

Chapter 9 Department of Education and Science

9.1 Residential Institutions Redress Board

Background

The Residential Institutions Redress Act, 2002 (the Act) provides for a scheme of awards to persons who were resident in certain institutions and have or have had injuries that are consistent with abuse received while resident in the institutions.

The redress scheme is administered by a Residential Institutions Redress Board (the Board). A Residential Institutions Review Committee (the Review Committee) has also been established to review awards of the Board. The general scope of the scheme was outlined in my 2002 Annual Report.

The redress scheme extends to former residents of 123 institutions regulated by the State. 87 of these were under the supervision of the Department of Education and Science (DOES). 82 of the 123 institutions were managed by religious congregations represented by the Conference of Religious in Ireland (CORI). 95% of the applications to the Board are from former residents of institutions which were managed by these congregations. 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 Department is examining proposals to extend the scheme to a further set of institutions. It is the DOES's view that the number of applications to the Board arising from the addition of these institutions would not be significant.

In conjunction with the introduction of the redress scheme, the Government also reached an agreement with eighteen religious congregations, who had been represented in negotiations by CORI, that they would make a contribution of €128m, inclusive of some past contributions, towards the cost of the compensation scheme. 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 for Education and Science, the Minister for Finance and eighteen religious congregations.

In accordance with a commitment given to the Committee of Public Accounts I reviewed the claim outturn to date, the likely cost of redress based on current information, the extent to which the State indemnity has been invoked and the progress of the DOES in collecting the contribution agreed with the congregations.

Redress Costs

The redress scheme has now been operating for 18 months and between the introduction of the scheme in December 2002 and 21 June 2004 the Board has received 3,763 valid applications⁸. Applications have been made at a rate of approximately 48.5 per week.

By 21 June 2004 the Board had made 1,277 offers of awards since it commenced hearings in April 2003. The total amount of awards offered was €98.8m⁹. To date, 77% of the total amount paid in awards has been agreed in a settlement process. The balance involved hearings. Table 33 sets out the pattern to date.

⁸ 3,829 applications had been received. 66 were outside the terms of the scheme.

Table 33 Awards by Redress Board, December 2002-June 2004

<i>Nature of award</i>	<i>Number of cases</i>	<i>Total Amount €m</i>	<i>Average award €</i>
Settlement	973	76.4	78,500
Hearing	304	22.4	73,700
Total	1,277	98.8	77,400

Applicants have one month to accept or reject an award or submit the award to the Review Committee, which is wholly independent of the Board. The number of cases sent to the Review Committee up to 21 June 2004 was 33. The Review Committee had 10 reviews on hand and had made 23 awards by that date. The details are set out in Table 34.

Table 34 Awards by Review Committee, December 2002-June 2004*

<i>Nature of award</i>	<i>Number of cases</i>	<i>Total Amount €m</i>	<i>Average award €</i>
Initial award by Board	23	0.96	41,565
Award following Review	23	1.08	46,740

* The awards following review are included in Table 33.

The Board awards costs in respect of expenses incurred in the preparation and presentation of an application. Up to 21 June 2004 the Board had awarded costs, including related High Court costs, in 173 cases. The total amount of these costs was around 15%¹⁰ of the cost of the awards made in these cases.

In cases where agreement about costs cannot be reached, either the claimant or the Board may submit the case to the Taxing Master of the High Court. Following a ruling by the Taxing Master either party has the option of appealing to the High Court. A number of cases have been submitted to the Taxing Master but the process has not yet concluded for any of these cases.

Based on the current level of the Board's own costs and the expected level of claims it is estimated that the Board's total costs (excluding costs paid to applicants) could be of the order of 5% of the cost of awards.

Estimated Redress Scheme Cost

The component elements in any estimate of the cost of redress are

- The number of qualifying persons who will apply for redress
- The extent of any awards made to them
- The extent of any costs which may arise.

Although the scheme has now operated for 18 months and greater estimation precision is possible there are still inherent uncertainties attached to any calculation. Consequently, I am presenting figures estimated on three different bases

- An estimate based on a survey of firms of solicitors representing approximately 36% of claimants to the Redress Board up to the end of May 2004

⁹ Approximately 150 of these offers had yet to be accepted at 21 June 2004.

¹⁰ Exclusive of VAT

- An estimate based on trends in Freedom of Information (FOI) requests which evidence residency in these cases
- An extrapolation of the claim outturn of the Board.

In addition, I report the Board's own estimate of the likely liability on foot of claims.

For purposes of each estimate, the all-in-cost of awards is estimated at around €93,000 — the average award for cases finalised to date is €77,400 and costs have been estimated at 20%.

Estimate based on Survey of Solicitors

The Redress Board has informed me that almost all applicants to the Board have legal representation.

Using information from a file of FOI requests supplied by the DOES, I compiled a list of 20 law firms who had made 72% of the FOI requests that came from solicitors and around 44% of all FOI requests.

Following consultations with the Law Society of Ireland, and with their co-operation and assistance, I sent a questionnaire to the 20 firms. The information sought was

- The number of claims submitted to the Board, on behalf of clients, to 31 May 2004
- The number of cases on hand where there was a real prospect of an application being lodged with the Board
- The number of new cases coming to the firm in each month from January to May 2004.

Sixteen firms replied. The results of the survey are set out in Table 35.

