

Chapter 7 Department of Education and Science

7.1 Residential Institutions Redress Scheme

Background

Approximately 29,500 people, born since 1930, were committed by the courts to industrial and reformatory schools. In addition, significant numbers, which cannot be accurately quantified by the Department of Education and Science (DOES), were committed by parents.

Widespread concern was expressed in the 1990s about the extent and effect of child abuse at institutions supervised by the State in previous decades. Such abuse included sexual, physical, emotional abuse and neglect.

The Taoiseach, in May 1999, apologised on behalf of the State to the victims of abuse and announced the establishment of a Commission to inquire into this matter (the Laffoy Commission).

The Laffoy Commission was established by legislation in 2000³⁵. The Commission operates either by affording victims an opportunity to tell their story without investigating their allegations or to have their allegations investigated.

Addressing the redress issue

In October 2000, the Minister for Education and Science (the Minister), in a memorandum to Government, outlined his general policy position in relation to redress.

The principal points made were that:

- Requiring victims to pursue claims for compensation through the courts would not be consistent with the desire, evident in the Taoiseach's apology, to face up to and deal with the issue of past child abuse
- He was of the opinion that there was a compelling case for setting up procedures outside the court system for dealing with claims from victims of abuse, in order to avoid significant delays and costs in litigation
- Victims could face great difficulties in bringing claims through the courts and it was appropriate to offer a quicker and less demanding process for the award of monetary compensation
- The Government was committed to providing the necessary funding, with a contribution from religious congregations if one could be agreed.

In addition, Judge Laffoy had, by this time, expressed concerns that victims would not co-operate with the Commission in the absence of a compensation scheme.

The Government, following consideration of the matter, agreed, in principle, to establish a redress scheme. It was envisaged that the scheme would compensate people who as children were victims of abuse while resident in institutions where the State had regulatory or supervisory functions. Compensation would be paid on an ex-gratia basis, without establishing any liability on the part of State

³⁵ The Commission to Inquire into Child Abuse Act, 2000.

bodies but subject to a claimant establishing to the satisfaction of the compensation awarding body that he or she had suffered abuse and resulting damage.

In response to the Government decision the Conference of Religious in Ireland (CORI) indicated their willingness to become involved, in principle, with the Government in setting up and implementing the proposed scheme. In November 2000, the Minister and the religious congregations agreed to enter into formal discussions on the details of the congregations' participation in the compensation scheme.

In February 2001, the Government approved the drafting of the Victims of Child Abuse Compensation Tribunal Bill to provide for a compensation scheme, which would validate claims in a non-adversarial way. At that time, the Government noted that discussions were to continue between the State and the religious congregations with a view to securing agreement on a meaningful contribution to the compensation scheme in advance of the publication of the legislation.

The Bill was enacted into law, on 10 April 2002, as the Residential Institutions Redress Act, 2002 (the Act) and provides for the establishment of the Residential Institutions Redress Board (the Board) and the making of awards to persons who, as children, were resident in certain institutions and have or have had injuries that are consistent with abuse received while resident in the institutions.

In addition to claims from residents of DOES supervised institutions, former residents of certain institutions not under the supervision of the DOES can also apply for redress.

The redress scheme extended to former residents of 123 institutions regulated by the State. 87 of these were under the supervision of the DOES.

82 of the 123 institutions were managed by religious congregations represented by CORI. The remaining 41 institutions were not involved in the negotiations about a contribution nor will they benefit from any indemnity.

In January 2002, the Minister had announced that agreement, in principle, had been reached with the congregations about the level of the congregations' contribution. Further negotiations took place culminating in the approval by the Government, in June 2002, of an agreement under which the congregations would make a contribution of €128m inclusive of some past contributions. In return, the State agreed to indemnify the congregations in respect of all cases where a person would have been eligible to make a claim under the Act, with the indemnity to apply to those cases where litigation was commenced within the following six years. On 5 June 2002, an Indemnity Agreement (the Agreement) to give effect to this was signed between the Minister, the Minister for Finance and eighteen religious congregations.

The Redress Scheme

The Act provides for the making of awards to assist in the recovery of people who have injuries that are consistent with abuse received while resident as children in certain State regulated institutions. The Board has been established to determine awards while a Residential Institutions Review Committee (the Review Committee) has been established to review them.

The Board has two main functions:

- To make awards in accordance with the Act
- To make all reasonable efforts to ensure that those who were resident in the institutions listed in the Act are made aware of the Board's existence so that they may apply for redress.

In order to qualify for redress an applicant must establish, before the Board:

- His or her identity
- That he or she was resident, while under the age of 18, in one of the institutions listed in the schedule to the Act
- That he or she was abused while so resident and suffered injury
- That the injury is consistent with abuse suffered while so resident.

Applications must be made within three years of the establishment of the Board on 16 December 2002. In a case where a person, who would have qualified as an applicant, dies after 11 May 1999 the spouse or children of that person may make an application on his or her behalf. The Board may, in exceptional circumstances, extend the time limit.

The Board makes a preliminary decision as to whether an applicant is entitled to an award. It requests its medical advisers to prepare a report on the injuries received by an applicant and then makes an award in accordance with established redress bands.

If the applicant accepts the award, then he or she must agree in writing to waive any right of action against a public body or a person who has made a contribution under the Act.

An award may be paid by way of lump sum or in instalments, if an applicant requests this and the Board agrees to the request, or in circumstances where, having heard submissions, the Board directs that the award should be paid in instalments or otherwise than by way of a lump sum.

The Board may make an interim award, not exceeding €10,000, where it makes a preliminary decision that the applicant is entitled to an award, that the award is likely to exceed the amount of the interim award and is satisfied, having regard to the age or infirmity of the applicant, that the interim award is appropriate.

An applicant has one month to accept or reject an award or to submit the award to the Review Committee, which is wholly independent of the Board.

An applicant may submit any of the following matters for review:

- The rejection of an application because the criteria laid down in the Act have not been established
- The amount of an award made by the Board
- A direction by the Board that an award is to be paid in instalments, or otherwise than by way of a lump sum, to an applicant deemed incapable of managing his or her own affairs.

Objectives and Scope of the Examination

The principal objectives of the examination were to:

- Estimate the State's contingent liability arising from the establishment of the redress scheme
- Review the negotiation of the Agreement with particular reference to the information, advice and arrangements for approval of the acts of negotiation
- Review the implementation of the Agreement concluded as a result of those negotiations.

It is outside the scope of my audits to comment on policy issues. It is, however, within my remit to examine, and form a view on, the quality of information underlying key decisions in the formulation of a policy.

The scope of the examination included a review of files, including notes of meetings, legal advice, correspondence and records of decisions. Discussions were held with officials of the DOES and the Redress Board.

The Contingent Liability for Redress

The extent of the State's liability for redress is dependent upon a number of contingencies and future events. Consequently, any estimate of future liabilities arising out of the redress scheme is made in circumstances of uncertainty, particularly since the Board has not yet functioned for a full year.

The principal uncertainties inherent in any estimation of liability surround:

- The potential population of claimants
- The number of those potential claimants who will apply for redress
- The extent of any awards which depends, in turn, on the nature of abuse suffered by applicants, its impact and consequences
- The extent of costs which may arise.

The liability outlined in this section is, therefore, a contingent one and can only, due to these uncertainties, be treated as a preliminary indication of the extent of the liability.

The possible cost of redress

Between the commencement of the scheme in December 2002 and the end of July 2003 the Board had received 1,662 applications. Applications have been made at a rate of approximately 50 per week to that date and 48 had been rejected as not coming within the terms of the scheme.

The ultimate cost of the scheme to the State will be a factor of the average award made, the number of valid applications and the costs. None of these can be estimated with certainty at this stage.

Level of awards

An Advisory Compensation Committee was established by the Minister in 2001 and brought together expertise from a range of disciplines, including legal, medical, psychiatric and psychological. The Committee considered the experience in other countries in the course of its deliberations. Its report "Towards Redress and Recovery", known as the Ryan Report, was presented to the Minister in January 2002 and included, inter alia, recommendations for the assessment of redress.

The Committee recommended that redress should be assessed under four headings with a weight to be attached to the different elements in accordance with Table 7.1.

Table 7.1 Weighting scale for evaluation of severity of abuse and consequential injury

Constitutive elements of Redress	Severity of abuse	Severity of injury resulting from abuse		
		Medically verified physical/psychiatric illness	Psycho-social sequelae	Loss of opportunity
Weighting	1 – 25	1 – 30	1 – 30	1 – 15

The Committee recommended that, having regard to the cumulative rating, the amount of redress should be determined in accordance with redress bands set out in Table 7.2.

Table 7.2 Amounts payable for weightings allocated

Redress Band	Total weighting for severity of abuse and injury/ effects of abuse	Award payable by way of redress
V	70 or more	€200,000 to €300,000
IV	55 – 69	€150,000 to €200,000
III	40 – 54	€100,000 to €150,000
II	25 – 39	€50,000 to €100,000
I	Less than 25	Up to €50,000

In December 2002, the Minister, in regulations made under the Act, incorporated the recommendations of the Ryan Report into the redress scheme.

Having determined an award under these redress bands, the Board may make a further payment of up to 20% of the assessed award in exceptional circumstances and may also make a payment for medical expenses and reasonable expense incurred in the making of an application (e.g. legal fees).

Estimates of average awards

The Redress Board commenced hearings in late April 2003. Only a limited number of cases have yet been heard and it may take some time for a definitive trend to emerge. Up to the end of July, the Board had made offers in 108 settlement cases and 25 awards in hearings. Awards ranged from €10,000 to €200,400. The average award was just over €84,000.

If allowance is made for a variation, in future awards, of 15% of the average awards made to date this would place awards in the range €71,400 to €96,600.

By way of comparison this trend is borne out by the level of average awards from three of the compensation schemes which operated in Canada where awards made were, broadly speaking, based on matrices similar to that recommended by the Ryan Report and adopted in the Irish Regulations.

The relationship between average award levels and the maximum potential award in the three Canadian schemes is set out in Table 7.3³⁶.

³⁶ Institutional Child Abuse in Canada, a paper prepared for the Law Commission of Canada (Goldie M. Shea, October 1999).

Table 7.3 Claims and awards in Compensation Programmes relating to Institutional Child Abuse in Canada, 1993 to 1999

Schemes	Final number of claims	Maximum award	Average award as % of maximum award
Nova Scotia (3 institutions)	1,260	\$120,000	26%*
Ontario – Grandview	329	\$60,000	62%
Ontario – St Johns & St Josephs	1,200	\$108,000	31%

*The average award in Nova Scotia, 26%, includes a separate counselling award.

The trends which can be noted in the Canadian cases are:

- The average award represents something of the order of 32% of the maximum available.
- As the number of cases increases, the average award tends to fall. If only the two schemes with the higher number of applicants are considered the average award is around 28.5% of the maximum available.

This, if replicated in Ireland, would place average awards in the range €85,500 to €96,000.

The Accounting Officer pointed out that awards in army deafness cases may be a more reliable indicator of average awards than the Canadian experience. In furtherance of this view he described army deafness as very much a 'home-grown' class action which, in particular, demonstrated how the amount of awards lessens with time. Army deafness awards are finalised either by loss adjusters or through court hearings. Since redress and deafness claims are very different in nature I do not consider that any adjustment should be made, at this point, in the estimation process because:

- The scheme will only operate for three years
- Awards will be based on formulae
- The disposal of claims during the three years may be as much a factor of the timing of receipt of claims and evidence as of the nature and consequences of any alleged abuse.

Moreover, the average level of award in army deafness cases settled under the Early Settlement Scheme has not materially changed since its introduction in January 2001.

Costs

The regulations provide for the payment of reasonable costs. The awarding of costs will be a matter for the Redress Board to agree with an applicant and his/her solicitor. In the absence of agreement, costs will be decided by a Taxing Master of the High Court. For the purposes of estimating the liability, it is assumed that costs will be approximately 15% of awards³⁷.

All-in award levels

Applying this level of costs to the estimated award range calculated on the basis of determinations and to the average award actually made to date by the Redress Board yields the following estimate of the all-in cost of awards:

- The average all-in cost would be around €96,600

³⁷ There is provision in the Act for ensuring that costs are not duplicated where a person has the same legal representation before the Board, the Investigation Committee of the Laffoy Commission or in litigation.

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- If awards were at the lower end of the scale they might average approximately €82,100
- If awards were at the higher end of the scale they might average around € 111,000.

Number of claimants

The ultimate number of claimants will be a factor of the potential population of claimants and the numbers who ultimately apply for redress.

In regard to the population of claimants, information is available from a number of sources:

- Litigation, where victims had commenced or threatened cases against the congregations
- The number of people who had applied to give evidence to the Investigation Committee of the Laffoy Commission
- Freedom of Information requests from former residents of institutions.

I requested the DOES to carry out an analysis of the information available on the number of potential applicants at 30 June 2003. Information was supplied to me on foot of this request, as follows:

- A set of names from the litigation cases and the FOI requests, compiled so as to eliminate duplication
- The overall results of a comparison of this set of names with the names of those who applied to give evidence to the Investigation Committee of the Laffoy Commission in order to give an up-to-date “base population” of possible applicants to the Redress Board, again eliminating duplication.

In addition, the Minister directed the Redress Board, under section 26 of the Act, to prepare a report comparing its applications at mid-July 2003 with a combined set of names, obtained by combining the FOI and litigation data³⁸. The Board had received 1,551 applications at that time.

To date, the Redress Board’s experience has been that 30% of existing claimants, from former residents of institutions under the aegis of the DOES, have provided evidence without first making a FOI application. Consequently, an allowance must be made for claims which are not supported by evidence obtained under FOI. This would suggest around 778 potential applications from this source at 30 June 2003³⁹.

The analysis carried out by the Board also showed that around 6% of its applications are from former residents of non-DOES institutions. This indicates that the non-DOES claimant numbers at 30 June 2003 would have been of the order of 410⁴⁰.

³⁸ No information about applications to give evidence to the Laffoy Commission was submitted to the Redress Board.

³⁹ There were 4,508 FOI applications at 30 June 2003, after eliminating duplicate requests. 30% of all DOES potential applicants at this date amounts to 1,932. Those who instituted cases or applied to give evidence to Laffoy, without making a FOI request, amount to 1,154. The balance comes to 778 potential claimants.

⁴⁰ 6% of all applicants.

Claimant population – Potential claims at 30 June 2003

The combination of these lists resulted in the derivation of the following base population at 30 June 2003:

Potential Redress Applications at 30 June 2003

Persons who has instituted cases or FOI requests

People who had initiated cases and made FOI requests	1,448	
People who made FOI requests only ⁴¹	3,060	
People who instituted cases only	<u>884</u>	5,392

People who applied to give evidence before Laffoy Investigation Committee but not included above

270

Other Claims

Claims from DOES supervised institutions not included above	778	
Claims from residents of institutions not under DOES	<u>410</u>	<u>1,188</u>

Total potential claimants at 30 June 2003		<u><u>6,850</u></u>
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Further potential claims

Further potential claims are likely to arise because:

- Requests for information under FOI continue to be made at a current rate of around 180 per month
- Certain claims may be received without recourse to FOI
- The trend in claims from non-DOES cases is likely to continue at least at the existing level of 6% of all applications
- The experience in Canada has been that the actual creation of a non-confrontational redress scheme induces more victims to come forward and make claims. In the two Ontario schemes the increase in the number of claimants varied between 2.6 and 3.4 times the known likely number of claimants at the start of the schemes⁴².

