2002

Annual Report
of the
Comptroller and Auditor General

and
Appropriation Accounts

Volume 1

2002

Annual Report of the Comptroller and Auditor General

on

The Appropriation Accounts of the Sums granted by the Oireachtas for Public Services for the year ended 31 December 2002

(Presented pursuant to Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993 (No.8 of 1993)

Baile Átha Cliath
Arna fhoilsiú ag Oifig an tSoláthair

Le ceannach díreach ón
Oifig Dhíolta Foilseachán Rialtais,
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- Volume 1, this volume, contains the Report of the Comptroller and Auditor General on matters arising from his audit of the Appropriation Accounts for 2002

- Volume 2 contains the individual Appropriation Accounts for 2002 with the audit certificate of the Comptroller and Auditor General on each account

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The report was prepared on the basis of information, documentation and explanations obtained from Government Departments and Offices referred to in the report.

Drafts of relevant segments of the report were sent to the Departments and Offices concerned and their comments requested. Where appropriate, these comments were incorporated into the final version of the report.

Accounts of the Public Services, 2002

Report of the Comptroller and Auditor General

I am required under Article 33 of the Constitution to report to Dáil Éireann at stated periods as determined by law. Under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993, I am required to report to Dáil Éireann on my audit of the Appropriation Accounts, the stock and store accounts of Departments and the accounts of the receipt of revenue of the State not later than 30 September in the year following the year to which the accounts relate.

I hereby present the report for 2002 in accordance with Section 3 of the aforementioned Act.

John Purcell
Comptroller and Auditor General

16 September 2003

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Chapter 1 Department of Finance

1.1 Tax Expenditures

Introduction

Exemptions, deductions, credits, and deferrals designed to encourage certain taxpayer activities or to limit the tax burden on certain types of individuals or endeavours are known as tax expenditures — these can have a significant impact on tax revenues. When such reliefs are introduced through the annual Finance Act, a judgment is made that the overall change that will occur as a result will represent good value overall to the State for the cost of the relief viz. the tax revenue forgone. It is generally agreed that prudent financial management requires that the ongoing and ultimate actual cost and outcome for such reliefs are measured and kept under review, that the impact on taxpayer behaviour and on the overall taxbase is monitored, and appropriate action taken as necessary.

Cost Effectiveness

The Commission on Taxation[1] in 1984 acknowledged that 'the effect on tax revenue cannot always be measured accurately, nor can the results of granting the concessions be estimated with any precision'. However the Commission also considered, while not underestimating the difficulties of doing so, that it was essential 'that procedures be instituted to enable the government to assess the effectiveness of tax incentives on a regular basis'. My 2001 Value for Money Report on the Expenditure Review Initiative concluded that 'operating on the principle of results-based reviews, the scope of the Expenditure Review Initiative should also be broadened to include tax expenditures such as tax reliefs and exemptions'.

In October 2002 a Department of Finance report on Tax Incentives/Expenditures[2] to the Tax Strategy Group listed 28 major tax incentives/expenditures estimated to cost more than €20m each per annum with an estimated total cost of €7.3bn. The report considered issues relating to tax expenditures and indicated a need to examine tax incentives/expenditures both in the terms set out by me in the Value for Money Report viz. establishing and reviewing the ongoing costs of schemes, and in terms of the introduction of new incentives/expenditures. That included the possibility of linking them to associated targets and time limits within which the provision could be examined and extended, curtailed or withdrawn as appropriate. In response, the Tax Strategy Group[3] acknowledged the need for better data on tax incentives and expenditures. It agreed that there should not be an automatic roll-over of schemes reaching their end date, and that tax incentives and tax expenditure schemes should be reviewed on a case-by-case basis.

Current Deficiencies in Information Gathering

Revenue is the main source of information, statistics and data on tax incentives/expenditures as the collection of statistical information flows from the administration of the tax system. However, the extent of the data available is limited to that included on the various tax return forms and to the degree to which that data is captured on computer to facilitate extraction and analysis. The 2001 Revenue Statistical Report lists a total of 91 allowances and reliefs[4] and indicates an estimated cost for 48 of them. A more speculative estimate is provided in a further 10 instances, and costs are not available for the remaining 33 reliefs.