Table 35 Survey of solicitors' firms at 31 May 2004

	<i>Claims</i>	<i>%</i>
Total applications to the Board to 31 May 2004	1,338	43%
Cases on hand at 31 May 2004	1,775	57%
Total cases	3,113	100%

The results of the survey indicate that less than half of the potential claims to the Board had been made by 31 May 2004. However, the rate of receipt of cases by solicitors in 2004 was declining. 6% of the total cases resulted from instructions received in the first five months of 2004.

The solicitors who replied to the survey accounted for 36% of all claims made to the Board in the period to 31 May 2004. If the cases on hand become claims to the Board and claims from these firms continue to represent around 36% of all claims, additional claims arising from cases on hand at 31 May 2004 could be in the region of 4,930. 3,681 claims had already been lodged to the Board at that date. This would indicate that the total number of claims to the Board could amount to something of the order of 8,900¹¹.

At a level of 8,900 claims the all-in cost could be around €828m.

¹¹ This has been calculated on the basis that the diminishing rate of receipt of instructions will result in a further 300 claims, over and above those on hand, between May 2004 and the closing date.

Estimation based on FOI Trends

FOI requests are an indicator of potential claims since the information supplied by the DOES is used as evidence of residency. Residency in the case of the remainder is proved by letters supplied by the relevant religious order, detention orders and by various school documents. Information supplied by the DOES on foot of FOI requests may also be used to otherwise support a claim to the Board.

I requested the DOES to carry out an analysis of the information available on the number of potential applicants at 25 May 2004. Information was supplied to me on foot of this request, as follows

- A set of data on FOI requests
- A set of data on litigation cases, where the DOES is named as a defendant.

In addition, I obtained a set of data in relation to litigation cases, where the Department of Health and Children is named as a defendant, from that Department.

This information was adjusted in order to eliminate litigants whose claims related to non-qualifying institutions and also to eliminate duplicate records¹². An amended file containing 7,017 cases was compiled. The details are set out in Table 36.

Table 36 FOI and Litigation cases - May 2004

Category	Number of cases	
<i>Total FOI Requests</i>		
Persons, not litigants, who had made a FOI request	4,603	
Litigants who had made a FOI request	<u>1,609</u>	6,212
<i>Litigants who had not made a FOI request</i>		805
Total		7,017

The amended information was then returned to the DOES.

The Minister directed the Redress Board, under Section 26 of the Act, to prepare a report comparing its applications at 10 June 2004 with this information. The Board had received around 3,750 applications at that time. The Board's report in the form of a computer file, which the DOES forwarded to me, included the date of an application, if any, to the Board for each record. The information was returned in a format that ensured that no individual or institution involved in a redress claim could be identified as is required under Section 28 of the Act.

The following trends emerged from a detailed examination of the file

- 70% of claimants to the Board had sought information from the DOES through FOI requests
- A sizeable percentage of claims are lodged in advance of the FOI request (around 13% in the period May 2003 to December 2003)
- Currently 70% of FOI requests are from solicitors. This proportion has risen steadily over the years. On average 62% of all FOI requests to date are from solicitors

¹² There were 716 litigants who had named both the DOES and the Department of Health and Children as defendants while around 100 litigation cases referred to institutions not covered by the scheme.

- When FOI requests are tracked on a monthly basis it was noted that they are translating into claims at a steady rate with requests from solicitors converting into claims at a higher rate than cases where a solicitor has not made the request. To date around 46% of all requests from late 1998, when the FOI process commenced, up to 30 September 2003 have resulted in claims¹³.

Different tranches of FOI requests were examined to determine the rate at which they were translating into claims taking account, in particular, of

- The date of the FOI request – different claim rates occurred for requests made before the Agreement and other key milestones in the process
- Solicitor-lodged FOI requests differed in the extent to which they converted into claims (49% to September 2003) from requests lodged by the public (42% to the same date)
- Litigation cases who also had made a FOI request had a much higher associated rate of claim to date (56%) than litigants who had not made a FOI request (30%).

Overall, it was concluded, based on trends to date, that ultimately between 75% and 80% of all FOI requests are likely to translate into claims.

6,212 FOI requests had been made up to 25 May 2004. Requests are running at the rate of 150 per month for the first five months of 2004, down from 2003 which had a rate of around 180 per month for the first half and 160 per month for the latter half. It is difficult to predict what impact the closing date, the processing of foreign cases¹⁴ and the fact that claims to the Board may be made in advance of a FOI request, will have on the volume of requests. It appears prudent to project an average of around 90 per month for the next eighteen to nineteen months. On this basis, the total number of FOI requests would be of the order of 7,900.

In addition, 30% of all claims to the Board to date have been made without a FOI request. Assuming that this reduces over time to 25%, for future claims, the total claim population, based on the trend in conversion of FOI requests into claims and on the trend in non-FOI based claims being experienced by the Board, would be in the range 8,200 to 8,700.

Based on an all-in cost of awards of €93,000 this could yield a liability in the range €763m to €809m.

Estimate based on Claim Outturn

In the first eighteen months of operation of the scheme, 3,750 individuals have made claims to the Board. Assuming claims continue to be received at the same rate and the average all-in cost of awards remains unchanged at €93,000, the overall liability will be of the order of €700m. However, based on the results of the survey of solicitors it appears that less than half of the claims have been lodged at this point.

Estimate of the Redress Board

The Board, in its annual report, noted that it anticipates receiving between 6,500 and 7,000 applications in the 3 years allowed under section 8(1) of the Redress Act 2002. The Board informed the Minister that this is based on information supplied by a number of the solicitors who have presented the most applications to date.

¹³ Thereafter, a sufficient amount of time has not yet elapsed to allow for interpretation of the conversion rate.