While, to date, 30% of applications to the Board are not supported by FOI based evidence it has been assumed that, given the fact that the Board is encouraging applicants to use the FOI route, the percentage of non-FOI supported cases will drop to around 20%. In estimating future potential claims under these assumptions, FOI requests have been taken as a key indicator of claims since the information supplied by the DOES is used as evidence of residency. Analysis has been carried out on the basis of two levels of requests – 86 and 140 per month.⁴³, during the period July 2003 to December 2005.

⁴¹ This figure has been adjusted for duplicate FOI requests.

⁴² It is not possible to derive similar rate increases for the Nova Scotia schemes due to lack of information on the actual number of potential claimants.

⁴³ Average FOI claims to date are 86 per month while the average rate since the agreement in principle was announced is around 140 per month. While the rate since the establishment of the Board is around 180 per month, it is assumed that this will begin to reduce as the three years elapse.

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An estimate based on these levels of requests would suggest that potential future claims might be of the order set out in Table 7.4.

Table 7.4 Potential further claims to December 2005

	FOI requests of 86 per month	FOI requests of 140 per month
Projected claims based on assumed new FOI requests	2,580	4,200
Potential applicants from DOES institutions who do not make an FOI request ⁴⁴	645	1,050
Potential applicants from non-DOES institutions ⁴⁵	206	335
Estimated number of potential future claims	3,431	5,585

Total potential claimants

Combining the estimates of claimants at 30 June 2003 with that of future potential claimants would yield a possible range from 10,281 to 12,435 claims.

If a further assumption is made that around 5% of potential applicants who have instituted legal proceedings will not apply for redress and that only around 85% of the remainder will apply, then the estimates indicate that the final number of claimants could lie in the range of around 9,000 to 10,800.

These adjustments are made in an attempt to take account of the fact that the age of claimants may militate against the pursuit of redress in all cases⁴⁶ and a certain base level of applications under FOI is for purposes of tracing relatives and gaining insight into the background, family history and circumstances of a referral to institutions regulated by the State.

It is difficult to interpret the initial relatively slow rate of applications to the Board. Only 15% of the 884 litigation cases mentioned previously have claimed to date. Assuming that all of these litigation cases will become claims and that a similar claim pattern applies to non-litigation cases it would suggest that final claims may be of the order of 10,300.

As part of the estimation process these calculations will need to be revisited by the DOES from time to time as the trends upon which they are based become clearer and if more institutions are added to those listed in the schedule to the Act.

Estimates of the contingent liability

The trends apparent in the Canadian schemes examined suggest that as the number of claimants increases the average award might be towards the lower end of a range.

This would be consistent with the fact that:

- The base population at the date of conclusion of the agreement contained a high proportion of persons who had instituted legal proceedings and were, therefore, committed to the more onerous pursuit of redress through the courts

⁴⁴ 20% of DOES applicants.

⁴⁵ 6% of all applicants.

⁴⁶ Over 1 in 5 of applicants to give evidence to the Investigation Committee of the Laffoy Commission are over 60 years of age while almost 4% are over 70.

- It also contained a segment of claimants who had opted to give evidence before the Investigation Committee of the Laffoy Commission
- Even if more recent additions to the population of potential claimants all result in claims, it may be reasonable to estimate the average award on the basis that, taken in the aggregate, additional claims, while valid and genuine, may progressively arise from persons who have coped better with the psycho-social consequences and loss of opportunity that arise from abuse.

In summary, the following assumptions appear relevant to the estimation of the State's contingent liability:

- Claim numbers may lie in the region of around 9,000 to 10,800⁴⁷.
- Average awards would be around €96,600, including costs, but might lie in the range €82,100 to €111,000.
- It is likely that the average award level would be higher at lower claim levels and lower in a situation where claim levels were high.

Taking account of these assumptions the contingent liability might be as follows:

- If the average award level is applied - €869m to €1.04bn
- If the awards vary as assumed with the claim numbers this results in a liability of between €887m and €1bn⁴⁸.

These contingent liabilities must be viewed with caution until the claim and award trend emerges in the light of the further experience of the Redress Board. Consequently, it will be important for the DOES to periodically rework the figures in order to provide the most accurate projection in the light of each new set of claim data.

Department's views on the liability

The DOES takes a more conservative view of the potential liability. It bases its estimate on the Redress Board's caseload to date. The Board is receiving applications at a rate of 50 per week and is now eight months into its operation. If it is assumed that it will continue to receive this level of applications for the next three years it implies a total caseload of 7,800. The Accounting Officer's view is that it is likely that the flow of applications will abate as time goes on, with possibly a flurry of activity in the final months before the closing date in just over two years time. Under this scenario the maximum number of applicants is, in his view, unlikely to exceed 8,000.

Allowing that the average award of just over €84,000 remains static, and taking the total number of applications at a level of 8,000, would imply a cost of awards in the order of €672m. Adding 15% for costs implies a total maximum cost in the order of €772m. However, this is likely to be an exaggerated estimate since it takes no account of diminishing numbers of cases and a diminishing average award as time goes on. The Accounting Officer stressed that the Department will keep the issue under regular review.

The Accounting Officer bases his analysis on the claim experience of the Redress Board to date and his calculation of the likely cost of the redress scheme may indeed be valid. However, the figures produced in

⁴⁷ In extreme circumstances, if FOI requests continue to be made at the current rate of 180 per month, claims may rise to over 13,000.

⁴⁸ Where the lower claim numbers are assumed the highest award level is used and vice versa.

my calculations are estimates of the contingent liability or the liability that may arise if the potential population claim in accordance with the pattern set out in the assumptions. It is only as the claim pattern becomes clearer that the DOES will be in a position to assess the liability with a greater degree of precision.

The Agreement and its Negotiation

While internal briefing papers noted that the decision to set up the scheme was not dependent on a contribution from the congregations, the Act provided that a person, with the consent of the Minister and of the Minister for Finance, could make a contribution for awards. This was designed to provide for a situation where the State would reach agreement with the congregations on an indemnity to be provided in return for such a contribution.

Formal discussions on these matters took place throughout 2001 and the first half of 2002.

There were, broadly speaking, three phases in the negotiations.

- During the period up to October 2001, officials conducted the negotiations in the course of which the congregations made their opening offer. These negotiations reached an impasse.
- From November 2001 to January 2002, the Minister was involved in direct negotiations with the congregations, leading to the announcement that agreement, in principle, had been reached.
- Further negotiations between officials took place during the period from February to June 2002 when agreement was reached.

Negotiations to October 2001

In the period up to October 2001, the State's negotiating team comprised representatives from the DOES, the Attorney General's Office and the Department of Finance. Legal advisers accompanied the congregations' representatives.

The congregations were concerned that those negotiating on behalf of the State should have the power to bind the State and at various stages they expressed concerns about the process and how the Cabinet could be kept involved. Both sides accepted that negotiations would be on the basis that nothing is agreed until everything is agreed.

Key issues in the negotiations

While the negotiations covered a range of items, including issues surrounding the validation of claims, two interlinked issues were central. These were:

- The level of the congregations' contribution
- The nature of the indemnity to be provided in return.

The congregations' negotiating stance

The congregations took the view that the level of contribution required from them should be in proportion to the level of validation of allegations decided by the Government and their ability to pay. In their opinion, the contribution should also take account of:

- The fact that it was the State that had decided to proceed with this particular form of redress
- The fact that the State had set the level of validation lower than that of the Courts
- The congregations' own assessment of their liability in a Court situation.

Also, the congregations maintained that account should be taken of the contributions made by them to the Faoiseamh Helpline and other pastoral services which had been made available to former residents of institutions. In addition, the congregations indicated that any contribution should take into account the ministry which they continue to carry out and, where appropriate, the resources of individual congregations.

In return, the congregations were seeking an indemnity against all claims by persons who would be eligible to make a claim to the Redress Board.

The State's position

The State's estimate of the liability, which would arise from the creation of a redress scheme, had developed during the period February to June 2001⁴⁹.

- In February, the estimated upper limit of the liability was €254m.
- By April, a DOES memorandum indicated that it would be reasonable to operate in terms of a maximum potential cost of €381m.
- In June, a further DOES memorandum stated that the liability might be as high as €508m.

The initial stance taken by the State was that the congregations should pay 50% of the cost of the scheme. The congregations responded that this went far beyond what they had envisaged.

In April 2001, officials sought Ministerial approval for an approach whereby, while a contribution of 50% would be sought, it should be subject to a maximum limit. While the opening figure sought should be €190m, representing 50% of the then estimated liability, in the event that the congregations could provide convincing reasons for resisting this approach, a lower limit of €127m could be set. If not satisfied as to the contribution, the State should be prepared to refuse to accept the participation of the congregations and should, in that case, amend the law to ensure that claimants could, even if compensated through the scheme, pursue their claims independently against the congregations.

A DOES memorandum of 30 April 2001 stated that the congregations had been given a figure of a possible 2,000 claims with a final cost in the region of €254m but that it had been stressed to the congregations that the final cost might be much higher. However, a possible capping of the contribution was not mentioned to the congregations at this time. In March 2001, the DOES had pointed out that the provision of an open-ended indemnity would have significant implications for the State and that the issue would require further detailed discussion.

The initial offer

At a meeting on 26 June 2001, the congregations outlined their proposed contribution. The offer amounted to approximately €108m, €57m in new resources and past property contributions valued at approximately €51m. The offer included:

⁴⁹ At all times, caveats were entered to the effect that these estimates were tentative and that the estimation was difficult.

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- Cash payments of €25.4m over a five-year period
- An education trust fund of €12.7m
- Transfers of property worth €12.7m to the State
- €6.35m for counselling and other support services, some of which had already been spent
- Property, valued by the congregations at €51m, which congregations had transferred to the State for little or no consideration over the previous 10 years.

In return, the congregations wanted an indemnity against all claims in respect of institutional abuse of children up to the present.

The congregations maintained that the offer exceeded their exposure in litigation by a considerable margin. The congregations also claimed that, by establishing the scheme, the Government had increased the number of claims far beyond the number the congregations would have been required to meet in litigation.

Figures were submitted by the congregations outlining a number of possible outcomes if cases, approximately 2,500, were taken through the Courts. Various assumptions were made concerning the number of cases that would succeed and the possible range of awards and costs in such circumstances. There was an assumption that between 78% and 89% of the cases would fail.

The congregations estimated that, over a range of different liability apportionment scenarios, their exposure would lie between €21m and €106m. On the basis that each of these scenarios had an equal chance of occurring, and that the expected cost would be an average of the cost in all of the scenarios, the congregations went on to estimate their probable exposure in litigation at around €54m.

The Department's response

DOES officials, in putting the offer to the Minister, noted that the value of the offer amounted to €57m, unless the State was prepared to accept the congregations' approach and include the past property transfers. This fell far short of the State's objective of 50% with a minimum contribution of €127m. The officials noted that the property transfers had occurred without any reference to abuse compensation.

The officials emphasised that the State had no reliable information on the congregations' assets and their ability to pay. In addition, the value of the indemnity requested and the resultant cost to the State were not quantifiable.

The Minister for Finance was informed and wrote to the Minister stating that the offer was quite inadequate and left the State to bear virtually the full cost of the redress scheme.

Impasse in the negotiations

The negotiations slowed in the months following the offer by the congregations. There was some publicity which caused discord between the two sides.

A further meeting was held in October 2001. Handwritten DOES notes from this meeting indicate that a contribution of €127m was mentioned but the notes also show that the State negotiators considered past contributions to be of no value.

Following this meeting, the congregations wrote to the DOES. The letter indicated that the congregations felt that the June proposal had not been taken seriously by the State and that the leaders of the congregations were going to meet to decide on their future participation in the negotiations.

The Negotiations – November 2001 to January 2002

On 6 November, prior to the first meeting involving the Minister, the DOES wrote to the congregations. This letter marked a significant change in the stance being adopted by the State in relation to past contributions. Included among the points made in the letter were the following:

- The State would provide a permanent indemnity against litigation in cases which would come under the remit of the Redress Board.
- A package involving cash, an education trust and property transfers could form the basis for the congregations' contribution.
- The DOES would like to see the congregations contribute 50% of the cost of the redress scheme. While the State estimated the likely cost at €254m to €508m, the congregations' contribution could be capped at €127m, which represented 50% of the lowest cost estimate.
- A problem existed with the proposed inclusion of past property transfers to the State, given that they occurred without reference to a redress scheme, but the issue could be re-examined in the context of the date of the State's apology.
- The congregations' proposed contribution, when past transfers are excluded, represented only 10% to 20% of the likely cost.

Negotiations took place in the period from November 2001 to January 2002. No contemporaneous records of these negotiations were available during my examination. On 12 March 2002, the DOES prepared a retrospective memorandum on the negotiations conducted by the Minister.

The memorandum, which was prepared by the Secretary General who accompanied the Minister during this phase of the negotiations, stated, *inter alia*, that:

- The negotiations had reached stalemate after the June offer and the congregations were also concerned about confidentiality. In the interests of seeking a final resolution, the Minister agreed to meet the congregations accompanied only by the Secretary General.
- Two meetings were held between the Minister and the Secretary General of the DOES, for the State, and the representatives of the congregations. These meetings were held on 7 November 2001 and 7 January 2002. The legal representative for the congregations attended the second meeting.
- The discussions centred on the amount of the contribution and how it was to be structured. Agreement was reached, for a contribution of €128m, and announced on 30 January 2002.
- The indemnity was only discussed to the extent that the congregations indicated that a draft they had proposed should form the basis for the final indemnity. The Minister and the Secretary General indicated that they did not have the legal expertise required to deal with this subject.
- The congregations also sought amendments to the Bill that would focus on injury rather than abuse or would give a right of reply to accused people.
- Prior to the matter going before Government, the congregations sought written assurances in relation to the proposed indemnity. However, the DOES informed the congregations it could not be recommended that the Minister be bound legally to the agreement without the formal involvement and advice of the Attorney General's Office.

The papers indicate that the Minister made an oral report to Government on the outcome of the negotiations at the end of January 2002 and this was followed by the Minister's announcement that the Government had agreed, in principle, to a set of proposals. The agreement, as announced, would see the congregations contributing €128m to the redress scheme - €38m in cash including €12.7m for an education trust, €80m in property transfers including transfers made since 11 May 1999 and €10m in counselling and other services. In return, the Government would indemnify the congregations concerned against all present and future claims arising from past child abuse which would be covered by the redress legislation.

The Negotiations – February to June 2002

Following the announcement by the Minister, on 30 January 2002, that the Government had agreed in principle to the proposals, negotiations resumed in March. At the first meeting, the congregations' representatives were accompanied by their legal representatives. Thereafter, the legal representatives attended alone. The DOES represented the State. The first two meetings had representation from the Chief State Solicitor's Office. From the third meeting, which was held in April, a representative from the Attorney General's Office joined the negotiations.

Two items dominated proceedings:

- The nature of the indemnity to be provided
- Whether or not previously transferred property could include property transferred to Non-Government Organisations (NGOs).

The nature of the indemnity

The issue of the indemnity had not been agreed in the previous discussions with the Minister. The Minister had said that the detailed terms of the indemnity could only be finalised with the involvement of the Attorney General's Office. The congregations' stance was that agreement in principle had been reached that the indemnity would cover all cases which could come within the remit of the Redress Board and that the indemnity should be open-ended.

In the preparation by the State side, for negotiation on the indemnity, it was necessary to conclude on the State's stance. The Attorney General's Office, in correspondence, noted that their understanding, when the Office was previously involved in negotiations during 2001, was that the indemnity would only extend to cases which would actually go before the Redress Board. The Minister, in a letter to the Attorney General's Office, clarified the policy objectives – that the indemnity would cover all cases which would come within the remit of the Board but that the indemnity would be time-limited.