[1] Commission on Taxation Second Report: Direct Taxation – The Role of Incentives, 1984.
[2] Department of Finance – Tax Strategy Group Papers Budget 2003 – TSG 02/28 & TSG 02/28a.
[3] Department of Finance – Tax Strategy Group Papers Budget 2003 – TSG 02/27.
[4] Statistical Report 2001 – Table IT6 – Cost of Allowances and Reliefs.

Department of Finance

Table 1.1 Costings of Allowances, Reliefs and Exemptions which are Particularly Tentative and Subject to a Considerable Margin of Error

Tax Relief Provision	1999-00	1998-99
	€m	€m
Employees' Contributions To Approved Superannuation Schemes	456	329
Employers' Contributions To Approved Superannuation Schemes	645	533
Exemption of Net Income of Approved Superannuation Funds (Contributions plus Investment Income less Outgoings)	1,274	967
Exemption of Irish Government Securities Where Owner Not Ordinarily Resident in Ireland	81	47
Exemption From Tax of Certain Social Welfare Payments:		
Child Benefit	127	116
Maternity Allowance	8	8
Relief under Profit Sharing Schemes	31	34
Exemption under Approved Share Option Schemes	5	20
Stock Relief	2	2
Rented Residential Accommodation	31	32

Table 1.2 Uncosted Allowances, Reliefs and Exemptions

Certain payments made by a person carrying on a trade or profession to an Irish university or other qualifying educational establishment
Relief for donations made to certain bodies engaged in the promotion of the arts
Exemption in respect of certain income derived from the leasing of farm land
Expenditure on certain buildings in designated inner city area
Relief for new shares purchased on issue by employees
Relief for donations made to "Cospoir" The National Sports Council
Relief for investment in research and development
Exemption in respect of stallion stud fees
Exemption of profits arising from commercially managed woodlands
Relief from averaging of farm profits
Exemption for income arising from payments in respect of personal injuries
Exemption of certain payments made by Hemophilia HIV Trust
Exemption in respect of income arising from certain patents
Exemption in respect of payments made under the Enterprise Allowance Scheme
Exemption of income from foreign trusts
Exemption of lump-sum retirement payments
Relief for allowable motor expenses
Tapering relief allowable for taxation of car benefits-in-kind
Relief for gifts to The Enterprise Trust Ltd.
Reduced tax rate of 10% for authorised unit trust schemes
Reduced tax rate of 10% for special investment schemes
Exemption of certain grants made by Údarás na Gaeltachta
Relief for donations made by companies to First Step Ltd.
Reliefs for activities related to the Customs House Docks Area and Shannon Airport Customs-Free zone
Relief for investment income reserved for policy holders in life assurance companies
Allowances for double-rent, owner-occupier and expenditure on historic buildings in Urban Renewal areas
Relief for various business-related expenses such as staff recruitment, rent, legal fees, and other general expenses
Exemption in certain circumstances on quoted bearer Eurobonds
Exemption of payments made as compensation for loss of office
Renewal scheme for traditional seaside resorts
Donations to Third Level Institutions
Exemption of scholarship income
Donations to Public Libraries

Capital Allowances

One of the main categories of tax expenditure lies in the area covered by the generic title "capital allowances". For instance, the total amount claimed in the 1999/00 tax year (on which the 2001 Statistical Report was based) was €8,310m. Table 1.3 sets out the major elements of that figure including plant and machinery, industrial buildings and rental, and gives details of the number claiming, the average claim and the highest claim.