¹⁴ A recent increased level of FOIs from non-resident solicitors has not yet begun to convert into claims.

The Board stressed that this estimate was tentative as there are no precedents for this scheme. In addition, the extent to which potential applicants have postponed contact with their legal advisers and/or the Board until later is an unknown factor.

Based on the average all-in cost of awards of €93,000 this indicates a liability in the range €605m to €650m.

Overall Summary – Likely Cost of Redress

Summarising the estimations made above the likely cost of redress has been calculated as set out in Table 37.

Table 37 Estimations of Liability

Basis of estimation	Liability
Estimate based on survey of solicitors	€828m
Estimate based on trend relating to FOI-based and non-FOI based claims	€763m to €809m
Extrapolation based on claim outturn to date*	€700m
Board's estimate in Annual Report to Minister	€605m to €650m

*This is a simple extrapolation based on current claim numbers. Solicitors indicate that the ratio of claims on hand to claims lodged could be of the order of 1.3: 1. Adjustment based on this ratio would suggest an outturn of up to €810m.

Sensitivity of the Estimates

All the above figures have been estimated based on the current claim and cost experience of the Board. Each 5% change in award levels would call for an adjustment of around €30m - €40m in the final outcome. It is quite possible that movements may be countervailing since initial indications are that cost trends following taxation may create upward cost pressure while award levels may drop if later cases involve less serious injury or consequences.

While there is a reasonable degree of association between the claimload reported by solicitors and that estimated based on the extent to which FOI data is translating into claims the following factors could impact on the ultimate claim levels

- Whether the steady trend in translation of FOI requests into claims continues and non-FOI based cases continue to represent at least 25% of the total claims received by the Board
- The extent of overseas cases — during the examination of the file of FOI requests it became clear that, while there was a significant number of requests from solicitors' firms based in the UK, as yet, only a small proportion have become claims to the Board.

The estimates, therefore, will need to be revised periodically to take account of emerging information. Particular uncertainties relate to

- The impact of cost taxation outcomes on future costs
- The characteristics of the residual population bearing in mind that injury and damage may adversely impact on their capacity to pursue claims
- The nature of the injuries suffered by more recent claimants compared to those whose claims have been finalised.

Only five nil awards have been made to date. Consequently, no downward adjustment for spurious claims is considered necessary.

In regard to the estimation of the redress liability the Accounting Officer drew attention to the fact that the average award has dropped from €84,000 in September 2003 to €77,400 in June 2004 and the rate of receipt of application had dropped from 50 to 48.5 per week. He stated that these figures would seem to reflect the DOES view expressed in my 2002 Report that it is possible that these averages will continue to fall. However, he stressed that any estimate will remain problematic as it involves surmise and conjecture and any view on the DOES former estimate of €508 million should have regard to that context.

Costs arising from the Indemnity

The indemnity has been invoked in relation to three cases. The total amount of the settlements in these cases was €380,000 while costs are of the order of 30%¹⁵ bringing the total cost to the State to almost €500,000.

In addition, the DOES has retained the services of the firms of solicitors who acted for the congregations in relation to litigation cases prior to the signing of the Agreement and has agreed a level of fees for the management of the files and the provision of specific legal services in respect of the files. The fees agreed, effective from 5 June 2002 were

- An annual fee of €250 for each of the first hundred cases
- An annual fee of €150 for each of the next hundred cases
- An annual fee of €50 for each of the remaining cases
- A fee of €250 per hour for specific types of legal work on a case.

The firms of solicitors were asked to put measures in place to ensure that, as cases are dealt with by the Board, they are removed from the list of open files.

The DOES informed me that the total fees payable to solicitors for the first full year was of the order of €750,000. The management of the indemnity files is to be transferred to the Chief State Solicitor's Office (CSSO) with effect from October 2004 and the solicitor firms involved have been so informed.

Implementation of the Agreement

The Agreement provided for a contribution of €128m by the congregations made up as follows

- | | |
|---------------------------|---------|
| • General Contribution | €28.44m |
| • Education Fund | €12.70m |
| • Property | €76.86m |
| • Counselling and Support | €10.00m |

¹⁵ Costs, averaging 30% of the settlements, have been awarded in two cases while costs have not yet been settled in the third case.

The general contribution and the payment towards the Education Fund were duly made in accordance with the terms of the Agreement. In addition, the congregations contributed further cash payments totalling €4.99m in substitution for property of an equivalent value.

The total awards and medical and legal expenses paid to claimants by the end of June 2004 amounted to €86.95m. This has been funded from the proceeds of contributions from the congregations (€30.44m), interest earned on that contribution (€0.54m) and Exchequer funds (€55.97m). At 30 June 2004, €2.99m by way of the general cash contribution is held by the Minister for Finance and is available to fund future awards¹⁶.

Education Fund

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

An ad-hoc committee was formed comprising one representative each from the Further Education Section of the DOES and the National Office for Victims of Abuse (NOVA), one representative from each of the four support groups affiliated to NOVA, the Adult Education Officer at City of Dublin VEC and the Adult Education Facilitator at NOVA. The committee advised on how the fund should be administered and developed a draft application form together with a document setting out criteria for eligibility for a grant scheme to operate from the academic year 2003 - 2004.

