30.17	889,628	25.13
Curragh	167,324	156,237	12.66	212,753	15.34
Fort Mitchell	153,074	164,018	13.87	157,890	14.38
Limerick	893,048	717,003	23.95	851,267	26.59
Loughan House	30,780	39,216	6.58	36,281	6.06
Midlands	29,270	460,617	12.31	899,318	17.26
Mountjoy	⁽³⁰⁾	1,247,046	9.83	1,437,170	11.31
Portlaoise	1,086,135	1,275,746	15.29	1,471,113	17.39
Saint Patrick's	363,660	455,715	11.78	379,335	9.26
Shanganagh	84,731	93,309	15.21	90,288	13.97
Shelton Abbey	88,151	88,151	15.33	88,635	14.59
Training Unit	93,110	131,499	16.37	122,237	13.88
Wheatfield	740,516	830,405	16.09	1,069,035	18.63
Total €	2,456,303	7,727,493		8,644,054	

Operational Response to Sick Leave

The Prison Service is entitled to compel all serving grades to perform overtime. However, many prison staff see the opportunity to work overtime as highly desirable. There is a high volunteer rate and infrequent use of compulsion.

The officer in charge of the Detail Office of each prison is responsible for finding replacement staff to cover for those on sick leave. To this end, he currently maintains two lists of officers. One shows those volunteering to replace staff on sick leave, and the other shows those who will be compelled to replace such staff if the need arises.

Overtime is allocated on the basis of availability by reference to the volunteer/compel lists. Under this system, an officer who is not available, for whatever reason (including sick leave), to work the required period of overtime is placed at the end of the priority list. This should preclude an officer returning from sick leave being immediately allocated duties involving overtime, as his or her name would be at the bottom of the list. This in turn would seem to discourage officers taking excessive sick leave. However, the SORT report noted that in a number of institutions there was an agreed policy of distributing overtime equally among staff over a specific period of time. This policy included staff who had been absent on sick leave during the period. This approach offered little incentive to have a good attendance record. The Prison Service has indicated that practices vary from institution to institution. Officers

²⁹ For comparative purposes, costs for all years are stated in terms of the average overtime rate applying in 2002 which was €28.50 per hour.

³⁰ Mountjoy data unavailable for 2000.

returning from sick leave may immediately be offered overtime if other staff are unable or unwilling to perform it. The overall effect of this practice on the rate of sick leave is unknown.

The Accounting Officer in commenting on this stated that volunteer/compel lists will become obsolete on the introduction of the proposed annualised hours attendance system. This approach will ensure that deficiencies in the present system are removed.

Control and Management of Sick Leave

General Policy Approach to Control and Management

The last general agreement between the Prison Service (the Department of Justice at the time in question) and the Prison Service staff was made in 1976. This agreement brought the Prison Service rules in regard to casual sick leave into line with the general Civil Service.

The Prison Service drafted an Attendance Policy in November 2001. The purpose of this detailed document is threefold

- To set out a clear and consistent policy in relation to the management of attendance
- To devolve managing that policy to local prison level and
- To ensure that immediate supervisors have a clear and defined role in the management of staff who report to them.

As part of the draft Attendance Policy, the Prison Service proposed that there would be regular contact with staff on sick absence. The contact was to be by telephone, followed by prearranged visits periodically thereafter. The benefits of such a policy were stated to include

- The employee updating the supervisor on his/her medical condition
- The supervisor updating the employee on work events
- Completion of outstanding paperwork
- Identification of the employee's needs in the structured return to work programme.

The Prison Service also proposed return-to-work interviews. These would be conducted with every member of staff on return to work after a period of sickness absence, including a one-day uncertified absence. The officer's immediate supervisor would conduct the interview.

The POA rejected both initiatives and no progress has been made in finalising the draft Attendance Policy. Until all parties agree such a policy, Prison Service management has stated that it is bound by the general sick leave regulations. It cannot introduce any schemes that would not be standard or acceptable practice in the wider civil service.

In the UK, the NAO found that the Prison Service encouraged prison establishments to keep in touch with absent staff to help demonstrate commitment to their welfare and interest in their recovery and return to work. However, the NAO also found that most prisons were inconsistent in the frequency and type of contact made. Furthermore, as few establishments required notes to be taken of such contacts, estimates of the number of contacts made could not easily be validated.

In relation to return-to-work interviews, the NAO found that the Prison Service in the UK planned to introduce them following all absences. Interviews were to be documented for all absences of six days or more.