Table 1.3 Breakdown of 1999/00 Capital Allowance Claims

Capital Allowance Type	Average Claim	Number Claiming	Highest Claim	Total Claimed
Plant & Machinery	€210,060	35,249	€246m	€7,405m
Industrial Buildings	€77,855	3,817	€23m	€297m
Miscellaneous Reliefs	€62,402	7,676	€180m	€479m
Rental Capital Allowances	€83,436	1,546	€17m	€129m
Total				**€8,310m**

**The total claimed, and the estimate of cost below, do not include a significant amount in respect of 'unused capital allowances' i.e. capital allowances which are not absorbed by a company in the accounting period in which they arise, but are carried forward until sufficient profits are available for offset in future years.*

The overall estimated cost of €1,649m for capital allowance reliefs as reported in the 2001 Statistical Report[5] was calculated by applying the relevant rates of Income Tax and Corporation Tax, as considered appropriate, to the capital allowances claimed.

Outside of the breakdown between Plant and Machinery, Industrial Buildings and Rental, no further details or costs are available for the many schemes included in the capital allowance category e.g. urban renewal, rural renewal, seaside resorts, airports, hotels, nursing homes, child care facilities, private hospitals, park and ride facilities, third level institutions. As taxpayers are not required to give details on the tax return of the particular schemes under which the capital allowances are claimed, the amount of the particular reliefs/incentives claimed cannot be extracted from the aggregated totals. A further reduction in the information required on the 2002 Corporation Tax return form will result in the loss of even the aggregate capital allowance totals for that year. 80% of the cost of capital allowances is claimed against Corporation Tax. The requirement for aggregate details was restored for 2003.

While detailed capital allowance data is effectively inaccessible when it is not entered on and coded from the tax return form to facilitate computer processing, the amounts claimed under each of the various schemes can be reviewed on a case-by-case basis from the documentation accompanying the tax return. That approach was the basis of the 2002 High Earners Report[6] which demonstrated how the top 400 earners availed of the various property-based capital allowance incentives to minimise their effective rate of tax. In this group of earners, significant loss relief was generated through capital allowance incentives such as hotels (€12m) and multi-storey car parks (€9.7m) and other miscellaneous property based schemes (€46m). Other loss reliefs claimed included heritage homes (€4m), loan interest (€0.8m) and film relief (€0.15m).

[5] Office of the Revenue Commissioners – Statistical Report 2001.
[6] 2002 Revenue Commissioners Study – Effective Tax Rates for High Earning Individuals.

Audit Concerns

As I was concerned about the lack of information available on the cost to the Exchequer of many tax expenditure schemes, I asked the Accounting Officers for the Department of Finance and the Office of the Revenue Commissioners about the steps being taken to address the information deficit. I also sought the views of the Accounting Officer of the Office of the Revenue Commissioners on the level of check on the legitimacy and correctness of the reliefs claimed under the schemes, bearing in mind that a joint Revenue/Department of Finance group noted in 2002 that existing Revenue audit activity might not be adequately covering this aspect.

Department of Finance Response

The Accounting Officer of the Department of Finance informed me that the Department recognised the need for close monitoring of tax expenditures and that the Minister and the Department were committed to keeping such schemes and provisions under review. For that reason, the Department had been working with Revenue for some time on ways to improve the availability of costing information to assist in such reviews. Any developments in that area must also take into account a number of other public policy objectives such as facilitating tax compliance and minimising regulatory burdens. He indicated that a number of developments were under consideration including amending the tax return system to capture data on capital allowances. It was envisaged that a working group of Finance and Revenue officials at senior level would be established to examine further the issues involved and to monitor progress.

The Accounting Officer stated that tax expenditures and reliefs were being kept under review. The Tax Strategy Group paper had indicated that with better data it should be possible to monitor, evaluate and review existing tax reliefs in a more systematic manner. It had also indicated that it would be necessary to look critically at existing reliefs. Following the Tax Strategy Group discussion, submissions were made to the Minister assessing a range of reliefs. Following consideration of the issues arising, the Minister had announced in Budget 2003 the termination of nine tax incentive schemes at the end of 2004 and the immediate termination of two schemes. In addition, in the context of the Finance Act 2003, the Minister provided for inclusion in the tax return of certain exempt income.