Applications by former residents of qualifying institutions and their families are assessed by the Adult Education Facilitator at NOVA to determine if they qualify under the criteria laid down by the committee. Following a recommendation by the facilitator, grants to cover the cost of fees and materials are paid by the Further Education Section in the DOES. To date approximately €502,000 has been paid under the scheme. The Education Fund is held in an account administered by the Minister for Finance and the value of this fund at 30 June 2004 after taking account of interest earned is €12.94m. The DOES has informed me there was some concern regarding the legislative basis for the operation of the Education Fund and that, with the agreement of the Department of Finance, payments to date have been charged to the Vote pending the enactment of legislation.

The DOES intends that the legislation will provide for the establishment of the fund as a separate self-financing entity with a managing board or committee made up of representatives of survivors, the wider education sector and other interested parties.

Property Contributions

Two categories of property were eligible to satisfy the contribution of the congregations

- Up to €40.32m could be provided by way of property which had been transferred to the State, State agencies, local authorities or voluntary organisations between 11 May 1999¹⁷ and the date of the Agreement. There was, however, provision for the substitution of other property or cash in the event that this element of the contribution could not be fully satisfied from transfers in that period (previously transferred or substituted property).
- Further transfers of property which were to be made to the State, or its nominees, as soon as practicable after the signing of the Agreement, to the aggregate value of €36.54m (post-agreement property transfers).

¹⁶ This is part of the cash contribution substituted for property in 2004.

¹⁷ This was the date of the Taoiseach's apology to victims on behalf of the State.

Previously Transferred or Substituted Property

By the end of July 2004 the DOES had accepted, in principle, a total of 27 properties and valuations have been submitted for all but one of these by the congregations. The transferees and valuations of the 26 properties are outlined in Table 38.

Table 38 Previously transferred or substituted property accepted in principle by DOES – July 2004

<i>Transferee</i>	<i>Properties</i>	<i>Valuation €m</i>
DOES	7	7.04
Voluntary Organisations	13	17.02
Local Authorities	3	3.59
Health Boards	3	0.78
Total	26	28.43

The properties accepted comprise 17 properties which had been transferred prior to the signing of the Agreement. These properties had an aggregate valuation of €21.06m. In addition, by the end of July 2004, a further €7.37m of the contribution had been made in the form of replacement properties offered in instances where original properties were rejected. While the originally offered properties were transferred prior to the Agreement, the replacement properties represent new transfers. One further replacement property was still being considered in July 2004.

The current position in regard to validation is

- The congregations have submitted professional valuations for 26 of the 27 properties accepted in principle.
- Independent valuation by the Valuation Office of a sample of six properties resulted in five properties being accepted at the initial valuation submitted. A further property has been accepted, in principle, at a lower valuation put on it by the Valuation Office¹⁸. The aggregate value of the accepted properties which were independently valued is €17.02m.
- The value of past grants made by the State in respect of these properties has not yet been determined as it must await completion of the acceptance in principle process.
- The responsibility to establish that a transferor holds a good title to a property rests with each transferee.
- 13 of the properties which the Department has accepted in principle are properties which had been transferred to voluntary organisations. The Agreement provides that any such properties are required to have restrictions on alienation, whereby the transferee cannot dispose of them within a 25-year period without the consent of the Minister for Finance. The Department has sought the advice of the CSSO on the options available to restrict alienation and the CSSO has entered discussions with the congregations regarding the drafting of a Deed of Covenant between the congregations and the transferees.

Overall Summary – Previously Transferred or Substituted Property

The total target set in the Agreement was €40.32m. The DOES has accepted, in principle, 26 properties with an aggregate valuation of €28.43m. The DOES is awaiting the valuation of one property which has been accepted, in principle, and continues to examine one further replacement property offered.

¹⁸ Although the Valuation Office had valued three other properties, the DOES rejected them for other reasons.

Post-Agreement Property Transfers

The Agreement set a target of €36.54m as the contribution under this heading. By the end of July 2004, when account is taken of cash contributed in substitution for further property, this target had been exceeded, subject to valuation and good title.

By that date, the DOES had accepted, in principle, a total of 35 properties. The transferees of these properties are set out in Table 39.

Table 39 Post-agreement property transfers accepted in principle by DOES – July 2004

<i>Transferee</i>	<i>Properties</i>	<i>Valuation €m</i>
DOES	4	5.11
Eastern Region Health Authority	3	1.97
Southern Health Board	19	13.49
Mid-Western Health Board	2	0.66
South-Eastern Health Board	5	1.89
Dublin City Council	1	8.90
Office of Public Works	1	1.27
Total	35	33.29

In addition to the acceptance of property valued at €33.29m, the congregations had paid €4,987,500 to the DOES in lieu of property as follows

- €4,000,000 from one congregation in respect of a property which the DOES had rejected as not qualifying under the terms of the Agreement
- €987,500, the proceeds of the sale of a property which was the subject of a CPO.

As a result, the congregations have contributed the equivalent of €38.28m, €1.74m in excess of the target of €36.54m for this heading.

The congregations submitted professional valuations for properties. The transferees have been requested to obtain independent valuations of properties and submit these to the DOES. Up to the end of July 2004 the DOES had received these valuations in respect of 27 of the properties which have been accepted in principle¹⁹.

In regard to previous State grants in respect of the properties, 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 the DOES if any grants have been paid in respect of the properties being transferred.

The responsibility to establish that a transferor holds a good title to a property rests with each transferee.

Counselling and Support

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

¹⁹ By and large the independent valuations coincide with those submitted by the congregations.

In 1997, CORI had 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. Congregations could also provide counselling and other support services other than through Faoiseamh.

In the course of the negotiations the congregations had stated that much of the €10m contribution related to counselling and other services which had already been provided. The DOES sought details from the congregations' legal advisers.