Agreement was reached. The indemnity would cover all cases which could potentially come within the remit of the redress scheme and would operate for any related litigation which had commenced within three years of the last day for applications to the Redress Board.

The indemnity applies only in cases where the State has full control over the defence. Where a congregation or an individual wishes to adopt a course with which the State does not agree then the indemnity will not apply.

Previously transferred property

The agreement in principle provided for property previously transferred to be included as part of the congregations' contribution. The issue arose as to whether this could include property transferred to NGOs. The DOES took the view that only property transferred to the State could be accepted, as it was important that non-cash assets would be capable of being realised by the State. The Department of Finance took the same view. A note from a meeting held in April states that the Secretary General had confirmed that there was no agreement on the inclusion of properties transferred to NGOs. The congregations were adamant that the agreement reached with the Minister provided for the inclusion of such property.

The State, following further consultations, agreed to accept property transferred to the State or a public body (e.g. local authority or health board) in the period from 11 May 1999 to the date of the signing of the agreement. In addition, property previously transferred to a registered charity would be accepted, subject to a restriction on the sale or disposal of the property for a period of 25 years. The DOES would not accept the inclusion of any property transferred to a body owned or controlled by any religious congregation or other Church body. In cases where the 25-year restriction could not be provided, the congregations would replace the property with another or with cash, at their discretion.

Other adjustments agreed

Other adjustments were agreed, at this stage, including an increase in the cash element of the contribution and a corresponding reduction in the property element.

In the course of the negotiations, the congregations sought to extend the number of institutions in the schedule to the Bill, with the additional institutions (e.g. hospitals and special schools) being included without any increase in the contribution. The DOES accepted that additional institutions could be added to the schedule.

General views of the DOES on the negotiations

The Accounting Officer has pointed out that a fundamental element of Government policy in respect of the redress scheme was that the Government decided to set it up with or without a contribution from the congregations. The Government also decided to set it up notwithstanding that the final cost was not quantifiable. This in itself is not unusual in respect of Government programmes. As regards the contribution from the congregations, the Government's policy was that such a contribution was a desirable, but not an essential, element of a redress scheme. It was desirable as a factor in bringing closure to the issue of abuse for victims. Leaving them in a situation where they could sue the congregations in the courts for part of their compensation provided no such closure for them, or indeed society more generally. There was also, of course, a financial consideration – a contribution from the congregations meant that the State would not have to provide all the funding required. The objective of the negotiations was to achieve the highest possible contribution that the congregations were prepared to make. There was no capacity to coerce them into any agreement and, in all probability, if they were not part of the scheme then they would have avoided most, if not all, the costs of compensation.

Negotiations commenced and proceeded for a time on the basis of a 50/50 split of cost. However, negotiators for the State realised early on that if the congregations were to be persuaded to make a contribution they would not do so on the basis of an open-ended 50/50 split and would not do so without an indemnity. As early as April 2001 the Minister and the Minister for Finance had agreed that the State would accept a capped contribution amounting to €127m. This was not related to any

proportion of likely minimum or maximum cost. The discussions continued on the basis of seeking a 50/50 contribution as a means of seeing how far the congregations could be persuaded to go.

The Accounting Officer accepted that there is a reference, in correspondence with the congregations, that €127m represented only 50% of the DOES's lowest estimate, but this was intended as underlining that it was a line below which the DOES would not go in seeking agreement. What was at issue in seeking that agreement was a contribution that could be considered by the Government to be satisfactory.

The Final Agreement

The final agreement, signed on 5 June 2002, quantified the contribution and outlined the indemnity.

Contribution

The agreed contribution of €128m to be made by the congregations to the redress scheme comprised the following:

- Cash payments amounting to €41.14m, of which €12.7m will be used by the State for educational programmes for former residents of institutions and their families.
- Transfers of real property which have been made (previously transferred property) to the State, State agencies, local authorities or voluntary organisations since 11 May 1999 to the aggregate value of €40.32m.
- Transfers of real property which are to be made to the State, or its nominees, as soon as practicable, to the aggregate value of €36.54m.
- Counselling and other support services for former residents of institutions and their families, already provided or to be provided, to the value of €10m.

The amount of past contribution included in the final agreement would be between €40.32m and €50.32m, depending on what proportion of the counselling contribution had been spent prior to the signing of the Agreement.

Indemnity

In return for the contribution, the State agreed to indemnify the contributing congregations in respect of liability in litigation which had commenced within three years of the last day for applications to the redress scheme and which would qualify to be dealt with under the Act.

Information, Advice and Approval Arrangements

In negotiating the agreement, the following information and advice would be critical to the adoption of an informed negotiating position by the State:

- Information about the possible liability, which would inform any demand in relation to the amount of a meaningful contribution by the congregations.
- The possible costs facing the congregations if all cases went to Court, as this was the figure underpinning the congregations' negotiating stance.
- Legal advice on the implications of any indemnity agreed.

Information about the Liability

Information was directly available to the DOES from a number of sources to estimate the possible liability.

Number of claimants

Information was available from the number of litigation cases, those applying to give evidence to the Investigation Committee of the Laffoy Commission and the Freedom of Information requests from former residents of institutions. In addition, information was available on a number of compensation schemes in Canada⁵⁰.

Litigation

It would be reasonable to assume that individuals who were prepared to pursue a case through the courts would avail of the right to seek redress.

When the Government approved the drafting of the Victims of Child Abuse Compensation Tribunal Bill in February 2001, the memorandum noted that 865 cases were pending against the State in November 2000. It had been estimated, in 1999, that the number of litigation cases would be of the order of 2,000 and, the memorandum further noted, there was nothing to indicate that this estimate would be significantly wide of the mark.

In June 2001, the congregations had based the calculation of their exposure in the courts on a likely 2,500 cases and in June 2002, the congregations notified the State that there were 2,551 cases where court proceedings had been issued, or litigation was threatened, in respect of alleged abuse at institutions covered by the Agreement. The State was named as co-defendant in 2,460 of these cases.

Laffoy Commission

The Commission comprises two committees:

- A committee to investigate allegations of abuse (the Investigation Committee) before which individuals and institutions implicated in allegations of abuse would have full legal rights available to them, including the right to cross-examine witnesses. The committee will produce a report identifying institutions where abuse took place and, possibly, naming perpetrators. The committee may report on individual complaints but will not name individual victims.
- A committee which gives victims an opportunity to tell their story (the Confidential Committee) but which does not investigate any allegations.

The Ryan Report, published in January 2002, noted that there had been 1,957 requests to give evidence to the Investigation Committee of the Commission and 1,192 requests to give evidence to the Confidential Committee. 1,375 former residents of Industrial and Reformatory institutions made 1,695 of the requests to the Investigation Committee with the balance coming from people who attended other schools and institutions.

⁵⁰ The memorandum to Government in February 2001 noted that the approach adopted in these schemes had been reviewed.

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While details of the complainants to the Confidential Committee are not available, if the same ratios applied, approximately 835 former residents of Industrial and Reformatory institutions would have made requests to this Committee giving a total of just over 2,200.

Freedom of Information

The DOES had, from the coming into force of the Freedom of Information Act, 1997 (FOI), received requests from former residents of institutions for personal information from the Department records.

There had been 62 FOI requests to the end of May 1999. The Taoiseach's apology and increasing publicity surrounding the issue, both on TV and in the print media, appeared to trigger an increase in the number of requests. The number had grown to 386 by the end of 1999, 1,020 at the end of 2000, 2,245 at the end of 2001 and 2,840 by the end of May 2002.

While individuals may seek information for reasons other than to obtain evidence to support a claim in litigation or to the Redress Board, it is plausible to suggest that there will be a strong correlation between the number of FOI requests and applications for redress.

Amount of awards

Information was available on award levels as follows:

- Experience in the courts of award levels in a major case involving abuse in a family setting
- The Ryan Report recommendations.

Use of the information

During the initial phase of the negotiations, the State was seeking a contribution of approximately 50% of the possible liability. In order to pursue this demand, a best estimate of the liability, using the available information, should have been available at all times.

Claimant numbers

The overall information available on potential claimants included the list of litigants, the FOI requests and those applying to give evidence before the Investigation Committee of the Laffoy Commission.

During the course of the negotiations the State agreed with the congregations that additional institutions could be included. This would also impact on estimates of claimant numbers.

While the Department produced estimates at various points it based them only on the number of litigation cases and the likely number of claimants in excess of this, which might arise due to the creation of the non-confrontational compensation scheme. The earliest estimates had put the potential claimants at 2,000. By November 2001 the DOES was estimating that the number of claimants was likely to exceed 3,000 and might rise to 4,000. By June 2002 it was being estimated that the number of claimants could be 5,200 or more.

As a consequence of basing estimates solely on litigation cases the trend in FOI requests was not fully taken into account. By the end of 2001 FOI requests were being made at the rate of approximately 100

per month. This trend continued during the first half of 2002 and it would have been reasonable to assume that the trend provided some indication of the likely effect of the compensation scheme on claimant numbers.

The experience in Canadian schemes suggests that more claimants are likely to pursue a claim in a non-confrontational compensation scheme, than would through the courts.

In any event, once the decision was taken, in November 2001, to cap the contribution demanded from the congregations it effectively meant that the contribution being sought, assuming a 50:50 liability split, was based on the equivalent of 2,000 claims.

Cost of awards

Estimates were informed by the results of a leading law case. The memorandum to Government, in February 2001, noted that in this case the damages to victims of abuse in a family setting were agreed at €190,000 each, by the State, in a settlement. This figure was used as a basis for estimating the likely award level in a redress scheme which was estimated to be around €127,000, including costs. This figure was based on an assumption that approximately one third of awards would be in the region of the €190,000 and that average awards in the other cases might be around €51,000 with costs around 25% of awards.

The Ryan Report, which was presented to the Minister in January 2002, was not available to inform liability estimation in the earlier part of the negotiation process.

The evidence from Canada suggests that average awards in a compensation scheme are likely to fall with increases in the number of claimants and that the working estimate used at all stages by the State may be slightly high.

Implications for the liability

As additional information comes to hand it would be reasonable to expect that the full range of potential costs, including the lower estimate, would be revised. In fact, no revision of the lower estimate of the potential cost, €254m, was made, at any stage, despite evidence that the minimum number of claimants was likely to be greater than the 2,000 upon which the estimate was based.

When the State agreed, in November 2001, to cap the congregations' contribution at €127m, this represented 50% of the lowest estimated cost.

However, by this time the Department was estimating that the number of claimants would probably exceed 3,000. Using the Department's estimate of the average award this would put the minimum liability at €381m.

For purposes of the calculation of the contribution no allowance was made for adjustment on the basis of any increase in numbers after the agreement of a scheme. The Canadian experience was that the number of applicants might increase by a multiple of approximately three times the known number of likely applicants at the start of a compensation scheme.

While the DOES did not carry out detailed analysis of the information on known likely applicants, the underestimation of the likely minimum cost of the scheme could have been identified by using the Department's own estimate of the likely cost of awards and its information from any one, or a combination, of the available sources for identification of potential applicants.

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- An estimated 2,200 former residents of Industrial and Reform institutions applied to give evidence to the Laffoy Commission.
- In June 2001 the congregations estimated the number of litigation cases at approximately 2,500.
- There were 2,840 FOI requests at the end of May 2002.

Using a more conservative multiple than that suggested by the Canadian schemes and assuming only a doubling of any one of these figures would have indicated that the minimum number of applicants might be in the region of 4,400 to 5,700. Even without combining the populations and eliminating overlaps, using the DOES's estimate of the average cost of an award of €127,000 would have put the likely minimum liability in the range of almost €560m to €720m.

The DOES has stressed that, once the decision to cap the demand was taken, no relationship was made thereafter between the contribution and the minimum cost of the scheme. Consequently, minimum cost levels were not a factor in the ultimate negotiations of the congregations' contribution.

Information about the Congregations' Exposure in Litigation

In the course of the negotiations, the congregations asserted that any contribution should not exceed their exposure if all the cases were to go before the courts.

- In June 2001, the congregations' said that their best estimate of their likely exposure in litigation was €54m with their highest estimate at €108m.
- On 30 May 2002, a DOES document prepared for discussion with the Minister in advance of the proposal going to Government stated that the congregations' estimate of their exposure in the courts might be correct. Plaintiffs could face formidable legal obstacles. On the other hand, the document points out, it could be expected that the courts might take a benign view of plaintiffs in many cases and juries might be sympathetic and the costs for all concerned could be much greater than the congregations anticipated.
- While the DOES made no detailed assessment of the congregations' figures or of the likely apportionment of liability by the courts, the Government, in considering the agreement, noted that its approval reflected the understanding of evidence which could be produced in any court proceedings as to liability by the State. Subsequently the Secretary General of the DOES provided the Secretary General to the Government with the available information which the DOES had on the issue of State liability.

Legal Advice

Participation in negotiations

While the teams of negotiators were meeting, in the series of meetings which reached an impasse in October 2001, the State's team included representation from the Office of the Attorney General.

However, from October 2001 to April 2002, the Office of the Attorney General was not represented at meetings with the congregations and had no contact with those negotiating on behalf of the State⁵¹. The Accounting Officer has pointed out that there were only two meetings between officials and the congregations in the period. Neither meeting focused in detail on legal issues and the first on 13 March

⁵¹ Officials from the Chief State Solicitor's Office attended meetings between the State and the congregations during March and April 2002.

2002 specifically agreed to refer the matter of the indemnity to a group comprising the solicitors for the congregations and representatives of the Attorney General's Office and the Department.

In order to be in a position to offer further advice, following the oral report of the Minister to the Cabinet and the announcement of the agreement in principle, in January 2002, the Office of the Attorney General sought information on the detailed negotiations, including the extent of the indemnity. A letter requesting information was sent to the Minister by the Attorney General on 31 January 2002 and this letter was followed by a further letter from his office on 1 February 2002. As no reply had been received by 13 March 2002, the Attorney General advised the Department that his Office could not participate in negotiations or offer legal advice in the absence of the requested information. As the negotiation details had not been documented the Secretary General prepared a retrospective memorandum on the negotiations conducted by the Minister up to that point.

On 13 April 2002, the Minister wrote to the Attorney General outlining the policy approach he proposed to adopt in the further negotiations in relation to the indemnity. He proposed that the indemnity should extend to all the persons who could apply for redress and that the period should not be any longer than 10 years.

Senior Counsel's Opinion

The Office of the Attorney General sought advice from Senior Counsel in late May 2002 on the terms of the Indemnity Agreement.

The Senior Counsel addressed the issue of cases which go to court and where a congregation (or an individual) has an established constitutional right to defend his or her good name and advised that while the intent to indemnify was clear he was not sure that indemnity of every party could be compelled or assured in circumstances where there are individually named defendants who are separately represented and whose interests might not converge with the interests of the congregations.

He raised the question of the risk of a substantial award in a case, perhaps due to the way in which the congregation conducted the defence, and the possible implications for other cases including those which might have gone to the Redress Board.

Attorney General's advice/observations to Government (June 2002)

The Attorney General, in June 2002, noted that the draft Indemnity Agreement reflected the policy position adopted by the Minister in relation to the extent and breadth of the indemnity. He pointed out that an estimate of the doubling of the number of cases to 5,200, based on the number of litigation cases, might be conservative and pointed out that the highest estimate of the liability, €508m, was based on an estimated 4,000 claims. In addition, he pointed out that the contribution of €128m might be regarded as insufficient and highlighted the lack of a mechanism for increasing the contribution from the congregations if the number of cases increased greatly.