The Accounting Officer pointed out that assessments of certain reliefs on a more extensive basis had also been conducted through the engagement of consultants. Examples included a review of the Urban Renewal Scheme in 1996[7] and a review of the Film Relief Scheme in 1999[8]. He also noted that the Seed Capital Scheme and the Business Expansion Scheme had been reviewed on a number of occasions, most recently in 2001, by the Department of Finance in conjunction with the Revenue Commissioners and the Department of Enterprise, Trade and Employment. Both schemes were currently under review prior to their expiry on 31 December 2003.

Revenue Response

The Accounting Officer of the Office of the Revenue Commissioners stated that he was in strong agreement as to the need to be able to accurately cost tax incentives and reliefs and to track the effect of budget changes, and that had already been signalled to the Department of Finance. However, a cornerstone of Revenue's strategy to maximise tax compliance was to keep compliance costs for taxpayers as low as possible through ongoing simplification of forms, procedures and regulations.

Revenue considered, therefore, that the challenge it was faced with was that of being able to gather the costing data required without creating a more complex tax compliance environment for the vast bulk of taxpayers who did not avail of the incentives or reliefs. However, recent technology developments in Revenue, particularly electronic filing through the Revenue On-line Service, were enabling the

[7] Review of the Urban Renewal Scheme conducted by KMPG on behalf of the Department of the Environment and Local Government (1996).
[8] Review of the Film Relief Scheme by Indecon on behalf of the Department of Arts, Culture, Gaeltacht and the Islands (1999)

development of firm proposals to do that in a manner that would source the information needed (and in a timely manner) while keeping the extra compliance burden for taxpayers to a minimum. While Revenue fully accepted the need to have accurate and timely data for the purposes of effective policy formulation, the Accounting Officer also pointed out that there would be substantial costs involved in making the necessary changes to Revenue computer systems and that looking for such extra information from taxpayers would undoubtedly lead to expressions of concern amongst tax practitioners.

As regards the validation of reliefs claimed, the Accounting Officer confirmed that, by and large, the verification of taxpayer specific claims to reliefs was subsumed into the ordinary audit process. Over the years particular verification exercises would have been carried out in individual audit districts in regard to some of the reliefs e.g. film relief, etc. For the future, there was no doubt that Revenue, in obtaining data on claims for such reliefs in a more structured manner (to comply with Department of Finance requirement for detailed costing data), would also be gaining a valuable input to its new Risk Analysis system. That would allow for more targeted monitoring of taxpayers availing of the various reliefs and incentives than was the case at present. He also stated that the establishment of a High Wealth Individuals Unit in the new Revenue Large Cases Division would ensure a much closer focus on the tax affairs of the top 200 - 250 wealthy individuals including the monitoring of incentives claimed by such individuals. Revenue was confident that such a more risk-focused approach to taxpayers generally (including the checking of tax reliefs where risk analysis deemed it necessary) would provide adequate assurance regarding the legitimacy of such claims.

Chapter 2 Office of the Revenue Commissioners

2.1 Revenue Account

Basis for Audit

An account showing all revenue received and paid over to the Exchequer by the Revenue Commissioners is furnished to me annually. I am required under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993 to carry out such examinations of this account as I consider appropriate in order to satisfy myself as to its completeness and accuracy and to report to Dáil Éireann on the results of my examinations. The results of my examinations have been generally satisfactory.

I am also required under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993 to carry out such examinations as I consider appropriate in order to ascertain whether systems, procedures and practices have been established that are adequate to secure an effective check on the assessment, collection and proper allocation of the revenue of the State and to satisfy myself that the manner in which they are being employed and applied is adequate. Sections 2.4, 2.5 and 2.8 to 2.10 refer to matters arising from this examination.

Revenue Collected

Revenue collected under its main headings in 2002 is shown in Table 2.1.