Following the initial replies from the congregations' legal advisers, in May and June 2003, the DOES informed me that it was concerned that expenditure incurred could include the cost of services offered to victims of diocesan abuse as well as that provided to former residents of the institutions.

The congregations have reported 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. Also, in regard to the service generally, the congregations have maintained that they are committed to the continuation of counselling services for as long as they are required.

In response to the DOES's further enquiries the congregations' legal advisers delivered a file of documents to the DOES in June 2004. The DOES is currently examining this file to see if it provides the evidence required to support the qualifying expenditure claimed by the congregations.

9.2 Centres for Young Offenders

Legislative Framework

Institutional reformatory and industrial schools, dating from the middle of the 19th century, were set up to provide custodial care for young offenders and neglected children. The Minister for Education and Science is statutorily obliged under the Children Act, 1908 to 1989 to provide places for young offenders. The Children Act, 2001 constitutes a fundamental revision of existing legislation. It provides a new legislative framework for the Departments of Education and Science, Health and Children, and Justice, Equality and Law Reform and their Agencies in the delivery of support services for children with special care needs or those in conflict with the law. On its enactment, it was intended that the Act would be commenced on a phased basis, with an original timeframe for implementation of 2006.

The Minister for Education and Science is responsible for the commencement of Section 88 (remand in custody) insofar as it relates to junior remand centres and Part 10 of the Act, which provides for the establishment of Children Detention Schools (under 16 year olds) to replace the existing reformatory and industrial schools. The necessary commencement orders have not been made yet.

Preparation for the introduction of the educational provisions of the Act is ongoing but these provisions cannot commence until separate detention facilities are provided for 16 and 17 year old boys and girls by the Department of Justice, Equality and Law Reform. The Accounting Officer informed me that at present there was no timescale for providing these facilities. However, having regard to the difficulties being encountered in implementing the Act, the Cabinet Committee on Children had recently approved an urgent review of the key obstacles to the implementation of the Act. The National Children's Office was co-ordinating this review.

The Special Residential Services Board was established in November 2003 under the Children Act, 2001 to provide policy advice to the Ministers for Health and Children, and Education and Science on the remand and detention of children in detention schools and special care units. It also has responsibility to advise on co-ordination of the delivery of residential accommodation and support services for children in these schools and units, the efficient use of the schools and units, and the level and nature of services available for children charged with offences, as well as those with behavioural problems and in need of special care and protection.

The Centres

The Department of Education and Science owns the five Centres for Young Offenders. They generally cater for children under 16 years of age who have been convicted or placed on remand by a Court. The centres are as follows:

- Finglas Child and Adolescent Centre, Dublin (recently downsized to 12 places). This is an industrial school.
- Oberstown Boys Centre, Lusk, Co. Dublin (20 places). This is a reformatory school.
- Oberstown Girls Centre, Lusk, Co. Dublin (15 places). This is a reformatory school and unlike the Centres for boys, admits girls who are aged 16 years.
- St. Joseph's Special School, Clonmel, Co. Tipperary (40 places). This is an industrial school.
- Trinity House School Lusk, Co. Dublin (27 places). This is a reformatory school and is the only secure facility operated by the Department of Education and Science.

All of the schools, with the exception of St Joseph's School, Clonmel are certified by the Minister for Justice, Equality and Law Reform as places of detention for the purposes of Part V of the Children Act, 1908.

Scope of Audit

I examined the outturn of the Centres in terms of occupancy levels, staffing and capital and running costs.

I also reviewed how the Department discharged its overall responsibility for the Centres.

Occupancy and Staffing Levels

Refurbishment and renovation work, fire, safety and security concerns and current childcare practices determine the operational capacity of the Centres at any particular time.

Table 40 gives details of the occupancy, vacancy and staffing numbers for each of the Centres at the end of January in each of the last three years.

Table 40

		<i>Occupied beds</i>	<i>Vacancies</i>	<i>Non-teaching Staff</i>	<i>Teachers employed</i>
Finglas Child and Adolescent Centre	2002	24	7	129	15
	2003	14	17	125	17
	2004	21	5	119	12
Oberstown Boys Centre	2002	20	0	82	13
	2003	20	0	89	12
	2004	20	0	85	11
Oberstown Girls Centre	2002	8	7	49	²⁰
	2003	10	5	60	-
	2004	9	6	67	-
St. Joseph's School	2002	33	7	127	13
	2003	31	9	131	13
	2004	25	15	115	11
Trinity House	2002	22	2	103	10
	2003	20	7	113	10
	2004	18	9	112	9

The Department has indicated that the capacity requirements of the sector have been declining over the past number of years, with the provision of facilities for “out of control” young people within the health sector, the increasing view of detention being a last resort (a policy enshrined in the Children Act, 2001), demographic developments and the development of alternatives to custody.

The Special Residential Services Board has recommended a bed capacity of 88 plus 6 step-down beds and has recently introduced a centralised system whereby all bed requests from the Courts are channelled through it. The Department liaises with the Board in monitoring the on-going demand for beds. With the reduced capacity at Finglas, the current operational capacity for all Centres is 114 (99 male beds and 15 female beds).

Table 41 highlights the average staff numbers for each child detained based on occupancy levels at 31 January each year.