In relation to the defence of litigation to which the indemnity applied the Attorney General pointed out that the State would have to be mindful of possible subsequent defamation proceedings, numerous actions having been undertaken in Canada by individual members of congregations on the basis that the resolution of a claim by way of payment to the claimant was damaging to the reputation of the individual referred to in the claim. The Attorney General suggested a related amendment to the agreement and the relevant clause was amended to incorporate the change.

Approval Arrangements

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The lines of communication during the negotiations were that memoranda were sent to the Secretary General for discussion with, and direction from, the Minister. Approval was sought from the Government at certain stages.

Key milestones in the supervision of the negotiation process were:

- Government approval for the redress legislation in February 2001
- Ministerial approval for the negotiating approach in April 2001
- Consideration of the congregations' offer in June 2001
- Direct Ministerial involvement from November 2001 leading to the announcement of the agreement in principle
- Ministerial clarification of the extent of the indemnity in April 2002
- Briefing in advance of approval for the Agreement in May 2002
- Government approval for the Agreement in June 2002.

Implementation of the Agreement

The DOES has established the Residential Institutions Redress Unit. The responsibilities of the unit include overseeing the implementation of the Agreement. The following progress has been made in collecting the contribution agreed and bringing any funds to account.

Cash Payments

The Agreement stipulated that the cash payments should be made as follows:

- € 12,654,000 to be paid on execution of the Agreement
- The balance to be paid in four equal instalments (€ 7,121,500 each instalment) on 5 September 2002, 5 December 2002, 5 February 2003 and 5 May 2003.

The Congregations duly made the payments as stipulated.

Application of the proceeds

Up to 5 June 2003, the total value of the funds was € 41.77m. This was made up of contributions from the congregations of €41.14m and interest of €0.63m. The contributions and interest are held in two funds as set out in Table 7.5.

Table 7.5 Investment and deposit of contributions

Investment/Deposit	Redress Fund €m	Educational Fund €m	Total €m
National Treasury Management Agency (Exchequer Notes)	23.91	12.86	36.77
Paymaster General	5.00	-	5.00
Total	28.91	12.86	41.77

Strictly, under the Act, the part of the proceeds pertaining to awards to be made by way of redress should be lodged in an account with the Paymaster General. In fact, only €5m has been so lodged. The

remainder was invested directly in Government securities through the National Treasury Management Agency. I will be auditing this account, in due course, after it has been prepared and presented for audit.

Transfers of Property

There are two categories of property provided for in the Agreement:

- Property transferred between 11 May 1999 and the date of the Agreement (previously transferred property)
- Property to be transferred in the future (future property transfers).

Previously transferred property

The Agreement stipulated that property previously transferred to the State, State agencies, local authorities or voluntary organisations providing health or social services could be included in the contributions.

In May 2002 the Congregations supplied the State with a schedule of 37 properties which the Congregations claimed had been transferred after 11 May 1999. The valuations, as of the date of transfer, submitted by the Congregations put an aggregate value of € 40.97m on the properties.

The recipients of the property, which the Congregations claimed to have transferred since 11 May 1999, are set out in Table 7.6.

Table 7.6 Recipients of properties identified by congregations

Transferee	Properties	Congregation Valuation €
DOES	11	10.24m
Voluntary Organisations	18	22.12m
Local Authorities	4	6.98m
Health Boards	1	0.12m
Unidentified ⁵²	3	1.51m
Total	37	40.97m

The Agreement set a target of € 40.32m under this category.

The DOES put a process in train to review the schedule to determine if the properties represented qualifying properties under the terms of the agreement. Discussions are ongoing with the legal representatives of the Congregations.

The key validation steps required for these properties are:

- Determining whether the properties qualify, in principle, under the Agreement
- Agreeing the value of the properties
- Determining the value of any previous State grants in respect of these properties

⁵² Insufficient information was received to enable the Department to identify these transferees.

- Confirming that property transferred to voluntary bodies will not be alienated for at least 25 years
- Taking account of any consideration paid
- Confirming good and marketable title.

Qualifying properties

The DOES sought to establish that the properties listed had been transferred to a qualifying body during the designated period. Arising from this the DOES has informed me that it has rejected, or is likely to reject, eight properties, valued by the congregations at € 8.11m. Two further properties, valued at €0.76m, have been transferred to the schedule of future property transfers.

Valuation

The congregations submitted professional valuations for each property. The DOES selected a sample of 10 properties for valuation by the Valuation Office. Prior to the valuations being carried out the DOES had rejected two properties in the sample as not qualifying under the terms of the Agreement and the Valuation Office did not value two further properties, as it did not have maps of the sites.

For one property, a site of 7.4 acres in Co Galway, there was a major difference between the valuation of €3.5m submitted by the Congregations and the value of €1.85m per the Valuation Office. In the event that agreement cannot be reached, either party can apply to have the matter determined by an independent valuer.

In the remaining five cases, the opinion of the Valuation Office was that the valuations submitted were reasonable.

Grants or other payments provided by the State

The Agreement stipulates that a valuation of any property must take account of any grants or other payments provided by the State. The State has not yet accepted, in principle, any of these properties. Consequently, it has yet to investigate and determine whether, and to what extent, any such grants have been paid.

Restriction on transfer or alienation of a property

The implementation of this provision has given rise to difficulties. The religious congregations do not appear to be in a position to provide evidence that there is a legal 25-year restriction on the transfer or alienation of properties previously transferred to voluntary organisations. In order to address this issue, the Congregations have obtained letters from the transferees stating that they will not further alienate or transfer properties without the consent in writing of the Minister for Finance. The matter has been referred to the Chief State Solicitor's Office for its observations.

Properties previously transferred where the State paid consideration at the time of transfer

Where property was transferred below open market value, the difference between the consideration paid and the open market value at the date of transfer should be taken into account when assessing the value of the contribution.

There were three previously transferred properties which the State had purchased for consideration. The Congregations claimed that the consideration paid was below the open market value and claimed credit

for the difference. The State has rejected two of these properties as not qualifying under the terms of the Agreement. The DOES took the view that the difference between the consideration paid and the open market value could not, in the circumstances, be considered as a contribution under the scheme.

The first of these properties was a 5.5 acre playing field purchased in 2000 by a Vocational Education Committee from a congregation. A condition of sale was that, in the event of the VEC disposing of the lands within 10 years, the congregation would receive 50% of any increase in price. The DOES rejected the property as not qualifying under the terms of the agreement.

The second property was in Dublin. A religious order had sold a convent and an adjoining residence to a voluntary housing association for € 6.98m in 2000. An independent valuation put the open market value of the site at the time of the sale at € 10.2m. The congregations claimed credit for the difference. The contract of sale included a restrictive covenant in favour of the order recognising the fact that the property was being sold for less than open market value and entitling the order to 25% of the proceeds in the event of the property being sold within 21 years for any purpose other than for social or affordable housing.

The aggregate credit sought by the congregations for these two properties was € 4.62m.

The third property where the State paid consideration was a property in Co Mayo, which a religious order had sold to the Western Health Board for €275,000 in November 1999. The sale included a restrictive covenant that the property was to remain in community use for the benefit of locals. The valuers for the order put the loss of market value due to this covenant at €125,000. The DOES is seeking further information from the congregations' legal representatives about this property.

Good and marketable title

The State has not yet accepted any of the previously transferred properties. Consequently, the matter of the title has not yet been clarified.

Summary

To date the State has not accepted any of the properties listed as previously transferred property on the schedule provided by the Congregations. The DOES says that this is mainly due to deficiencies in the information supplied by the Congregations and has raised the matter with the Congregations' legal representatives.

The following is the DOES's position at the end of June 2003:

- One property, valuation € 0.57m is likely to qualify under the terms of the Agreement
- A further twelve properties, with an aggregate valuation of € 17.29m are likely to qualify if the State is satisfied that undertakings about the 25-year restriction are legally enforceable. There is disagreement about the valuation of one of these properties
- Further details are being sought by the DOES in regard to ten properties with a total valuation of € 8.89m
- Two properties, with an aggregate valuation of € 0.76m, have been transferred to the schedule of future property transfers
- The DOES has rejected, or is likely to reject, ten properties with an aggregate valuation of €12.73m
- The congregations have withdrawn two properties, valuation € 0.73m.

Future property transfers

In May 2002, the Congregations provided the State with a schedule of 43 properties to be transferred. The valuations submitted by the Congregations put an aggregate valuation of € 38.74m, as of the date of the agreement, on 42 of the properties. No valuation was submitted for one property which is the subject of a Compulsory Purchase Order (CPO). Two properties were transferred from the schedule of previously transferred property bringing the total to 45 properties with an aggregate valuation of € 39.5m, excluding the unvalued property which is the subject of a CPO.

The Agreement set a target of € 36.54m under this heading.

The DOES reviewed this schedule to determine if the properties being offered were qualifying properties under the terms of the agreement. Discussions are ongoing with the legal representatives of the Congregations.

The principal considerations in the review are:

- Determining whether the properties offered will be of use or benefit to the State
- Agreeing the value of the properties
- Determining the value of any State grants
- Confirming good and marketable title.

Use or benefit to the State

The State had nine months under the Agreement in which to refuse to accept a property if in its reasonable opinion it will be of no use or benefit to the State. This period was subsequently extended to 30 April 2003.

The DOES circulated details of the properties to Government Departments to identify Departments or State agencies that could benefit from a transfer. Those that expressed an interest were provided with details of the property. Many of the properties were already being used by Health Boards and the Boards indicated their interest in acquiring a fee simple interest in those properties.

The DOES has rejected eight properties, with an aggregate value of € 9.85m, taking the view that the properties will be of no use or benefit to the State. Decisions are pending on five further properties. The total value of four of these properties is € 10.18m while no valuation has yet been supplied for the remaining property.

By the end of June 2003, the DOES had accepted 32 of the properties offered, conditional on good and marketable title being established and their valuation being agreed. Subject to this, these properties will be transferred to public bodies as set out in Table 7.7.

Table 7.7 Property transfers accepted in principle by DOES

Transferee	Properties	Congregation Valuation € m
Eastern Regional Health Authority	3	1.97
Southern Health Board	19	12.24
South Eastern Health Board	5	1.80

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Mid West Health Board	2	0.61
Office of Public Works	1	1.20
DOES	2	1.65
Total	32	19.47

Valuation

The congregations submitted professional valuations for properties. The DOES has requested the transferees to treat the transfer of a property in the same way a prudent purchaser would. The transferees have been requested to obtain an independent valuation of the property. The DOES will seek a copy of all independent valuations.

By the end of May 2003, ten of the Southern Health Board properties had been valued by the Valuation Office. The aggregate valuation given by the Valuation Office was € 2,600,000 while the aggregate valuation according to the Congregations was € 2,666,600.

At 23 July 2003, the DOES had not received any other independent valuations.

Grants or other payments provided by the State

The DOES has written to the Health Boards, who are the transferees for a number of the properties to be transferred, requesting them to inform it if any grants have been paid in respect of the properties being transferred.

Good and marketable Title

The DOES takes the view that it is the responsibility of the transferee to establish that a transferor holds a good title to a property.

Summary

To date, the State has accepted, in principle, 32 properties, subject to good and marketable title and agreement about the valuations of the properties. The aggregate value attributed to these properties by the Congregations is €19.47m.

The DOES has rejected eight properties with an aggregate value of € 9.85m.

Decisions are pending on four further properties whose aggregate value is € 10.18m and a fifth property for which no valuation has been submitted.

Replacement Properties

The agreement stipulates that, in the event of the State refusing to accept a property, the congregations have the right to replace it with cash or other property at the congregations' discretion. Replacement properties are to be valued at the date of the Agreement. The Agreement does not stipulate the timeframe within which the Congregations must offer a replacement property or cash.

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The Agreement also provides that if the aggregate value of the properties contributed by the congregations falls short of the aggregate value of the properties which they have committed to provide, then the contributing congregations will be entitled to make up the shortfall in cash or property as soon as possible but not later than 6 months from the date the shortfall is ascertained and notified in writing to the congregations by the State.

As the State has rejected a number of properties, the aggregate value of the remaining properties is likely to fall short of the value which the Congregations have committed to provide.

The DOES prepared a schedule of locations where it wishes to acquire sites for the development of primary and post-primary school facilities. This schedule of sites was sent to the legal representatives of the congregations in October 2002 and subsequently updated to include a number of properties being sought by Health Boards. There are currently 21 locations and properties on the list. The Congregations have been asked to focus further offers of property on these areas.

Arising from this, the DOES was offered, and has accepted, land for school building development in Co Kerry. The value attributed to this site by the congregations is € 2.6m. The DOES is of the view that further properties may be offered arising from the schedule. The congregations have also submitted a list of 14 alternative properties. The Department is considering this list.

Counselling and other Support Services

The Agreement states that the Congregations' contribution shall include counselling and other support services for former residents of institutions and their families, already provided or to be provided, to the value of €10m.

Previously delivered counselling

In 1997, CORI established an organisation called Faoiseamh with the aim of providing a confidential listening service and face-to-face counselling for adults who, as children were abused by religious or diocesan clergy. Under the Agreement, the Congregations may spend money on counselling and other support services other than through Faoiseamh.

Claims for contributions to date per the Congregations

In the course of the negotiations the congregations stated that much of the €10m contribution related to counselling and other services which had already been provided. The DOES wrote to the legal representatives for the congregations on 10 March 2003 requesting them to forward a further report detailing expenditure incurred in respect of counselling and support services for former residents of institutions and their families.

A reply from the congregations' legal representatives in March 2003 stated that the amount spent on counselling and other support services to that time was just over € 11m. The information supplied, however, did not indicate the precise amount attributable to the provision of counselling and support services to former residents of the institutions and their families. The DOES, therefore, sought clarification.

Further letters on behalf of the congregations in May and June 2003 stated that in addition to contributions to Faoiseamh of € 4.53m to date, there was also a further € 7.1m of qualifying expenditure for counselling and other support services.

The Department continues to seek evidence from the legal representatives for the Congregations that the expenditure claimed has, in fact, been spent on providing counselling and other support services for those envisaged in the Agreement.

In regard to the service generally, the congregations maintain that they are committed to the continuation of counselling services for as long as they are required.

Education Fund

The Agreement allocates € 12.7m of the cash contribution to be used by the State for educational programmes for former residents of institutions and their families.

Administration of a scheme

The overall administration of the fund will be by the DOES and the initial administrative costs were met by the Department. The fund, including investment income, was valued at € 12.86m at 5 June 2003.

The DOES stated that it was not possible, within the time constraints to develop a scheme for the 2002-2003 academic year.

The National Office for Victims of Abuse (NOVA) has been approached to establish if it would be prepared to administer an application process on behalf of the DOES. An ad-hoc committee was formed comprising one representative each from Further Education Section of the DOES and NOVA, one representative from each of the four support groups affiliated to NOVA, the Adult Education Officer at City of Dublin VEC and the Education Facilitator at NOVA. The committee was to develop an application process and framework document in order to have a grant scheme in operation for the forthcoming academic year.

Following a number of meetings the ad-hoc committee has advised on how the fund should be administered and developed a draft application form together with a document entitled criteria for eligibility.

In order to include those victim support groups that operate outside the umbrella of NOVA, individual victims and other interested parties, the committee decided to circulate a copy of the draft documents and invite observations in writing. This exercise covered both Ireland and the UK-based Outreach centres.