Table 2.1 Revenue Collected

	Gross Receipts €m	Repayments €m	Net Receipts €m	2001 Net Receipts €m
Income Tax	10,983	2,004	8,979	9,318
Value Added Tax	11,375	2,531	8,844	7,907
Excise	4,734	139	4,595	4,213
Corporation Tax	5,129	325	4,804	4,144
Stamps	1,177	38	1,139	1,223
Customs	154	20	134	165
Capital Acquisitions Tax	157	7	150	168
Capital Gains Tax	636	17	619	876
Residential Property Tax	1	-	1	1
Total	**34,346**	**5,081**	**29,265**	**28,015**

Of the net receipts of €29,265m, a total of €167m was paid during 2002 under Section 3 of the Appropriation Act, 1999 from the proceeds of tobacco excise to the Vote for Health and Children. €29,283m was paid into the Exchequer which represented a prepayment of €316m. The amount prepaid at the end of 2001 was €131m. Most of the prepayment is due to the transfer into the Exchequer of moneys received from taxpayers as deposits and payments on account pending final settlement of tax liability. Such amounts are rarely repaid to the taxpayer and will subsequently be included in the relevant tax receipts figures as and when liability is finalised. From 2004, payments on account will be recorded and processed as tax receipts.

2.2 Tax Written Off

The Revenue Commissioners have furnished me with details of taxes written off during the year ended 31 December 2002. Details of the total amount written off and the distribution according to the grounds of write-off are shown in Table 2.2 and Table 2.3.

Table 2.2 Taxes Written Off

Tax	2002 €'000	2001 €'000
Value Added Tax	80,197	29,476
PAYE[9]	42,657	12,790
Corporation Tax	6,094	11,270
Income Tax	23,707	68,092
Other Taxes	2,600	6,401
PRSI	22,843	12,263
Total	**178,098**	**140,292**

Table 2.3 Grounds of Write Off

Grounds of write-off	2002 No. of Cases	2002 €'000	2001 No. of Cases	2001 €'000
Liquidation/Receivership/Bankruptcy	360	31,137	382	26,942
Ceased trading – no assets	2,236	42,765	578	16,945
Deceased and Estate Insolvent	251	2,813	52	1,631
Uneconomic to pursue	152,543	75,047	35,173	82,552
Unfounded Liability	167	2,547	37	830
Cannot be traced / Outside Jurisdiction	510	7,427	117	4,096
Compassionate Grounds	234	2,185	70	1,545
Uncollectible due to financial circumstances of taxpayer	954	14,177	243	5,660
Examinership	—	—	2	91
Totals	**157,255**	**178,098**	**36,654**	**140,292**

The write off in 2002 included the write off on an automated basis of 145,797 cases totalling €51m in respect of VAT, PAYE, PRSI, Income Tax, Corporation Tax and Capital Gains Tax. 117,000 of these cases were from periods back to 1966 and the amounts involved were less than €100. The remaining cases were pre-1993 and no amount was greater than €32,000. Cases under general investigation, potential Ansbacher cases, and cases under the control of the Criminal Assets Bureau are excluded from all write off procedures.

The Internal Audit Branch in Revenue undertakes an annual examination of tax write offs. Its 2002 audit examined file papers and computer records for a sample of 153 cases, representing approximately 17% of the value of non-automated write offs. In addition, the computer files relating to each of the sixteen automated write off runs were examined to confirm that the authorised selection criteria were applied. The internal audit found no instance where tax was improperly written off under the current instructions, procedures and guidelines.

2.3 Outstanding Taxes and PRSI

Table 2.4 was prepared on the basis of information furnished by the Revenue Commissioners and reflects the activities and transactions in the twelve month period ended 31 May 2003 - the latest date for which data was available at the time of finalising my Report. Table 2.5 sets out an aged analysis of the balance outstanding at 31 May 2003.

[9] Includes some PRSI written off.