Table 41 Staff to Children Ratio in Centres

	<i>2002</i>	<i>2003</i>	<i>2004</i>
Finglas Child and Adolescent Centre	6.0	10.1	6.2
Oberstown Boys Centre	4.7	5.0	4.8
Oberstown Girls Centre	6.1	6.0	7.4
St. Joseph's School, Clonmel	4.2	4.6	5.0
Trinity House Lusk	5.1	6.1	6.7

Capital Costs

The Department is embarking on a capital redevelopment programme for the Lusk campus²¹ that will have regard to the split of beds between remand and committal beds, and within committal beds, the number of secure beds required; the provision for boys and girls; the educational and recreational needs of the young people; as well as the implications of shorter sentences envisaged under the Children Act. The dual function (the only Centre that caters for both Health Board and committal cases) of St. Joseph's School Clonmel and its certification under the Children Act, 2001 is also being addressed. On finalisation of this process, the Department proposes to agree a strategic plan for the sector.

²⁰ Oberstown Boys and Oberstown Girls Centres share teaching staff.

²¹ Oberstown Boys Centre, Oberstown Girls Centre and Trinity House

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Capital expenditure on Detention Centres in the period 2001 to 2003 is summarised in Table 42.

Table 42

	<i>2001</i> <i>€000</i>	<i>2002</i> <i>€000</i>	<i>2003</i> <i>€000</i>
Finglas Child and Adolescent Centre	1,518	2,774	2,704
Oberstown Boys Centre	343	126	139
Oberstown Girls Centre	274	142	102
St. Joseph's School, Clonmel	5,042	153	234
Trinity House School	1,135	4,030	1,509
Lusk Campus	1,454	273	-
Total	€9,766	€7,498	€4,688

In total almost €22 million has been invested over the period. The major items within this expenditure included

- The purchase of St. Joseph's School in Clonmel by the Department
- The provision of a specialised unit at Trinity House catering for up to 6 young people displaying extremely challenging behaviour. The Department is currently considering the staffing requirements of the Unit and is examining its potential within the system in the context of the commencement of the Children Act, 2001
- The refurbishment of the Care and Education Unit at Finglas
- The provision of a security fence at the Lusk Campus
- The provision of step-down facilities at Trinity House and Oberstown Girls Centre.

There was also ongoing capital investment to ensure that the schools meet modern childcare standards in accordance with best practice internationally.

The Department considers that the investment has maintained rather than increased the overall capacity of the system.

Running Costs

Table 43 gives the day-to-day running costs of the Centres for 2001 to 2003.

Table 43

		<i>Pay</i> <i>€</i>	<i>Non-pay</i> <i>€</i>	<i>Total</i> <i>€</i>
Finglas Child and Adolescent Centre	2001	5,462,491	910,273	6,372,764
	2002	6,199,877	1,043,821	7,243,698
	2003	5,828,252	1,047,317	6,875,569
Oberstown Boys Centre	2001	3,508,217	698,152	4,206,369
	2002	4,164,114	572,541	4,736,655
	2003	4,219,836	765,816	4,985,652
Oberstown Girls Centre	2001	1,825,648	375,512	2,201,160
	2002	2,427,932	287,616	2,715,548
	2003	2,326,067	342,902	2,668,969
St. Joseph's School	2001	3,982,595	749,602	4,732,197
	2002	4,835,922	786,915	5,622,837

		<i>Pay</i> €	<i>Non-pay</i> €	<i>Total</i> €
	2003	4,875,173	829,964	5,705,137
Trinity House	2001	4,205,775	803,578	5,009,353
	2002	4,923,052	1,181,901	6,104,953
	2003	5,582,799	1,079,516	6,662,315
Total cost 2001 – 2003				75,843,176²²

Table 44 shows the annual cost of maintaining a detention place for a young person in each of the Centres. It is based on average operational capacity and the level of running costs for 2001-2003. The cost includes the salaries of Teachers, Directors and Deputy Directors of the Centres but excludes any apportionment of capital costs and expenditure funded from income from Health Boards and Local Authorities.

Table 44 Cost for each detained young person

	<i>2001</i> €	<i>2002</i> €	<i>2003</i> €
Finglas Child and Adolescent Centre	163,404	258,704	245,556
Oberstown Boys Centre	175,265	236,833	249,283
Oberstown Girls Centre	146,744	208,888	177,931
St. Joseph's School, Clonmel	118,305	140,571	142,628
Trinity House, Lusk	208,723	226,109	246,752

The relatively low cost involved in St. Joseph's reflects the fact that, as an industrial school, dealing with the younger and less difficult cases, it requires less intensive staffing levels, and due to its size enjoys economies of scale that cannot be availed of by the other Centres.

Management of Centres

The Children Detention Centres are currently managed by administrative Boards of Management pending the appointment of newly composed Boards under the Children Act, 2001. One Board is responsible for the three schools on the Lusk campus while individual Boards of Management are in place for the Finglas Child and Adolescent Centre and St Joseph's School.

The main functions of the Boards are

- Direct governance of the schools in accordance with policy guidelines and regulations made by the Minister for Education and Science
- The selection, appointment and dismissal of staff subject to the Minister's approval
- Financial management and control within approved budgetary procedures
- The maintenance and upkeep of the premises, furniture and equipment
- Providing the Minister with an annual report on the operation of the Centres and such other reports and information deemed necessary.

²² These costs exclude the expenditure of receipts (primarily by Finglas and St. Joseph's) from Health Boards in respect of non-offending children catered for in these Centres as follows: 2001 - €200,000, 2002 - €331,000 and 2003 - €612,000. Income of €144,000, €170,000 and €153,000 received from Local Authorities towards the upkeep of children under the terms of the Children Acts 1908 – 1989 during the period is similarly excluded from these costs.