Performance Management

Targets for the reduction of sick leave are not included in the Strategic or Business Plans for the Prison Service. This contrasts with the situation pertaining in the United Kingdom where NAO reported that the Prison Service there had introduced reductions in average levels of sickness absence as a key performance indicator from 1999. The indicator was to be reflected in targets set for each prison. Prior to this it was left to individual prisons to set such targets. The majority did not do so.

In commenting on this, the Accounting Officer expressed the view that imposing sick leave targets on prisons was unrealistic, as such targets could not possibly take account of events such as injuries on duty and pregnancy related absences. Nevertheless, the Department expects that the SORT exercise will reduce sick leave by up to 50%.

Monitoring and Control Procedures

Sick leave is recorded in all prisons on a computer system available to the Pay Offices of prisons. The system is used to provide monthly reports, through the prison Governor to Prison Service Headquarters. The names of the staff members and the breakdown between certified and uncertified leave are also reported.

Prison Service Headquarters primarily review these monthly reports to stop or reduce pay and annual leave entitlements where sick leave exceeds that permitted under the regulations.

The Accounting Officer informed me that the system is also used to produce printouts of officers who have had more than 60 days sick leave in the previous four years (30 days sick leave for officers who have been recruited since 1998/1999). This figure does not indicate an acceptable level of sick leave. It is simply an administrative filter to focus on the more serious cases. The reports have been used as discussion documents between the Prison Service Human Resource Directorate and the prison Governors on how to tackle those officers whose records indicate absenteeism, which is defined as an excessive amount of sick days coupled with an excessive number of absences. One such meeting with each Governor has taken place between November 2002 and July 2003. There is a choice of sanctions to be imposed, viz:

- Issue a warning of varying severity
- Withdraw privilege of uncertified sick leave for a specified period- usually a year
- Withdraw privilege of paid sick leave, both certified and uncertified, for a specified period- usually a year
- Referral to the Chief Medical Officer
- Recommend retirement on the grounds of ill health
- Recommend dismissal (in the case of a probationer the Minister has power to dismiss. In the case of an established officer only the Government can dismiss).

The system also produces five, six and seven day uncertified sick leave warning reports intended for staff members involved and their local management. However, the computer system does not record the number of warnings produced or issued thus limiting its usefulness for producing management information. Similarly, details of the duties and rosters worked by prison officers are not correlated with their sick leave records. In the circumstances, it is not possible to determine whether sick absences are significantly linked to particular areas or activities of prison work. Neither is it possible to readily determine the responses of individual managers to patterns of casual sick leave in their area without an extensive review of personal files.

It was noted in the course of my examination that in one prison a second computerised information system was used to enable prison management to monitor the use of manpower resources and prisoner movements. This database also facilitates detailed monitoring and review of individual, workgroup and prison-wide sick leave. Service wide use of such a database could lead to the identification of problems giving rise to excessive sick leave. The Prison Service has stated that this system has no prison-wide standing and that its usefulness or otherwise has not been established. However, the Accounting Officer has informed me that the Prison Service is presently conducting a major review of its IT systems.

Prison-wide Programmes to Manage Sick Leave

The Prison Service operates two principal programmes to manage sick leave. The first of these, the Employee Assistance Programme (EAP) is the civil service wide support programme designed to assist employees with personal difficulties. The programme provides information and aims to facilitate the voluntary resolution of attendance problems. In the Prison Service, it has been in operation since 1992.

The EAP has 2 full-time Employee Assistance Officers (Welfare Officers) who are supported by 32 part-time Staff Support Officers (SSOs) who perform these tasks in addition to their normal Prison Service duties. The Prison Service conducted a competition earlier this year from which additional Staff Support Officers were recruited.

The Prison Service also operates an Intervention Programme, which comes into effect when all other attempts to manage a prison officer's poor attendance record fails, and the officer faces dismissal proceedings. The Programme is not intended to operate in cases of serious illness, rather for casual sick days taken and less serious certified illnesses. Participation is voluntary but follows a rigorous and clearly defined series of steps. These document the seriousness of the situation and seek to gain the employee's commitment to remedying the problem within an agreed timeframe. The officer's POA representative is associated with the intervention from the outset.