Table 2.4 Outstanding Taxes and Levies

Balance at 31 May 2002 €m	Tax or Levy	Charges / Estimates Raised €m	Paid €m	Balance at 31 May 2003 €m	Estimate of amount likely to be collected €m
119	VAT (Declared Liabilities Net of Repayments)	8,322	8,315	126	101
207	VAT (Estimates)	53	54	206	166
169	PAYE (Declared Liabilities)	7,159	7,182	146	117
27	PAYE (Estimates)	747	759	15	12
198	PRSI (Declared Liabilities)	5,259	5,292	165	133
19	PRSI (Estimates)	464	472	11	8
443	Income Tax (Excluding PAYE)	1,511	1,627	327	263
-	DIRT	199	199	-	-
189	Corporation Tax	3,765	3,807	147	118
111	Capital Gains Tax	674	633	152	123
18	Capital Acquisitions Tax	158	157	19	13
8	Abolished Taxes	1	1	8	-
1,508	**Total**	**28,312**	**28,498**	**1,322**	**1,054**

Table 2.5 Aged Analysis of Debt at 31 May 2003

Tax	Total tax outstanding at 31 May 2003 €m	Amounts outstanding for 2002 €m	Amounts outstanding period for 30/4/01-31/12/01 €m	Due for periods 1990/91 to 2000/01 €m	Due for earlier periods €m
VAT	332	122	68	140	2
PAYE	161	67	23	65	6
PRSI	176	82	25	64	5
Income Tax	327	10	53	246	18
Corporation Tax	147	31	10	86	20
Capital Gains Tax	152	11	14	125	2
Capital Acquisitions Tax	19	1	1	17	-
Abolished Taxes	8	-	-	8	-
Total	**1,322**	**324**	**194**	**751**	**53**

The balance outstanding at 31 May 2003 of €1,322m is €186m less than at the same point in 2002. It is estimated by Revenue that €1,054m or 80 % of the total outstanding is likely to be eventually collected. This compares with an estimated collection ratio of 71% at May 2002. The estimation of the amount likely to be collected takes into account such factors as anticipated reductions of estimated amounts brought forward, the level of liquidations and business closures and historical business patterns.

2.4 DIRT Investigations

There are two distinct aspects to Revenue activity in the area of DIRT investigations. The first relates to the Look-Back Audits of the operation of non-resident accounts by financial institutions which were completed in 2000. Following on from that investigation of the institutions, Revenue commenced a further investigation in 2001 that focused on the issue of the 'underlying tax' which may be due by individuals in respect of the funds deposited in the bogus non-resident accounts.

DIRT 'Look-Back' Audit of Financial Institutions

As a result of the original DIRT 'look-back' audit of 37 financial institutions completed in October 2000, a total of €220m was collected in tax, interest and penalties for the years of assessment 1986/87 to 1998/99. Further audits were finalised in 2002 at 10 of those financial institutions in respect of the later tax years of 1999/00 and 2000/01 which resulted in an overall yield of just over €1m.[10] In 2001, DIRT 'look-back' audits resulting in an overall 'nil' yield were carried out on 47 other financial institutions, none of which had a retail branch network.

Underlying Tax on Bogus Non-Resident Accounts

The approach adopted by Revenue to the issue of moneys deposited in bogus non-resident accounts which may not have been declared for tax purposes involved setting a deadline of 15 November 2001 for depositors to make a voluntary disclosure and pay tax, interest and penalties. Under the 'voluntary disclosure' scheme, interest and penalty charges were capped at 100% of the tax due, a credit was allowed for DIRT paid by the depositor's bank, prosecutions would not be taken and settlement details would not be published. 3,675 bogus account holders availed of voluntary disclosure and paid €227m in respect of 8,380 accounts. Of these, 599 account holders declared a nil liability. All returns were checked by tax districts for basic eligibility. 30 cases were deemed ineligible as they were already under enquiry or came within the scope of the Ansbacher enquiry or other tribunals of investigation. The underlying tax project team selected 140 cases randomly for liability review by tax districts. Tax districts selected a further 115 cases based on risk. A nationwide report of the eligibility assessment and liability review has not yet been completed. I have carried out some audit work on the voluntary disclosure phase and my examination will be completed when the overall Revenue check on this first phase of the DIRT underlying tax project is finalised.