Review of Centres

In October 2001, the Department commissioned a consultant to undertake a review of existing residential provision for children convicted or held on remand by the Courts and having regard to the provisions in the Children Act, 2001, and best international practice. The consultant completed his review in December 2002 and concluded that the bed capacity should be maintained at its current level in the short-term.

Among the recommendations put forward was that “the management of the schools must be urgently addressed with the establishment of one Board of Management for all five schools and the appointment of a Chief Executive Officer with the requisite authority and staffing to manage the schools effectively”.

I asked the Accounting Officer why this recommendation was not proceeded with.

He informed me that the recommendation was not proceeded with as the Department felt that there were inconsistencies between the recommendation and the requirements of the Children Act, 2001. Furthermore there was a potential overlap with the Special Residential Services Board and in any event the workload would be excessive for a part-time board. Nevertheless, he stated, the management of the sector was being kept under review pending the finalisation of the arrangements in the context of the commencement of the Children Act, 2001.

Measuring Performance

There are no performance measures identified for the Children Detention Centres. The main functions of the Centres are to provide appropriate educational and training programmes and facilities for the children referred to them by the Courts, and to promote their reintegration into society.

In response to my enquiries on the absence of performance measures for the Children Detention Centres and as to how the Department satisfies itself that the centres are currently delivering services in an efficient and cost effective manner, the Accounting Officer stated that while there were no formal performance targets identified for the Children Detention Centres they operate in accordance with the standards, procedures and guidelines prepared by the Department. Each Centre has its own individual statement of purpose and function, and individual care and education plans are drawn up for the children concerned. He pointed out that the Department maintained an ongoing review of bed utilisation in the schools and reviewed specific issues/aspects of service delivery as situations arose. He stated the Department’s priority was the commencement of the relevant aspects of the Children Act, 2001 and in that context, work on codifying practices and policies across the schools is being undertaken. Once completed, this work and an agreed data framework would facilitate the introduction of consistent performance targets across the schools.

He said the Department was also examining staffing arrangements in terms of care staff ratios, pupil teacher ratios and administrative/clerical support. Once completed, this information would facilitate the adoption of standard ratios, which would allow comparisons across the sector.

Inspection of Centres

Section 46 of the 1908 Act provides for inspection of certified schools on an annual basis.

I asked the Accounting Officer for details of inspections carried out in the five-year period 1999 to 2003. He informed me that inspections were carried out by the Department on all five Centres in 1999. He

went on to say that Departmental policy had shifted towards having inspections carried out by an external agency. The first such inspection was at the Finglas Child and Adolescent Centre in 2002.

The inspection of the Finglas Centre found that the organisation was in acute crisis, lacking clear direction and not meeting a number of basic requirements, and having internal undermining conflicts. The inspector was retained by the Department to monitor progress in the Finglas Centre and has made a further four visits to the Centre in late 2002 and during 2003 to monitor implementation of his recommendations.

A further review of the operations of the Finglas Centre completed in May 2004 reported that the staff and management of the Centre were of the view that they had lost their capacity for the day-to-day delivery of care to young people, and that the Centre could not continue to operate in its current state. It has since been downsized from 3 units catering for 26 persons to 2 units catering for 12 persons.

It appears that the problems continued to mount despite the Department's investment of some €5m in the Centre since 2001.

The Accounting Officer stated that the Department had no indications that difficulties in the nature of those experienced in Finglas exist in the other four Centres. He also stated that an inspection of the Clonmel School had recently been completed and found the school to operate efficiently and effectively and to make good use of the resources available.

The remaining three Centres (Oberstown Boys and Girls Centres, and Trinity House, Lusk) have not been inspected, notwithstanding a key recommendation of the December 2002 independent review that

"All schools should be subject to independent inspection by the end of March next year (March 2003) in order that the central management, organisation, policy and practice issues within each of the schools are identified and a plan formulated to address them".

The Accounting Officer informed me that having regard to the provisions of the Children Act, 2001 the following were being considered

- the appointment of an Inspector of Children Detention Schools
- provision for each school to be inspected every six months
- the feasibility of retaining the Irish Social Services Inspectorate to undertake the inspection function.

Management Information

The Department is considering with the Directors of the Centres the feasibility of introducing a management information system which would store data on young people, produce reports and statistical information and assist in the tracking of young people within the sector. Data from the Centres will also be incorporated in a primary school database being developed by the Department.

Work on codifying practices and policies across the schools is being undertaken in the context of the commencement of the Children Act, 2001. Once completed, this work and an agreed data framework will facilitate the introduction of consistent performance targets across the schools, e.g. in terms of level of absconding, incidents of removal from the group, etc.

The Department has introduced a system of electronic staffing returns which will provide data for use in the filling of vacancies, identifying ratios and highlighting differences from Centre to Centre.

Post-Release Monitoring

Trinity House School introduced a tracking system in 2002 in conjunction with the establishment of a step down/pre-release unit. The primary aims of the tracking system are to retain information on the care provided at the school and to identify supports required by young people during their transition from residential care to independent living.

A step down unit has been established in Oberstown Girls Centre and a tracking system is being developed there also.

The Accounting Officer informed me that the tracking system was an initiative undertaken by the Director of Trinity House School in 2002 following the development of the step-down unit. The position of the 57 persons covered by the system was that within six months of their being discharged, 25 were residing at home, 24 were reported to be in prison, 3 were in residential care in the Health Board sector, 2 were reported to be homeless and 1 had returned to Trinity House School. The whereabouts of the remaining 2 is unknown. The re-offending rate for 2003 regarding young people leaving the school was 50%. He pointed out that eight young people who picked up new charges after leaving the school did not go to prison because of direct intervention by the step-down unit.