The Department's initial proposal was to issue payments for the 2003-2004 academic year through the City of Dublin VEC. However, victim support groups have expressed concern about this procedure and the Department is to examine the possibility of setting up an Education Trust with a view to having the Trust in operation for 2004.

7.2 Allocation and Prioritisation of Expenditure for School Buildings

Background

Overall Allocations

Table 7.8 shows the capital allocations for Primary and Second-Level School buildings in 2002. It illustrates how the provision evolved during the course of the year, the eventual outturn and accrued expenditure at year-end.

Table 7.8 Capital Allocation for Primary and Second-Level School Buildings

	Primary €m	Second Level €m	Total €m
Revised Estimates Volume	153.64	183.73	337.37
Supplementary Estimates	19.00	(12.0)	7.00
Total provision	172.64	171.73	344.37
Vote Expenditure	172.79	171.35	344.14
Accrued Expenditure ⁵³	11.49	4.92	16.41
Total Expenditure Incurred	184.28	176.27	360.55

Prioritisation of Projects

I examined the adequacy of the Department of Education's systems for planning and managing the provision of second level school accommodation in a Value for Money Report published in October 1996. One of the key issues dealt with in the report was the Prioritisation of Projects. I believe that my summary findings on the question of prioritisation are applicable to both the First and Second Level School Buildings Programmes and remain as valid today as in 1996. At that time I said:

- *Since the total estimated cost of projects approved in principle exceeds the available annual funding, choices have to be made about which projects have the highest priority. Building projects are currently recommended for funding on the basis of consensus judgments by Department officials having regard to a number of factors including the availability, adequacy and safety of existing accommodation. However, no formal set of fixed quantified criteria exists. A list of recommended projects is submitted for senior management and ministerial approval and amendments may be made to the selection at this stage.*
- *Without a proper prioritisation system based on predetermined objective criteria, the Department cannot demonstrate that the building programme addresses the areas of greatest need among the many projects proposed. While this report was being finalised, the Department indicated that it had commenced the development of a formal prioritisation procedure involving a points system based on relevant factors for ranking projects.*

I also noted that as far back as 1988 an interdepartmental committee had recommended that:

- *...a clearly defined order of priorities should be established for all school building projects and that no project should proceed to any stage of architectural planning or construction except by reference to the priority list. While the report acknowledged that there might be difficulties in drawing up criteria by which relative priorities would be established, it considered that such a system was absolutely essential in allocating scarce resources in an equitable way among the large number of projects on hands.*

⁵³ The corresponding 2001 figures were €3.59m and €4.80m.

In January 2003 the Minister for Education and Science published details of criteria for prioritising large-scale primary and post-primary building projects on the Department's website.

Audit Examination

Early this year the issue of how capital allocations for school buildings are prioritised and approved was the subject of much media attention. It was suggested that funding apparently earmarked for specific named projects which did not ultimately proceed, had been used inappropriately. I decided to examine the matter focusing in particular on the Primary Schools building programme.

Planned and Actual Expenditure on Primary Schools Building Programme in 2002

Planned expenditure on this programme comprises in any one-year three major components:

- Commitments under existing contracts
- A programme of major works, which are likely to extend beyond the year in question and in respect of which decisions have yet to be taken
- Provision for remediation, site acquisition and smaller scale works, which are likely to be fully paid for in the year in question.

Table 7.9 shows the planned and actual expenditure across the entire programme for First-Level capital works for 2002.

Table 7.9 Projected and actual expenditure for building, equipment and furnishing of national schools 2002

Expenditure heading grouped by sub-programme	Proposed allocation December 2001 €m	Approved capital programme April 2002* €m	Actual expenditure 2002 €m
Committed			
Contractual commitments/fees/final payments	90.7	95.5	89.5
Subtotal	90.7	95.5	89.5
2002 Major Works sub-programme			
List 1 Projects ⁵⁴	16.0		10.4
List 2 Projects ⁵⁵	15.6		5.4
Projects not originally in December 2001 proposal ⁵⁶	-		4.0
Subtotal	31.6	28.0⁵⁷	19.8
Minor and Emergency sub-programmes			
Purchase of Sites	6.0	5.0	7.6
High Support (special education facilities)	3.0	3.8	3.2
Devolved Grant	2.8	5.26	5.6
Temporary Accommodation and Emergency Works	12.7	36.0	40.1
Asbestos Related Remedial Works	6.3	6.0	5.8
Inventory of Accommodation Pilot Project	0.9	0.95	0.5
Miscellaneous (Furniture etc.)	-	-	0.7
Subtotal	31.7	57.01	63.5
Total	154	180.51	172.8

The delay in launching the programme was factored into these estimates.

⁵⁴ 10 Schools proposed, 10 schools approved.

⁵⁵ 16 Schools proposed, 8 schools approved.

⁵⁶ 16 Schools.

⁵⁷ There is not an equivalent breakdown in 2002.

The Priority List in December 2001

My examination found that in December 2001 the Department had recorded the priorities assigned to applications for capital grants under the major works sub-programme, on a list-based system. Five lists reflecting the relative priority of projects were drawn up.

On the following lists, the estimated costs of individual projects that have not gone to tender as yet have not been included because to do so could compromise the competitive bidding process and potentially damage prospects of obtaining value for money on the projects⁵⁸. Similar considerations apply in two cases where work may have to be retendered⁵⁹. Therefore only aggregate totals are given for each list.

Projects which went ahead in 2002 are shaded.

List 1 - Projects that can proceed to construction in 2002 as tenders have been received (decision to go to tender taken in Autumn 2001) (10 Schools - €18.1m).

Table 7.10 List 1

School	County	€	School	County	€
G.S. Eiscair Riada	Offaly	3,480,496	An A Tadhg O Murchú	Cork	1,097,288
St Mary's, Bayldoyle	Dublin	635,000	Scoil Íosagáin CBS	Limerick	482,500
Scoil Eoin, Kilbarrack	Dublin	938,199	St Kevin's Bray	Wicklow	1,951,110
Killashee, Naas	Kildare	1,420,977	Celbridge NKSP	Kildare	4,133,194
St Patrick's Special	Kilkenny	3,174,345	St Bernadette's Special	Cork	763,112
Aggregate Total for Schools which went ahead in 2002 €18,076,221					

List 2 - Very Urgent High Priority projects in respect of which it is proposed to invite tenders (16 Schools - €20.3m).

Table 7.11 List 2

School	County	€	School	County	€
St Paul's New	Cork	*	St Theresa's	Longford	*
Cabbas, Ashton	Cork	1,015,790	St Joseph's Special	Galway	*
St Killian's	Cork	*	St Nicholas	Galway	*
Glenahulla	Cork	**	St Fergal's Bray	Wicklow	380,921
St. Anthony's	Mayo	2,539,476	St Mary's Trim	Meath	888,816
St Joseph's/Eoin	Offaly	2,886,396	Our Lady of Fatima	Wexford	*
St. Kieran's Glasnevin	Dublin	1,904,607	Knockconan	Monaghan	*
St. Catherine's Donore Ave	Dublin	1,318,272	Sallins	Kildare	*
Aggregate Total		€20,297,285			

List 3 - Urgent projects ready for tender that can only proceed to tender and construction if substituted for projects on list 2 (17 schools - €36.7m).

⁵⁸ Indicated by *.

⁵⁹ Indicated by **.

Table 7.12 List 3

School	County	€	School	County	€
Gaelscoil An Mhuilinn	Westmeath	*	Scoil Treasa Donore Ave	Dublin	*
Sacred Heart, Huntstown	Dublin	*	Roxboro	Roscommon	*
Naas New School	Kildare	*	Mullinahone	Tipperary	*
Prosperous	Kildare	*	G.S.Tiobrad Árinn	Tipperary	*
Scoil Nais Mhuire	Carlow	889,633	Marino School (spec)	Wicklow	*
Holy Spirit J/S	Dublin	*	Scoil Íosagáin, Hospital	Limerick	1,440,935
St Joseph's Special	Dublin	*	Knockea	Limerick	1,642,564
St Joseph, Coolock	Dublin	2,137,729	Cappoquinn Convent	Waterford	**
Sc N Fínnin, Finglas	Dublin	*			
Aggregate Total		€36,700,432			

List 4 - Projects that will be ready for invitation to tender in the coming months but which can only proceed to tender and construction if substituted for projects on list 2 (34 schools - €37.8m).

Table 7.13 List 4

School	County	€	School	County	€
Scoil na Mainstreach	Kildare	*	St.Edward's Ballytinnan	Sligo	*
Ballymore Eustace	Kildare	*	S Pádraig Naofa	Wicklow	*
Roberstown	Kildare	*	SN Pádraig, Cranford	Wexford	*
Scoil Mochua	Kildare	*	Riverchapel	Wexford	*
Scoil Mhuire, Ballymany	Kildare	1,178,097	Gaelscoil Loch Garman	Wexford	*
Lucan Educate Together	Dublin	3,809,214	SN Clochar Mhuire	Wexford	*
Virgin Mary, Ballymun	Dublin	*	Flowerhill	Meath	*
St Killian's Tallaght	Dublin	*	Réalt na Maidine	Cork	*
Lady of Con, Donnycarney	Dublin	*	Scoil Chríost Rí	Cork	*
John Bosco Navan Rd	Dublin	*	Rathpeacon	Cork	2,176,172
S Ciaráin, Donnycarney	Dublin	*	Aghina	Cork	*
Georges Hill, Smithfield	Dublin	*	Scoil an Croí Ró Naofa	Cork	1,863,231
St Vincent's Glasnevin	Dublin	*	Tullyallen	Louth	*
St Catherine's Dominican Convent	Dublin	332,000	Raphoe Central	Donegal	*
St Francis Senior/Junior	Dublin	*	Cnoch na Naomh	Donegal	*
			Gortahork		
St Vincent De Paul	Dublin	*	Ardagh	Mayo	796,970
Grange	Roscommon	*	St Colman's	Kilkenny	*
Aggregate Total		€37,759,726			

List 5 - Projects that are expected to be ready to proceed to tender later in 2002 but which can only proceed to tender and construction if substituted for projects on list 2 (44 schools - €64.3m).

In effect, the lists identified projects capable of being approved in the course of 2002, if funds were available. The total estimated cost of completing all projects on the lists amounted to €177m as against the €31.6m originally allocated as the projected spend on List 1 and List 2 projects.

Developments During 2002

Departmental papers indicate that in February 2002 the Minister approved the 16 projects in List 2 to proceed and instructed that a further 12 projects were to proceed to tender and construction. This increased the total projected expenditure on the 28 projects to some €31.5m. Final Ministerial clearance for the programme of expenditure was not given until April 2002.

Departmental papers show that the Minister advised the Building Unit in April 2002 that an extra €15m with a possibility of a further €4m, would become available for the Primary sector. The Dáil voted a Supplementary Estimate on 10 December 2002 providing an additional €19m for the programme. The extra funds provided for the Primary capital programme represented reallocated savings achieved elsewhere in the Education 'envelope' of funds. €12m of the €19m came from a reduction in the

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provision for capital works in the Post-Primary building programme as a result of projects proceeding more slowly than anticipated.

By the end of 2002, expenditure on the 10 schools on list 1 was 65% of that planned in December 2001. Only the 8 schools highlighted in list 2 had proceeded and these had incurred only 35% of the available funding. A further 16 major projects were started and incurred some expenditure during the year. Five of these are highlighted on List 3, six on List 4, one on List 5 (Tineteriffe NS Limerick €1,065,945). The remaining four schools had not featured on any of the December 2001 lists and the contract amount relating to these are as follows:

- Star of the Sea, Cork €401,995
- St Paul's COPE, Cork €443,671
- Killnasona NS, Longford € 622,071
- Gael Scoil Philib Barun, Waterford €429,113.

Total expenditure on projects commenced in 2002 under the major works sub-programme fell short of the €31.6 earmarked by some €11.8m. In contrast to this, expenditure on the minor and emergency sub-programmes exceeded the planned level of expenditure by €31.8m.

Expenses of €11.5m relating to the programme as a whole had been incurred, but not yet paid for, by the Department at the end of the year. This accrued expenditure is made up as follows:

- Minor projects - €3.8m
- Temporary accommodation - €1.7m
- Expenses relating to major projects - €6.0m
 - In construction at 1/1/2002 - €1.37m
 - Projects from lists 1 and 2 - €0.46m
 - Went to construction in 2002 and not on lists 1 and 2 - €2.39m
 - Pre-construction costs - €1.78m

Expenditure on the post-primary building programme resulted in savings of €12m which was used to provide additional funding for the primary programme. Details of the projected and actual expenditure is given in Table 7.14.

Table 7.14 Projected and actual expenditure Post Primary 2002

Expenditure heading	Proposed allocation December 2001 €m	Actual expenditure 2002 €m
Contractual commitments/Dust extraction etc.	79.1	80.0
Fees	15.0	26.0
Prefabs	3.8	4.8
Furniture and Equipment	9.0	11.0
Remediation Programmes	3.3	9.5
Large-scale Projects (including sites)	56.3	25.6
Small-scale Projects (including sites)	14.2	14.5
Contingency	3	-
Total	183.7	171.4

The Department's Response

Prioritisation System

In response to my enquiries regarding the prioritisation system currently in operation the Accounting Officer said there is a tension between getting maximum impact from the funding allocated and remaining within budget in the absence of ring fenced multi-annual allocations. Furthermore the annual building programme has a number of elements or sub-programmes to be prioritised before a preliminary allocation is made for the major works sub-programme. The process is not set in stone at the outset, as emergency demands particularly within the smaller scale works sub-programme, are difficult to predict.

The major works sub-programme is the multi-annual component of the programme, while minor and emergency works are, by and large, approved on the basis that they will be paid for within the current year's budget. While the major works programme has a higher public profile, judgments on allocations for items such as emergency health and safety works can weigh heavily in the initial prioritisation of the budget allocation.

Background to existing prioritisation system

The Accounting Officer said that following my VFM report his Department had engaged an international expert and consulted widely on the most appropriate prioritisation scheme to adopt. While all of the parties consulted during the preparation of the expert's report endorsed the need for a more transparent system based on the application of objective criteria, many considered that it would be unlikely that a points system (as referred to in the VFM report) would be appropriate for the education sector. Many of the parties recognised that, no matter how objective and scientific the criteria were, there would be a need for decision makers to exercise their professional and/or technical judgment at some point in the process. The expert, in the event, did not recommend a points-based system. The expert's report, delivered in 1999, formed the basis of the prioritisation system that has been put in place.

Overview of the existing prioritisation system

These criteria are:

- The rationale underpinning the project
- The scale of project in terms of area (square metres) and pupils benefiting
- The extent of recent prior investment in the school
- The target date for completion of the project
- The cost of the project
- An analysis of technical considerations, if any, presenting.

In the context of limited resources, clearly only those projects that command the highest priority banding within their respective categories can fall to be considered for inclusion in the expenditure plans for any particular year. Where a number of projects from within the same category and all carrying the same priority band are competing for inclusion the senior management staff within the Planning and Building Unit are required to make professional judgments based on all known facts and having regard to the published criteria.

In an effort to establish the possible usefulness of a points based system the criteria for post primary projects were assigned numerical values on a pilot basis as an exercise to effectively shadow and potentially support the broader banding system. While the experiment illustrated that points could be an aid to the overall management process, the creation of a points system *per se* would not or could not obviate the need to exercise sound judgment cognizant of all relevant factors and based on past experiences of managing an annual programme.

Changing priorities

In response to my questions as to how projects could acquire a higher priority status the Accounting Officer stated that a range of circumstances and conditions can induce such a change. Key considerations would be the emergence of:

- New or additional information concerning the proposed scope of the project
- New conditions or circumstances in the school, for example, enrolments growing more rapidly than had been forecast.