In February 2002, investigations commenced into the bogus non-resident account holders that had been identified in the look-back audits of financial institutions and who had failed to avail of the voluntary disclosure scheme. Details on 1,800 cases were passed to tax districts for investigation in March and August 2002. Information on non-resident account holders was sought from 26 deposit takers on foot of High Court orders[11]. The information received under the orders was examined and enquiry letters were issued to 30,000 individuals in October 2002. Those who cooperated were liable to full penalties and interest and publication of the settlement but would not be prosecuted. Those who failed to respond to the enquiry letter are being examined for follow up and some are under investigation with a view to prosecution. A further 90,000 enquiry letters (see Table 2.6) have issued as information under the court orders is received and examined.

Table 2.6 Underlying Tax Enquiry - Letters Issued

Date	Number of Account Holders	Number of Accounts
October 2002	30,000	13,500
January 2003	40,000	21,500
May 2003	10,000	6,000
July 2003	40,000	20,000

€220m has been received to-date from bogus non-resident account holders who failed to avail of the voluntary disclosure scheme. Information is continuing to be received as a result of the court orders and it is expected that investigations will continue for several years.

[10] Total Yield €1,030,800 – DIRT €848,900 , Statutory Interest €171,800 and Penalties €10,100.
[11] The High Court orders were obtained under Section 908 of the Taxes Consolidation Act 1997 as amended by the Finance Act 1999.

2.5 Understatement of DIRT Liability

Arising from an examination by my staff in September 2001 of Revenue's DIRT Look-Back audits of financial institutions, I enquired at the time about the nature and extent of the Revenue audit carried out in a particular financial institution. In reply, the then Accounting Officer outlined the justification for the type of audit undertaken and affirmed that Revenue staff were fully satisfied that the 400 non-resident accounts examined were authentic and belonged to genuine non-residents. He stated that the financial institution in question had produced evidence in relation to the genuine non-resident status of the sampled cases to the Revenue team, including those accounts where there were declaration deficiencies. As a result of that Revenue audit, the Revenue report on the DIRT Look-Back audits to the Committee of Public Accounts had concluded that no amount of tax was due from the financial institution in question.

It was subsequently noted in June 2003 during a review by my staff of the pre-15 November 2001 "voluntary disclosure" phase of Revenue's pursuit of the underlying tax due in respect of funds deposited in bogus non-resident accounts that declarations were received from 62 persons which admitted to a total of 230 bogus non-resident accounts of which 102 were stated to be held in the financial institution in question. The payments to Revenue which accompanied the 62 declarations totalled €8.7m.

In regard to the reconciliation of Look-Back Audit information with the bogus non-resident declarations received, it was also noted that:

- The 62 voluntary disclosures included five individuals who had their accounts examined during the Look-Back Audit
- A listing of all non-resident accounts held with the financial institution as at October 1998 was supplied by the financial institution to Revenue at the time of the Look-Back Audit. The audit sample was selected from this list. Excluding the five selected in the sample, the list only included a further eight of the 62 individuals who subsequently made voluntary disclosures.

As this information raised renewed concerns about the quality of the Revenue Look-Back audit in the financial institution in question and the possible implications for the Look-Back audits generally I sought the views of the Accounting Officer.

He informed me that officers from the Underlying Tax Project office met with representatives from the financial institution on the 12 February 2002 to discuss the implications for the institution and its customers, of the application for a High Court Order under Section 908 Taxes Consolidation Act, 1997. The fact that some of its customers had come forward during the 15 November 2001 incentive scheme and disclosed bogus non-resident accounts, which they held with the financial institution was also made known to them. The Order was obtained in March 2003 and the financial institution is supplying information on foot of it on a phased basis over the period 30 June 2003 to 31 October 2003.

Until all of this information is received and reviewed, it will not be possible to form a clear view on the reliability of the DIRT Look Back Audit findings for the financial institution in regard to DIRT and the related interest and penalties.