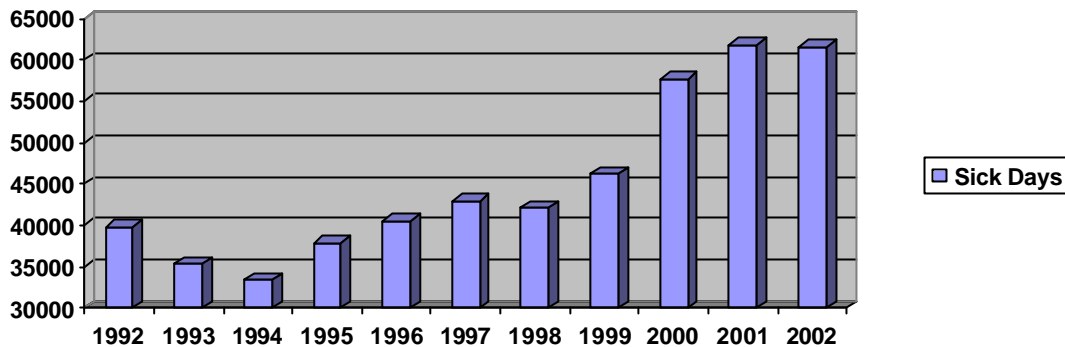
Under the Programme, eight meetings are to be convened between the Governors, the prison officer facing dismissal proceedings and the POA, with the intention of obtaining a resolution to the benefit of the Prison Service and the employee by the end of the eighth meeting. It is understood from the Prison Service that the Programme generally runs the full course of eight meetings.

Disciplinary Procedures

The Prison Service Operating Review Group noted in 1997 "since 1992 a vigorous policy has been pursued with a view to reducing absences." This policy included sanctions on officers who incurred excessive sick leave. The Prison Service could place those officers with more than 60 days in the previous four-year period and 10 days in the current year on sick leave without pay. This sanction was subject to an analysis of the person's record to discount such factors as accidents on duty, operations and non-recurring illnesses. The Group observed, however, that while initially large gains were made as a result of this approach, in 1995 and 1996 this progress has since been reversed. This is evident from the available statistics as shown in Figure 2 below ³¹.

³¹ Over the years, there has been a general increase in the number of officers availing of sick leave, as well as a rise in numbers of prison officers employed. These increases impact on the total number of sick days taken. Between 1997 and 1998, an increase in the number of officers availing of sick leave was accompanied by a small fall in the overall number of days taken. On the other hand between 2000 and 2001, a decrease in the numbers availing of sick leave was accompanied by a rise in the overall level of such leave.

Figure 2



Prison Service records show that, in the period 1998 to 2001, two hundred and ninety four officers were put on sick leave without pay. Eighty-one of these officers serve in Portlaoise prison, fifty-three in Limerick prison with forty-one each in Wheatfield and Mountjoy. The Accounting Officer has stated that in the period 2001/2002 many measures designed to combat persistent absenteeism had to be placed on hold pending the outcome of the High Court proceedings referred to earlier. Following the judgment in this case, staff from the Prison Service headquarters have met the Governors of all sixteen institutions to discuss the issue of absenteeism. These meetings have resulted in 48 prison officers having the privilege of sick leave with pay withdrawn for a period of 12 months. In all cases this sanction has been imposed because of excessive absenteeism that is defined as a high number of sick days combined with a high number of absences. In addition, forty officers had the privilege of uncertified sick leave withdrawn. Furthermore, dismissal procedures are in train in relation to a number of established officers who have a persistently high level of sick absence and in relation to a number of probationers who have poor attendance records.

Retirement on Medical Grounds

Where staff are found to have a consistently poor sick leave record they may be recommended for retirement on health grounds. This is in line with practice pertaining to other civil servants. Neither group may be dismissed from service on medical grounds alone.

The Prison Service sometimes refers its difficult sick leave cases to the Chief Medical Officer (CMO). There is no automatic referral system and each referral is done on a case-by-case basis. Both Prison Governors and Prison Service Headquarters may refer particular cases to the CMO as a preliminary procedure in the process of retirement on health grounds. Only the CMO may recommend that an employee is retired on ill-health grounds.

In reply to this Report, the Accounting Officer stated that, as part of the monitoring and control procedures, files continue to be referred to the CMO for consideration of ill-health retirement of officers who have been absent for prolonged periods. In some of the cases referred, the CMO has advised that the officer concerned is making slow progress but no date for resumption to work can be given. Such cases make a very significant contribution to the total number of sick days in any twelve-month period. Monitoring and control procedures can only have a negligible impact on it.