He considered that, logically, it would be expected that a project would move to a higher priority band as the time scale for its completion nears.

Confidence in the new systems

I also asked him how his Department can be confident that the existing prioritisation systems are:

- Demonstrably transparent and
- Target funding to schools most in need.

In his reply he stated that he believed that it was reasonable to say that the broad welcome afforded to the publication (on the website) by his Department of the criteria and lists of projects in 2003 reflected a high degree of confidence among school communities and education partners in the system. Publication represents a significant measure to assuage any disquiet that may have existed regarding prioritisation within the programme. Furthermore the current Minister for Education and Science has stated publicly, in unequivocal terms, that the programme would be managed in a totally fair and objective manner.

He pointed out that a key challenge facing the Planning and Building Unit of his Department, was how to adapt the existing banding system to respond to the ever-changing educational landscape. In the seven or so years since the VFM study, the rights of parents, on behalf of their children, to access non-denominational education and education delivered exclusively through the medium of the Irish language are now underpinned by statute. The concept of providing for diversity/choice, and not simply on the basis of available places regardless of ethos/characteristic/spirit, is now an unequivocal feature of the school planning landscape. This provokes tensions in prioritisation and requires judgment calls about how to balance, for example, the needs of a recently recognised school (the overwhelming majority of recently recognised primary schools are under the patronage of Educate Together or follow the ethos/tradition of Gaelscoileanna) against the refurbishment needs, say, of a long-established school under church patronage.

A 20% increase in primary teacher numbers over the past few years has increased dramatically the basic accommodation deficit in schools that are otherwise structurally sound and has added further to the complexity of the task of prioritisation. The expansion of the further education sector through the delivery of PLC courses and right of access to second chance education also contribute to demands for school places, accommodation and equipment. Attention must also be given to the changing role of the church in relation to trusteeship, and the impetus for rationalisation, particularly at post-primary level. All of these issues present an ongoing challenge for the Department to make consistent, and as rational as possible, decisions in the most transparent manner.

The Accounting Officer stated that the prioritisation system currently in use works to ensure that, in respect of all identified applications, funding is targeted at those most in need. He pointed out however, the reality that the system is historically a reactive application-based one and by definition, cannot ensure that those in greatest need are targeted. A further day-to-day concern for those attempting to prioritise

fairly is to ensure that, where a project becomes the subject of a concerted media campaign due to proactivity on the part of stakeholders, it does not supplant a more valid project.

The entire organisation and structures of the Planning and Building Unit are being re-focused to permit more proactive planning by disaggregating to a much greater extent the planning function from the operational or delivery function. This will permit the planners to plan in a more coherent and strategic manner, drawing together first and second-level needs. The ultimate aim is to provide for each county or region an educational development plan that will identify and map the future strategic shape of the educational landscape, thus informing critical investment decisions in a demonstrably public way.

The Accounting Officer felt it was worth pointing out that an inventory of accommodation has been piloted in Co Kildare and has amassed an extensive range of information concerning the state of schools in the county. This has already proven to be an immense aid to decision making. The Department has just completed an evaluation of the pilot phase. The second phase of the inventory is about to commence and when completed, should prove equally effective in guiding decisions relating to the targeting of resources.

Primary major works programme

I had asked why certain primary schools projects published on lists 3, 4 and 5 on the Department's website in April 2002 and some not listed, had progressed to construction ahead of others on list 2.

The Accounting Officer said that the identified projects were "ready for tender", "would be ready for tender" and "expected to be ready for tender" respectively in 2002 and, accordingly, were at an advanced stage. He pointed out that for projects to advance to construction in 2002, the architectural planning stages would have needed to have been at a very advanced stage and that it would not be possible to significantly fast track individual projects. He further stated that ultimately, the level of funding available was the critical limiting factor for progressing all projects.

In regard to the specific underspends on lists 1 and 2, the Accounting Officer pointed out that the draft programme for the year 2002 was prepared in December 2001. However, the programme was not cleared until late in April 2002. The loss of these 4 months in approving projects resulted in an actual spend in the year on new works projects of €19.8m compared to €31.6m originally estimated. However, €10.4m was spent on these projects in the first four months of 2003.

He further stated that the total cost of projects was accurately estimated. The 30 projects that proceeded from lists 1 to 5 had an estimated cost of €50.41m. The actual cost of these projects was €49.63m

Temporary accommodation and emergency works

In regard to the significant increase in expenditure on the temporary accommodation and emergency works programmes he pointed out that these programmes are demand driven. Applications for such funding are typically made after the estimates have been prepared and accordingly it is difficult to be absolutely accurate in forecasting demand. The Building Unit has to rely on the experience/trends of previous years when estimating likely demand.

The demand for temporary accommodation arises mainly from factors such as:

- Increasing enrolments
- Establishment of special units attached to mainstream schools
- Provision of additional teachers (mainstream, remedial, resource etc.) in mainstream schools

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- Expansion of recently established Gaelscoileanna and Multi-denominational schools.

The allocations of additional teachers to schools is not known when estimates for temporary accommodation are being prepared.

The Accounting Officer provided details of the number of grant sanctions in respect of temporary accommodation and minor grants and costs arising therefrom for the years 2000 to 15 August 2003. It can be seen that the number of sanctions for temporary accommodation was significantly higher in 2002 than for the previous two years and would have been impossible to anticipate.

Table 7.15 Grants for Temporary Accommodation and Emergency Works

Year	Temporary accommodation		Minor Grants	
	No. of Grants	€m	No. of Grants	€m
2000	15	1.3	731	43.5
2001	158	5.5	1247	49.9
2002	296	17.3	1474	46.7
2003 (to 15/8)	112	12.8	545	21.4

Correspondence Issues

In response to my queries about the issue of letters to school authorities advising them of the inclusion of their project in the 2002 programme, the Accounting Officer said that the Department contacts schools advising them of the progress of their individual projects. He confirmed that the objective of the letters was to advise that the projects would be included in the 2002 Building Programme. Some of these projects were to proceed to tender and construction in early 2002 and others were scheduled to proceed to tender in late 2002. He stated, however, that it became clear in late 2002 that the 2003 funding allocation was insufficient to allow all projects to proceed to tender and construction.

In late 2002/early 2003, the school building programme was reviewed in the context of the 2003 funding allocation. This process led to the 2003 school building programme which was published in January 2003. Projects could only be allowed to advance where the funding was available to meet the consequential costs. This meant that some projects, originally intended to go to tender and construction in late 2002/early 2003, could not be included in the 2003 programme.

Post Primary Specific issues

Analysis of under spend in post primary projects

The Accounting Officer provided an analysis of the reasons which gave rise to an underspend on the projects originally provided for in the Vote for Second Level and Further Education projects.

He informed me that approval for the large-scale projects on the 2002 programme of works came later in the year than would have been preferred, with large-scale projects in particular not being approved until the end of the first quarter.

The time gap between allowing a major project to go to tender and funding being disbursed in respect of the project has become rather protracted for post primary projects in recent years.

Inevitably, in the course of implementing a capital programme, projects fall away. Projects may have to be deferred pending more in-depth planning because detailed analysis of the scope of works may vary relative to the preliminary assessment.

He stated, however, that he expected that these difficulties could be eliminated by procuring a four to five-year envelope of funding.

Temporary accommodation

The Accounting Officer stated that the current Minister for Education and Science had made it clear that, schools in poor quality accommodation or requiring additional accommodation would have to accept Departmental offers of temporary accommodation. These views were prompted by evidence that some schools, having refused offers of temporary accommodation, were orchestrating high-profile media campaigns to pressurise the Department into providing improved permanent facilities without reference to the prioritisation system. He further stated that there is clear evidence that schools are now accepting offers of temporary accommodation, thus increasing the level of expenditure in this area.

Timeframe for delivery of projects

The Accounting Officer pointed out that the absence of ring fenced multi-annual funding is a significant obstacle to providing any school managerial authority with an indicative timeframe for the delivery of accommodation. He went on to list the factors which impact on the timeliness of completing projects

Site acquisition: Identification of suitable sites, price negotiation, conveyancing delays, the pre-planning consultative process and agreement of planning charges with local authorities,

Agreeing the brief: Drafting schedules of overall accommodation, assessing the extent to which existing accommodation can be rendered suitable for future use and drafting schedules of any residual accommodation. Affording school managerial authorities the opportunity to consider and debate the proposed scope of works against proposals emanating from the Department.

Appointment of a design team: The necessity to advertise for a design team pursuant to EU public procurement procedures,

Architectural planning: The architectural planning process can and does vary widely. It is easiest in a green-field site, but is more time-consuming in the case of extending an existing property or where matters relating to the integration with existing school buildings are involved. Listed status of some buildings has added to the complexity.

Planning permission issues: Third-party objections, appeals of planning decisions to An Bord Pleanála (including by the Department over unacceptable capital contributions demanded by local authorities).

Fire Officer's Certificate: Usually takes two to three months to obtain.

Tendering: The tendering process can take a number of months, with added delays for the production by the contractor of bonds, insurances and mandatory contract guarantees and notice to local authorities of intent to go on site.

There is inherent difficulty in predicting accurately the speed with which a project will proceed through the planning stages. To provide a school management authority with even an indicative time frame that could be seriously eroded through circumstances and conditions completely outside of the control of the Department is considered to be imprudent.

He instanced that two projects of equal band rating could commence architectural planning on the same day but one of them might have slowed so significantly that it would not be ready for inclusion in a particular year's major works programme alongside the other. It could be the case that a project of lesser priority might proceed more quickly and take its place.

7.3 Cork School of Music Public Private Partnership Project

On 1 June 1999, the Government approved a pilot programme of Public Private Partnership (PPP) projects, including projects in the education sector. On foot of this decision the Department of Education and Science (the Department) sought and received the approval of the Department of Finance for the provision of five post primary schools and the extension of the Cork School of Music under PPP arrangements. The extension of Cork School of Music was estimated at that time to cost €12.7m.

The Cork School of Music project was recommended by the Cork Institute of Technology (CIT) following a report prepared by a Review Group established in 1999 to examine the existing and future needs of the School. The School at that time was operating from its main building and sixteen other premises in the city and the project was intended to remedy this. The original estimated cost of the CIT proposal was €13.33m.

The Cork School of Music PPP project was launched in July 2000. The announcement in the Official Journal of the European Communities (OJEC) and the Outline Memorandum specifically referred to an extension/refurbishment project. Three proposals were short-listed. Each recommended the demolition of the existing 1954-constructed building and its replacement by a purpose built modern facility. Following further evaluation of the three short-listed bidders the Project Board appointed by the Department selected one as the preferred bidder.

The selection of the preferred bidder was approved by the Minister for Education and Science on 13 March 2001. Approval to proceed to preferred bidder stage was subsequently given by the Minister for Finance, this approval was conveyed to the Department of Education and Science on 16 March 2001. The company was notified on 22 March 2001 that it had been chosen as the preferred bidder and the Department entered into negotiations with the company to bring about financial and commercial close based on the submitted bid costs. On 26 July 2001 the Department sought the approval of the Department of Finance to award the contract for the project to the company. The Department of Finance replied on 30 July with concerns and in particular asking that the Value for Money Comparator (VFMC) be recalculated. The anticipated cost, at this time, of the project to design, build, maintain and operate the School over a 25-year term was €200m or a net present value of approximately €100m (in unitary payment terms, 25 annual payments of €8.2m over the project lifetime). A second VFMC was sent to the Department of Finance in April 2002 following a meeting between the Departments on 19 December 2001 to discuss the Department of Finance's preferred structure for the VFMC.

The Department of Finance, in a letter dated 25 July 2002, indicated that it could not recommend to the Minister for Finance that the project should be approved. The project has not been approved to date. In the event that the project does not proceed, a possible financial exposure for the Exchequer may arise in relation to costs incurred by the preferred bidder on the project.

In July 2001, in anticipation of construction commencing shortly thereafter, CIT, at the request and with the approval of the Department, vacated the main building and relocated to a former hotel nearby. A leasing agreement with the owner of the former hotel was concluded for an initial 2-year term at a quarterly rental of €200,000. Additional upgrading costs totalling €80,000 approximately were incurred in relocating to the rented premises. The lease was renewed in July 2003 for a further two years at a quarterly rental of €202,000.

As I was concerned that a fully costed business case for the development may not have been conducted in advance of the launch of the project in July 2000, I sought the views of the Accounting Officer.

I also sought his opinion on whether, in the light of the on-going impasse, there was adequate coordination between the different branches of his Department and the Department of Finance on this project.

In view of the central role exercised by the Department of Finance in authorising capital projects generally and its particular involvement in this project, I also sought the observations of its Accounting Officer on the issues raised.

The Response of the Accounting Officer – Department of Education and Science

In his response, the Accounting Officer pointed out that the Government has not finally determined the matter and that the best indications are that this will not happen until later in the autumn. The Government has requested that the matter should be re-submitted to it following engagement between the Ministers for Education and Science, Health and Finance in relation to the possible options. The Accounting Officer said that in the circumstances it is only possible at this point to speculate rather than be in any way definitive on the final outcome.

In response to my query on the co-ordination of this project the Accounting Officer informed me that the PPP Unit of his Department led the process. In doing so it ensured a co-ordinated and cohesive approach through regular contact with and involvement of relevant officials in other divisions, notably the Planning and Building Unit. Engagement with the Department of Finance in relation to the project was essentially through the PPP Unit. Contact was either with its Central PPP Unit or the Public Expenditure Division.

His Department considered the relationship with the Department of Finance, through its Central PPP policy unit, to be commensurate with what was viewed as a shared mission to advance the Government's policy in relation to PPP procurement and that the education projects were leading the way in that regard. In general, he believed that the work on the pilot education projects of the respective PPP Units proceeded on a partnership basis. This was reflected in the involvement of the Department of Finance on the project board since October 1999. He considered that the nature of contact and working relationships should be viewed in a context where both organisations were on a learning curve in relation to this approach to procurement. These were pilot projects intended to inform future policy through testing not just the method, but also the procedures employed and the relationship of existing approval procedures to the PPP process. The experience gained has informed the development of the Central PPP Unit Interim Guidelines on PPP recently published by the Department of Finance.

As regards his Department's engagement with the Department of Finance in relation to formal project approval, he believes that the records of contact demonstrate his Department's understanding of the requirements for formal Department of Finance approval and the distinction between formal approval by the Minister for Finance and that Department's role on the project board.

The Accounting Officer's view is that the decision of his Minister to sanction the company as the preferred bidder was for the project as proposed by it and at a capital cost that did not vary significantly subsequently. His Department had therefore, in good faith, moved to bring about financial and commercial close on the submitted bid costs. It was open to the Department of Finance not to grant its approval at that time (March 2001) on the grounds of scope of project or likely final cost just as those issues were subsequently raised in July 2002. He was satisfied that his Department had fully co-operated through the balance of 2001 and into 2002 on dealing with specific queries raised by the Department of Finance including its request for a value for money comparator.

He pointed out that he was not disputing the entitlement of the Department of Finance to advance the argument first put in July 2002 in relation to affordability and crystallised ultimately as the basic concern in Minister for Finance's letter of 17 October 2002. A difference of view clearly existed between Ministers and Departments about affordability, and the matter was put to Cabinet. The Minister for Finance's articulation of the affordability issue put affordability in the context of the then present and prospective budgetary position. The Accounting Officer's view is that it is of course legitimate to argue that affordability must be related to circumstances. However, in any such argument it needs to be acknowledged that affordability can be a function of timing. In the case of this project it can be contended that earlier, more benign circumstances may have created a different perspective all round on what was affordable.