The Department is considering the introduction of a tracking system across all schools in the context of introducing a management information system.

9.3 Qualified Audit Certification of Appropriation Account

Accounting Officers are required by law to sign and present for audit the Appropriation Accounts for their Votes to the Comptroller and Auditor General before the 1st day of April in the year following the financial year to which they relate. It is the responsibility of the Comptroller and Auditor General to audit the Accounts and to report on them by 30 September of the same year.

The Appropriation Account for Vote 26 for the year ended 31 December 2003 was signed on 31 March 2004 and submitted to the Comptroller and Auditor General for audit on that date.

The Appropriation Account presented by the Accounting Officer on 31 March 2004 was accompanied by a note stating that due to technical difficulties associated with the introduction of the new Financial Management System (FMS) it had not been possible to execute the reconciliation process required for completion of Note 5 (Net Liability to the Exchequer) and associated tables in the attached Appropriation Account for 2003 by the 31 March deadline.

The imbalance on the Appropriation Account presented was €4.6 million.

The practical effect of the unresolved imbalance is that it is not possible to determine the proper charge to the Vote for the purpose of establishing a correct surrender figure to the Exchequer. While the Department has reduced the imbalance to €681,035 and is continuing to try to bring the account into balance, it is unable to do so within a time frame which would allow me to meet my statutory date for

reporting on the Appropriation Accounts to Dáil Éireann. I have therefore qualified my audit certificate accordingly.

I enquired as to the circumstances that gave rise to the imbalance and the action being taken to resolve the matter.

Accounting Officer's Response

Background

A number of major changes and new procedures were introduced in the Department's accounting processes during 2003. On 1 July 2003, the Department moved from four Votes to a single Vote. On 7 July 2003, the Department began operating its new FMS. In addition, during 2003, the payment of pensions to retired teachers changed from a system of warrants to payable orders. Furthermore, in mid-2003, the Paymaster General (PMG) viz. the Department's banker, implemented a new computer system which caused some initial problems for the Department. The fact that the end-year reconciliation was the first using the new FMS, together with the major changes in the overall accounting process, added hugely to the complexity of the operation in the short-term.

Scope of the Problem

Arising from the introduction of the changed Vote structure from July 2003, the Department produced balanced accounts to the end of June 2003. The Department has agreed its receipts and payments with the PMG for all of 2003. The difficulties can be therefore isolated to the six months following the introduction of FMS and specifically to the bookkeeping part of the system. The balance at bank per the PMG is greater than the Department's trial balance is indicating it should be. There is nothing to suggest fraud or money loss. Rather the difficulty is in tracing transactions and their history in order to complete the Appropriation Account.

What Caused the Problem

In the course of the investigation of the sources of the specific problem with the Appropriation Account, the Department identified a number of issues requiring attention but which, of themselves, do not explain or identify precisely why the system has failed to deliver the required results. Essentially, until it is established with reasonable precision the totality of what went wrong it is not possible to be definitive about what caused the difficulties or to apportion weight to individual contributory factors.

Among the factors identified during the investigation to date were a combination of

- human errors
- data input errors
- FMS treatment of data
- omissions arising from how reports extracted data from FMS.

These factors led to the miscoding of transactions, inconsistencies in postings to ledgers, use of invalid codes, misposting of cancelled payments and incorrect treatment of foreign currency transactions. In terms of difficulty in producing the Appropriation Account, the essential point was that while all the data

was in the system, some of it was not stored correctly or in a location where report software as designed would pick it up.

A key underlying constituent of the problems that emerged was the pressure on the Finance Unit to cope with the additional workload involved in the changeover to the new system – dealing with an enormous volume of financial transactions together with the requirement to reconcile and transfer additional data onto the new system and operating both the old and new systems for the first three months. The pressure was compounded by the fact that the advent of the FMS brought with it the introduction of more advanced accounting approaches to the line and bookkeeping sections. The lack of expertise of Departmental staff coupled with the lack of understanding on the part of the software consultants of government accounting requirements meant that efforts to satisfactorily address some of the problems as they arose foundered. It was in this context that the necessary functionality had not been built into the new system.

Remedial Action

The Department has adopted a multi-pronged approach to accelerate a resolution of the problem. First, it is continuing to work on the 2003 Appropriation Account with particular attention directed on how the system is handling records of the PMG bank account transactions. Second, it is moving ahead to bring all 2004 reconciliation work up to date while applying any insights gained to date from the work on the 2003 account. It is also enhancing its IT capacity by a combination of additional in-house and external IT resources. The aim is to have the enhanced IT assistance both facilitate further checks on the 2003 data and the 2004 reconciliation work, through additional reports as the need for them is identified, and at the same time to put into place any enhancements to the FMS that are considered necessary.

In order to strengthen expertise in the Finance Unit, professional accounting advice has been provided in recent months and further training for the key areas is planned during 2004.

As part of the ultimate response to this experience, it is intended to put in place an extensive review of the Department's financial systems and procedures.

The Department further augmented the internal resources deployed to resolve the issue in July 2004, in parallel with a top down in-depth assessment being conducted by the system's developer. It has also engaged additional professional accounting expertise to advise the Department and to recommend, where appropriate, improvements to its systems, processes and procedures.