On the question of development of a business case he pointed out that the CIT sponsored review highlighted the accommodation deficit and was the genesis of the project. Critically it meant that the School of Music was a readily identifiable candidate project for inclusion in the pilot PPP initiative. Essentially there was a confluence of needs ? the need to deal with the School's requirements and the need to widen the testing of the PPP model by including a suitable third level sector project and to move the pilot PPP programme along swiftly. The Department's validation of the business case thereafter was integral to the PPP process and occurred specifically in the context of determining the output specification that was developed in consultation with CIT and the Department's external advisers.

In regard to the scope of the project he indicated that both the OJEC Notice and the Outline Memorandum specifically referred to an extension/refurbishment project but critically that did not constrain the bidders to deliver an extension which by definition would be new build and refurbishment of existing build. This is because a PPP is not the same as traditional procurement where a set of inputs, building design and specification, is provided. In the case of PPP procurement, output requirements are provided requiring the bidders to decide how to deliver these in the most cost effective and efficient manner. In this case, the bidders separately and in competition with each other proposed a new build solution to meeting the outputs. A key factor influencing their decision was the condition of the existing premises. The cost of refurbishing the existing building would be in excess of 60% of its replacement cost. In addition, the existing building would not "blend" with an extension making it difficult, if not impossible, for the future Operator to meet the service requirements. The Project Board accepted that the proposal to rebuild was the best solution going forward based on the output specification provided and the approval of the Ministers for Education and Science and Finance was obtained in relation to the preferred bidder and that bidder's proposals.

The Accounting Officer stated that the existing school was vacated before a definitive approval was given to proceed with the project because the existing premises of the Cork School of Music were and are clearly deficient and would inevitably have had to be evacuated by the school. Information brought into focus during assessment of the bids concerning the structure, roof condition and in particular the level of asbestos in the building re-enforced the desirability of vacating the building. Suitable accommodation in terms of size, location and adaptability for a school of music is hard to find. Therefore it was necessary to obtain and adapt premises in advance of the project commencing. It should be borne in mind that the project called for a tight schedule and therefore it was necessary to have the preliminary steps in place before construction was ready to commence. He pointed out that temporary accommodation was always going to have to be utilised even if the project had proceeded to the planned timelines. When no decision regarding the future of the project had been taken by May 2002 the PPP Unit advised CIT to enter into negotiations to extend the existing rental agreement on the former hotel to ensure accommodation would continue to be available. A more suitable agreement with no additional increase in rental charges up to August 2005 was negotiated.

Observations of the Department of Finance

The Department of Finance confirmed that a final Government decision on the CSM project had not yet been taken pending further consideration of the issues involved.

Two sections of the Department have been mainly involved in this project to date: the Central Public Private Partnership (PPP) Unit, and the Education and Science Vote Section. Both are part of the Public Expenditure Division. The Central PPP Unit was represented on the project team for this project.

The Department of Finance pointed out that the primary responsibility for any capital project, including PPP projects, rests with the sponsoring Department. In this case his Department's role on the project team was one of learning and advising, as appropriate, having regard to the fact that professional advisers had been appointed, with particular terms of reference, to assist the Department of Education and Science on the project. For example, the appointment of the professional advisers to assist the Department on this project was made on the basis of a majority decision of the project team and the Department of Finance did not hold or exercise a veto. The Vote Section is the relevant sanctioning/approval section and was not represented on the project team. In general, he considered that it would not be appropriate or feasible for a Vote Section to get involved in the detailed examination of capital projects.

He indicated that while there was ongoing communication between the Central PPP Unit and the Vote Section on this project the early indicative cost of the project was not a cause of concern to his Department. However, as the project proceeded the cost did become a cause of major concern. In particular, in December 2000 when the Central PPP Unit became aware that the potential cost of the project was likely to be much more significant than envisaged earlier. They brought that information to the attention of the Vote Section. The bids were at that time thought likely to be in the region of €30m, but possibly up to €48m. When the evaluation of the three bids in February 2001 indicated that the best bid had a comparable capital cost of €58.8m concerns regarding cost were brought to the attention of his Minister. The view of Public Expenditure Division was that a review of the project was appropriate, rather than proceeding as proposed. Concerns centred on the scale, cost and specification of the project. The Minister shared the concern about the cost escalation of the project and asked that the reason for that happening be examined with a view to incorporating any lessons arising in draft PPP guidelines. In the event, and having regard to this being a pilot PPP project, approval to proceed to preferred bidder stage was given by the Minister. The Minister's approval was conveyed to the Department of Education and Science on 16 March 2001.

At that stage, a final contract had to be negotiated and a Value for Money Comparator (VFMC) completed. He pointed out that a decision on the contract could not be made until the VFMC had been completed to the satisfaction of his Department. VFMCs for both the Cork School of Music and other schools' project had been sent to his Department on 23 July 2001 along with a request from Department of Education and Science for their approval. His Department asked that the VFMCs be recalculated for both projects, as it was unhappy with certain aspects of them. The Department of Education and Science advised his Department on 21 August 2001 that the recalculation of the Cork School of Music VFMC would be provided as soon as possible but an appeal to An Bord Pleanála of the decision to grant planning permission for the project appears to have contributed to the delay in its completion. On 17 April 2002 a second VFMC for the Cork School of Music was submitted to the Department of Finance. This followed a meeting on 19 December 2001 during which the Department of Finance outlined its preferred structure for a VFMC.

The Department of Finance pointed to another development in the period between the move to the preferred bidder stage in March 2001 and its Department's letter of 25 July 2002 to the Department of Education and Science. Discussions with the Central Statistics Office (CSO) were leading to the conclusion that the full capital cost of the bundle of five schools PPP project would have to be counted in the General Government Balance (GGB) figures and treated as Gross Fixed Capital Formation of general

government spread across the period of construction. Eurostat confirmed this conclusion in October 2002 in respect of the bundle of five schools PPP project. The implication of this decision for the Cork School of Music project is that it will have to be treated similarly for GGB purposes. This means that instead of the cost being spread over the longer period of the contract (twenty five years), it had to be taken into account for GGB purposes over the period of construction (approximately two years). Adding to these difficulties was the fact that the overall budgetary and economic situation had changed, very significantly, since the preferred bidder was selected.

These considerations contributed to the reassessment of the project and resulted in his Department's letter of July 2002 and his Minister's letter to the Minister for Education and Science on 17 October 2002. Both letters point out that the overall resource position could not be ignored.

While PPP projects were, at all stages, subject to the 1994 Capital Appraisal Guidelines no specific detailed guidelines for managing them existed when the pilot projects started. One of the reasons for having the Department of Finance's Central PPP Unit represented on project teams was to enable the experience gained to be used in drawing up guidelines that would deal with the specific and very complex aspects of PPP projects. These included the setting up of an Affordability Cap and the drawing up of comprehensive Public Sector Benchmarks⁶⁰ and Value for Money Comparisons⁶¹ at the appropriate stages in the process. An Interdepartmental Working Group (IDG) on PPPs was established at the outset of the process to facilitate coordination, provide a forum to share views and information, to monitor progress on PPP projects generally and to help develop guidelines to assist the process. The Department of Education and Science as one of the sponsoring Departments critically involved in the actual delivery of PPP pilot projects at that time had an important role in the evolution of the guidelines and the lessons to be learned from the pilot projects.

The Department of Finance pointed to the "Interim Guidelines for the Provision of Infrastructure and Capital Investments through Public Private Partnerships: Procedures for the Assessment Approval, Audit and Procurement of Projects" issued by his Department on 7 July 2003. These clarify the requirement to have a comprehensive Public Sector Benchmark, separate from the Value for Money Comparison, completed before tenders are invited. The Guidelines also provide advice on the appropriate stage for completing the Value for Money Comparison and set out the roles of the relevant participants in the procurement of PPP projects. Under the Guidelines the sponsoring agency continues to have overall responsibility for the planning and management of PPP projects and is responsible for all aspects of the appraisal and assessment of projects and for following national and EU procurement procedures. Approval points, and audit procedures, are now an integral part of the procurement steps in PPP projects of this scale. For projects that are likely to exceed €20m a Process Auditor must be appointed to certify that the procurement of the project complies with all regulatory and administrative procedures and that certificates of compliance are made available to the sanctioning authority on request. The relative roles of the Central PPP Unit and the Vote section are also spelled out in the Interim Guidelines.

As regards the adequacy of coordination, he believed that the level of contact and involvement between both Departments and between the Sections within his Department was good. One of the lessons learned relates to the importance of having as much clarity as possible as to the respective roles and responsibilities of the various players in a project such as this. The Interim Guidelines are very clear on that point.

⁶⁰ The Public Sector Benchmark is a comprehensive, detailed risk adjusted costing over the whole life of the project using conventional public sector procurement.

⁶¹ The Value for Money Comparison is a comparison of the whole-life cost of the project using conventional procurement (as measured by the PSB) with the proposal(s) submitted by the selected tenderer(s).

7.4 National Educational Psychological Service

Introduction

The Minister for Education and Science established the National Educational Psychological Service (NEPS) as an executive agency of his Department in September 1999 in response to demands for a psychological service for all Primary and Post Primary schools. A planning group for NEPS was set up in 1997 and reported in 1998. It established the blueprint for the service and set out the service and manning levels for the proposed agency. It is intended to establish NEPS on a statutory basis by order under the Education Act 1998.

The mission of NEPS is to support the personal, social and educational development of all children through the application of psychological theory and research in education, having particular regard for children with special educational needs.

In essence its main objectives are to:

- Support students
- Support those who help students
- Help schools respond to particular issues
- Engage with schools in the promotion of mental health.

In pursuing its objectives the agency's activities can be divided into two main areas, which are:

- Case management *viz.* dealing with referrals, conducting assessments, suggesting interventions and follow up
- Support and Development Work *viz.* consultation with teachers, developing and implementing whole school strategies relating to educational psychology and in-service training in schools.

The main thrust of the agency's work in its initial years has been the conduct of psychological assessment of students due to pent-up demand for this service. The assessments have been delivered through a combination of in-house psychological staff and outsourced psychologists.

Objectives of the Audit

The audit sought to establish:

- How the agency was fulfilling its mandate
- The systems in place for measuring performance.

Fulfilling the NEPS Mandate

Staffing The Service

The precise number of students who need to avail of NEPS services cannot easily be determined. However, the agency set two key targets for the level of coverage to be achieved by the end of its five-year developmental phase:

- Every primary and post-primary school to have access to a psychological service
- One psychologist per 5,000 pupils to be available to provide this service.

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The student populations in these schools were 439,560 (primary) and 345,384 (post-primary) in 2003. The target coverage was to be achieved by a phased increase over 5 years (1999-2004) in the professional psychologists employed by the service with a corresponding increase in support staff and the overall financial resources expended on the service.

In 1998, 69 psychologists were already working in the education sector – 53 in the Department of Education and Science, 6 in the two Dublin VECs, 5 were employed by area partnerships for educational work and 5 full-time equivalents in schools for young offenders⁶². A target of 200 psychologists working in the education sector was set, of whom 184 would be in NEPS, working in 10 regions roughly corresponding to the 10 Health Board Regions. Table 7.16 shows the planned phasing and actual outturn to-date for the employment of psychologists and support staff in NEPS.

Table 7.16 Staff numbers (actual vs. planned) 1999 - 2003

	1999		2000		2001		2002		2003	
Staff	Actual	Plan	Actual	Plan	Actual	Plan	Actual	Plan	Actual	Plan
Professional	43	78	75	103	87	131	121	158	123	184
Support	4	7	7	23	9	30	13	35	19	39
Total	47	85	82	126	96	161	134	193	142	223

Recruitment of additional psychologists proved to be more time consuming than expected. A considerable amount of time was needed to shortlist, interview and clear candidates leading to delays in making appointments.

The Accounting Officer stated that as at August 2003 there were 123 psychologists in NEPS, as opposed to the target of 158 for the end of the school year 2002/2003 and that he hoped that offers of employment currently being made will result in a total of 127 psychologists in post by mid-October 2003.

Cost

The cost of providing the NEPS service comprises salary costs of professional and administrative staff, bought-in services and travel and accommodation expenses. The cost for 2002, at €11m reflects the increase in overall staff numbers in the Service as well as the first full year of purchased assessments. The cost of fitting out a number of new NEPS offices was largely borne in 2002. Table 7.17 gives a breakdown of these costs since NEPS was established.

Table 7.17 Cost of NEPS 1999-2003

	1999 €m	2000 €m	2001 €m	2002 €m	2003 (est) €m
Professional Staff	0.6	2.9	4.5	6.2	10
Administrative Staff	-	0.1	0.2	0.3	0.6
Purchased Assessments	-	-	0.2	1.4	1.2
Other Authorised Payments	-	-	-	0.9	-
Total Pay	0.6	3	4.9	8.8	11.8
Travel and Subsistence	0.1	0.2	0.4	0.6	0.7
Office Overheads	0.6	0.4	0.9	1.7	1.9
Total	1.3	3.6	6.2	11.1	14.4

⁶² Source: Report of Planning Group 1998 page 80.

Regional Coverage

The 1998 Report of the Planning Group recommended a ratio of one psychologist to approximately 5,000 students (Primary and Post-Primary). The number of psychologists currently employed would give a ratio of approximately 1 to 6,825 if they were assigned evenly throughout the country. However, as additional psychologists are appointed, each is allocated the number of students recommended, giving a degree of uniformity in psychologist/student ratios where a service is provided but not in coverage across the country.

The latest figures available indicate that the agency provides a service to 1790 out of 3200 primary schools and 670 out of 751 post-primary schools. Table 7.18 shows the breakdown by region and the numbers of students with access to the service.

Table 7.18 Coverage of schools by NEPS by Region (April 2003)⁶³

Region	% Covered by NEPS			
	Schools	Pupils	Schools	Pupils
Eastern Region (East Coast Area)	224	67,996	89%	94%
Eastern Region (Northern Area)	227	80,888	76%	86%
Eastern Region (South Western Area)	201	72,040	59%	69%
Midlands	161	37,431	54%	76%
Mid West	121	32,477	29%	45%
North East	211	55,167	55%	76%
North West	146	48,702	43%	71%
South	434	88,182	69%	73%
South East	279	71,450	58%	78%
West	454	68,894	75%	87%
Total	2458	623,227	62%	79%

NEPS has indicated that there is full coverage of all mainstream schools in County Kerry and in the Connemara Gaeltacht and practically full coverage in the East Coast Area. In these areas, negotiations are now beginning with special schools and with the Health Boards and voluntary bodies that have hitherto served them. NEPS intends to serve these schools in collaboration with the clinical services. However difficulty has been encountered in recruiting psychologists to a number of regions, notably the Midlands, North West, Mid West and this is reflected in the levels of service delivery shown in Table 7.18.

The Accounting Officer said that the difficulty of recruiting psychologists who are prepared to work in the Mid-Western region is a particular concern to the Department. He noted that psychologists recruited to NEPS have, for the most part, substantial experience and are already in full time employment and, in many cases, have family commitments. This affects their willingness to take up employment in particular regions.

The Accounting Officer went on to say that NEPS has, with the help of the Department's IT Section, developed a weighting database as a management tool to assist in determining the optimum deployment of psychologists. The system takes account of such factors as the size and level of school, level of disadvantage and incidence of children with special needs. NEPS is moving from a psychologist-student ratio to a psychologist-points ratio with the aim of trying to ensure equity when assigning schools to psychologists and to enable psychologists to plan their allocation of time to each school. The Eastern Region (South Western Area) has some of the largest and most disadvantaged schools in the country. On

⁶³ Source NEPS.

foot of the weighting system, a smaller number of schools have been assigned to psychologists in the Eastern Region (South Western Area) than would be the case in other regions.

The Accounting Officer further informed me that a joint National Steering Committee has been set up to implement the recommendations of a NEPS/Health Boards Working Group on collaborative working and alignment of service at national, regional and local level. The findings of the working group have been published in its report, "Achieving through Partnership".

Delivering the Service

The 1998 Report of the Planning Group considered the various factors which arise from the work of an educational psychologist and in particular the importance of striking a proper balance between casework and support and development work in the context of estimating the total number of psychologists needed to provide the service. The Planning Group suggested that the ratio between casework and other services should be of the order of two to one while stressing that this proposal should not be rigidly interpreted.

Casework Output

Assessments Undertaken Directly by NEPS

Psychological assessment is a key component of casework and one that has received a considerable degree of attention both on account of its place as a core activity of psychologists working in education and the fact that it plays a crucial role in the provision of extra resources by the Department in respect of special educational needs. Table 7.19 shows the numbers of assessments carried out by NEPS psychologists during the three school years since inception.

Table 7.19 Number of assessments carried out by NEPS Psychologists

	1999-2000	2000-2001	2001-2002
Total number of assessments	3,051	2,978	4,536
Of which full assessments (i.e. involving IQ test)	2,131	2,212	3,594
Number of Psychologists reporting	39	61	72

While the number of assessments completed is a useful measure of achievement it is worth noting the Planning Group's caution that: "In casework itself, a narrow focus on the assessment aspect limits the usefulness of the intervention for students, parents and teachers. There is need for recommendations, follow-through, for advice on provision for the students and for support for parents and teachers".⁶⁴

Table 7.20 Analysis of assessments carried out by NEPS Psychologists by Region (Academic year 2001/2002)

	Pupils Assessed	Full Assessment	Average Number of Assessments per Psychologists	Average Number of Full Assessments per Psychologist	Psychologists Reporting
Eastern Region (East Coast Area)	768	579	77	58	10
Eastern Region (Northern Area)	641	432	64	43	10
Eastern Region (South Western Area)	682	510	68	51	10

⁶⁴ Planning Report page 74.

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Midlands	150	136	75	68	2
Mid-West	256	234	85	78	3
North East	394	332	56	47	7
North West	82	69	41	35	2
South	485	388	49	39	10
South East	439	350	55	44	8
West	639	564	64	56	10
NEPS	4,536	3,594	63	50	72

All casework undertaken by NEPS psychologists since September 2002 is being recorded in a computerised client tracking system (CASETRACK) developed in conjunction with the Department's IT unit to provide case management facilities to psychologists. The system is designed to track students seen by NEPS psychologists and will facilitate statistical analysis of this aspect of the work of the agency. NEPS has indicated that while the CASETRACK system is currently operational, problems are being experienced in providing administrative resources to support it.

The Accounting Officer informed me that the announcement by the then Minister for Education and Science, in autumn 1998, about the automatic entitlements of primary school children with special educational needs was made shortly after the publication of the Report of the Planning Group for NEPS. The additional demands that resulted had not been factored into the Planning Group's calculations of potential demands on NEPS. Almost immediately, there was a noticeable increase in the number of referrals for individual assessment, including many from schools not yet having access to a psychological service. This was because the Department's regulations require that the allocation of extra resources should be, in many cases, dependent on the findings in a psychological report. The increase in the number of special units and classes has also had a marked effect on the workload of the psychologists in schools.

Commissioned Assessments

NEPS responded to this surge in demand by introducing a scheme for commissioning assessments from private psychologists. Under the scheme primary schools⁶⁵ with no access to NEPS assessments may commission psychological assessments from an approved panel of private practitioners. The scheme also applies in schools that have access to psychological assessments but where there is a backlog of urgent referrals for special needs education. NEPS consider the scheme to be an interim measure.

Table 7.21 shows the number of assessments commissioned and their cost for the 22 months to 30 June 2003.

Table 7.21 Commissioned assessments and costs⁶⁶

Calendar Year	Number	Costs €
2001 from September	342	190,257 ⁶⁷
2002	3,907	1,337,230 ⁶⁸
2003 to end June	2,080	689,246 ⁶⁹

⁶⁵ NEPS coverage at post primary level is virtually 100% - psychological services were initially developed for the post primary sector with the recruitment of psychologists by the Department in the 1960s.

⁶⁶ Source NEPS.

⁶⁷ Includes €88,882 paid for reimbursement of schools for assessments carried out prior to the introduction of commissioned assessments.

⁶⁸ Includes €53,100 ditto.

⁶⁹ Includes €2,846 ditto.

As the scheme developed, a number of problems became apparent:

- Initially, there was some confusion over which schools were eligible to commission assessments. Some schools went ahead although they were already allocated to a NEPS psychologist and thus were not eligible. Psychologists identified to carry out the work were advised to check whether schools were eligible before they accepted a commission.
- The coverage of the country by the commissioned psychologists was patchy and schools in some areas found it very difficult for logistical reasons to get psychologists.
- As the demands increased, the psychologists became increasingly busy. Schools found it very difficult to get an appointment with a scheme psychologist within a reasonable time period.

Feedback from schools participating in the scheme of Commissioned Assessments

NEPS has advised that as part of its continuous assessment of the scheme it conducted a survey, in summer 2002, in a representative number of schools using the scheme. The survey sought feedback from the schools on the level of satisfaction with the quality of service they received and the administration of the scheme. It also asked for views regarding the method of payment for the service and suggestions on how the scheme could be improved.

The response to this survey indicated a significant level of satisfaction with the ease of use, time to get appointments, professional standards and quality of reports. Satisfaction with the administration of the scheme, including method of payment for the service was also high. Only 2 out of 214 respondents indicated that they did not wish to have the scheme continue. Both had had NEPS psychologists appointed to their schools during the year.

Advantages and Disadvantages of Commissioned Assessments

The scheme was introduced to meet a specific difficulty due to a pent up demand for assessments. NEPS believes this will diminish as planned levels of staff come on stream and the organisation evolves to a more advanced stage of development.

NEPS believes that its psychologists can provide the most appropriate support service for students, parents and teachers by:

- Advising teachers on appropriate screening and diagnostic instruments and checking results of teacher-administered tests
- Helping teachers to develop Individual Education Plans
- Carrying out reviews of progress to check if pupils are benefiting from their plan
- Tracking pupils with special educational needs through the educational system
- Helping schools to develop policies and actions that may prevent some of the presenting problems
- Contributing to relevant training programmes for teachers.

The Accounting Officer stated that this strategy means that NEPS, by enhancing the capacity of schools to prevent school failure, can indirectly help many more children than could be met individually by psychologists. This is in line with the Department's general policy trends. It is also intended to be cost effective and provide greater value for money.

The experience of contracting in assessment services presents NEPS with an opportunity to evaluate the advantages and disadvantages including costs of such an approach. To date, unit costs per assessment comparing those carried out by a NEPS psychologist as against a scheme assessment has not been computed by NEPS. Such a costing exercise should be a priority.

The Accounting Officer informed me that the NEPS administrative staff have not had the resources to develop and produce a financial management system capable of yielding an authoritative unit cost per assessment carried out by a NEPS psychologist. NEPS will, however, work with the Department, to put in place arrangements that will ensure that a unit costing will be carried out as a priority, so that the unit cost of an assessment by a NEPS psychologist can be compared with the unit cost of an assessment by a scheme psychologist.

NEPS is not in favour of outsourcing assessment work as a general strategy. However, it envisages that there will continue to be a limited need for some private assessment work to provide urgent cover in cases of parental leave or long term serious illness of NEPS psychologist staff.

The Accounting Officer, in his comments on commissioned assessments, pointed out that the commissioning scheme provides only a small part of an educational psychological service. Only a psychological report is provided but there is no follow up of the child. The scheme does not significantly enhance the school's capacity to respond to the children's needs.

In contrast, when a child is referred to a NEPS psychologist, an individual psychological assessment will only be provided if, after consultations with teachers and parents, school-based interventions have failed and progress monitored. This is a more cost effective intervention.

Because of concerns that have arisen in relation to some applications for resources, the Department is currently reviewing the process of allocation of additional resources to children with special educational needs. It is predicted that new systems that will be put in place will significantly reduce the demand for individual psychological assessments. When that happens, NEPS will re-evaluate the need for contracted assessments and will review the scheme with a view to ascertaining if there are features of that service which might be adopted by NEPS.

The Accounting Officer in a general comment on the delivery of assessments stated that referral for psychological assessment is a significant, and sometimes alarming, event for parent and child. An individual psychological assessment should only take place if the child's needs truly justify it.

Support and Development Work

The Planning Group recognised that the response of psychologists to student needs cannot occur in isolation and identified the need for working relationships with parents, teachers and the whole school.

Its report focused on support and development work in this context as increasingly relevant and necessary for the benefit of students. This work includes:

- Encouraging systematic change in schools as a preventative and development strategy in relation to learning and behaviour difficulties of groups of students
- Working with parents and teachers on discipline and behaviour policy
- Contributing to the enhancement of teachers' skills in identifying student needs
- Accessing and communicating information on research into good practice and alternative strategies
- Contributing to in-career development of teachers on relevant issues
- Engaging in research and development work on particular strategies or development of particular projects related to the work of psychologists in schools.

The group proposed as a target that 35% of psychologists' time be spent on this work.

Measuring Performance

As I was concerned by the apparent lack of quantified targets for the delivery of NEPS services, I asked the Accounting Officer for details of the targets set for the new agency and for an outline of the performance indicators established to confirm their achievement.

Targets

The Accounting Officer informed me that the main target for NEPS, set in the Report of the Planning Group 1998, was that the staffing of NEPS would gradually increase over the five year development period.

At the end of this time, every primary and post-primary school would have access to the NEPS service. The psychologist to student ratio, based on the experience in other jurisdictions and on an estimate of the need for psychological intervention, would be 1:5,000. Psychologists would devote 65% of their time in schools to casework and 35% to support and development work. Beginning in September 2003, NEPS will specify a target number of days to be spent in schools by each psychologist.

Table 7.22 gives the targets for number of students to be covered by each psychologist.

Table 7.22⁷⁰ Planned Number of Students per Psychologist⁷¹

End of Year	2000	2001	2002	2003
Post-primary schools only	15,000	11,000	8,000	5,000
Primary and post-primary schools	7,000	6,500	6,000	5,000

The service has been established in all 10 regions, six regional headquarters are operational, seven Regional Directors have been appointed and a further competition is imminent. Each regional headquarters is to have its own professional and administrative structure.

Performance Indicators

The Accounting Officer said that performance indicators for NEPS were implied in the Government decision to establish the service and the phased deployment of psychologists and support staff. While the Department has not itself formally established targets, senior officials of the Department are members of the NEPS Management Committee and monitor the objectives and performance of NEPS on a regular basis.

He further stated that NEPS has identified the following performance indicators:

- The number of psychologists in place, monitored by the Department's Personnel Section and by NEPS management
- The number of schools and students with access to the NEPS service, recorded in the NEPS Weighting Database and in the scheme Database
- The number of disadvantaged schools and schools of greatest need covered, monitored by Regional Directors, through the Weighting Database

⁷⁰ Source: Department of Education and Science.

⁷¹ Lower targets apply to psychologists with management responsibilities: for 2003 these are 3,000 students per psychologist in both primary and post-primary schools.

- The number of visits made to schools and the number of interviews that take place. Since the establishment of NEPS, this information has been routinely gathered from psychologists at the end of each school year
- The number of support activities, seminars etc, held each year. This information is being gathered from psychologists as part of their report on the 2002/03 school year, and will be included in the reporting template from now on.
- The time it takes for children with urgent need to be seen by a psychologist. This information is not gathered, as psychologists give priority to urgent cases. These will be seen within weeks if not days.
- The time it takes psychologists to produce their reports. This information will be available in future through the CASETRACK system.
- Production of policy documents, guidelines on procedures, reports of working groups. The evidence is in the number of documents produced.

Individual psychologists and administrative staff set annual targets and performance indicators in the context of the Performance Management and Development System and their service planning.

At the end of the school year 2001/02, the NEPS management team agreed on a number of minimum critical specifications with performance indicators that were to be achieved during the school year 2002/03, under the headings: Model of Service, Development of Team Structures, Professional Supervision, Evaluation and Record Keeping.

The Accounting Officer in response to my request for details of targets for specific activity areas stated that:

- Targets have not been set for the annual number of individual psychological assessments to be carried out as they are considered inappropriate in the context of the development of the NEPS Model of Service. As individual assessment is more costly when compared to the more indirect casework approach which assists more children in less time, NEPS has decided to set targets, beginning with the school year 2003/04 for the amount of time spent in schools on casework.
- A target has not been set for maximum waiting time for assessments, as NEPS believes a more appropriate measure is maximum waiting time for a response to a referral. Consultation and advice to the teacher and/or parent may obviate the need for an individual psychological assessment. NEPS will be setting targets for response time in the context of its Quality Customer Service Statement.
- Consultations with teachers may be related to cases involving teacher(s) and parent(s) of individual children or general issues that arise for teachers e.g. about behavioural management, programme development, special educational needs, responding to critical incidents, school climate. Psychologists are expected to devote 35% of their time in schools to this latter support and development work. A weekly activity journal maintained by each psychologist facilitates monitoring progress towards this target.
- There is no general target for the number of training courses / special projects, although individual psychologists will set targets in the course of the service planning process.

He indicated that in late 2002, NEPS published its Quality Customer Service Statement, which sets targets and performance indicators in such areas as response times to telephone calls and letters. Achievement of these will be dependent upon the availability of adequate administrative support. In relation to the other activities mentioned above, NEPS has undertaken to examine each and to decide what targets should be set and at what level.

The role of Management Information Systems in Measuring Performance

The Accounting Officer, commenting on whether the NEPS Information and Communications Technology (ICT)/Management Information System (MIS) supports the collection of data to enable it measure performance, stated that:

- The CASETRACK system, when fully working, will provide details of the time lapse between
 - first referral and response from NEPS
 - assessment and production of the psychological report.
- The NEPS Weighting Database is one year old and is currently being reviewed and amended. NEPS recognises that equity in numbers of students per psychologist would not necessarily mean equity in quantity of work and has identified as a task for 2003/04 the need to set targets for ratios in terms of weighting points.

On the general issue of Administration and ICT, he pointed out that, in hindsight, the 1999 administrative staffing proposals for NEPS were inadequate and ineffective to support such a major undertaking. No provision had been made for dedicated ICT staff. NEPS had to wait for approximately 2 years before the first dedicated ICT member of staff was assigned in late 2001. The current NEPS IT Unit is essentially an infrastructural development and technical support unit and is heavily involved in the development and roll-out of a separate NEPS network linked to the Department's network. It also supports NEPS staff in relation to hardware and software.

While the Department's IT Unit has been able to progress a few MIS projects on an *ad hoc* basis since the establishment of NEPS (CASETRACK, for example, has its origins in an initiative, before NEPS was set up, between Departmental psychologists and the Unit), it is not in a position to assist agencies such as NEPS in planning the development of their MIS. There is a clear and pressing need for the development of appropriate MIS to support financial management as current resources only permit basic systems.

The Department intends very shortly to review a draft Request for Tender for a full ICT plan for NEPS as well as a proposal to create a post of manager of the overall IT function in NEPS.