As regards the wider implications for the Look-Back audits he stated that the methodology used in the course of the particular audit was based on the special circumstances encountered in the financial institution – no previous reclassification or redesignation exercise, no internal or external auditor evidence of bogusness, an October 1998 sample date and post 1994 growth in retail banking involvement. He also stated that there was no evidence at this point to suggest that the issues that arise in relation to the financial institution have implications in relation to any other DIRT Look Back audit settlements.

2.6 Special Investigations

Offshore Investments via National Irish Bank

The investigation into individuals who invested in an offshore investment scheme operated by National Irish Bank is continuing. By June 2003, settlements were reached in 373 cases totalling €40m including interest and penalties of €22m. Of these cases, 97 were settled with no liability. In addition, payments on account totalling €5m have been received in respect of other unresolved cases. Payments totalling €1m in respect of Capital Gains Tax have been received in 52 cases where National Irish Bank paid compensation to the investor.

Three cases have been prosecuted. In two of these the defendants pleaded guilty, one was fined €1,750 in the District Court and the other was fined €6,000 in the Circuit Court. Both cases settled their tax liabilities for €882,610 and €804,592 respectively, these figures are included in the overall settlement figures. In the case of the defendant who settled his liability for €882,610 an additional €767,898 settlement was received from his company as a result of the same investigation. In the third case the defendant also pleaded guilty and received a suspended sentence subject to the taxpayer being fully compliant for the next five years. The taxpayer settled his liability for €448,827. One other case is being investigated with a view to prosecution.

In 2001, National Irish Bank submitted to Revenue a list of 22 new cases. Of these, 15 involve relatively small sums and are thought unlikely to involve substantial tax evasion. None of these cases have been finalised to date.

Ansbacher (Cayman) Limited

A special project team is investigating the Ansbacher accounts. The team is investigating cases directly involving Ansbacher type arrangements as well as other cases involving offshore funds and deposits. There are 289 cases comprising 179 cases on the High Court Inspectors' Report and 110 similar cases discovered by Revenue or listed on the Authorised Officer's Report. Taking account of spouses and connected companies, these cases consist of 300 names. The number of connected entities in relation to cases under investigation is nearly 700.

To date, 44 cases have been settled including 25 cases named in the High Court Inspectors' report which are non-resident and covered by the provisions of Double Taxation Agreements and are regarded as closed. Settlements of €2.8m, including interest and penalties of €1.7m have been agreed in the other 19 cases settled. These 19 cases include five cases with no additional liability and two cases covered by the 1993 Amnesty provisions.

In addition, payments on account totalling €22m have been received to date in 64 cases as follows:

- €15m from 56 cases involving Ansbacher-type arrangements
- €7m from 8 cases involving offshore funds and deposits.

Revenue's application to the High Court to obtain unpublished documents gathered by the Inspectors was heard in November 2002. Judgment is expected shortly.

Pick-Me-Up Schemes

Pick-Me-Up Schemes involved expenses for goods or services incurred by a political party being invoiced by the supplier to another trader who paid the supplier as a means of supporting the party. Such payments were not deductible for tax purposes, the VAT was not reclaimable and the invoices issued were not in accordance with legal requirements. The investigation found a total of 71 cases that apparently avoided tax by engaging in 'picking up' expenses which were proper to political parties. 42 cases have

been settled for a total of €470,724 including interest and penalties. Revenue has decided not to settle 15 cases that have been mentioned at the Flood (now Mahon) and Moriarty Tribunals until those bodies have reported. €158,157 has been received on account from 6 of those cases. 14 cases are still under investigation some of which relate to payments in the eighties or early nineties and for which records are no longer available. As a result it is proving difficult to confirm liability. Payments on account of €90,340 have been received in 5 of the cases still under investigation.

Tribunals

Matters disclosed at the Moriarity and Flood (now Mahon) Tribunals that suggest that tax evasion may have occurred are being investigated as they come to notice and a considerable number have been looked at to date. Currently 17 cases are being investigated as a result of the Moriarity Tribunal. One case has been settled for €6,292,506 and a payment on account of €14,876 has been received in respect of one other case. Currently 22 cases are being investigated as a result of the Flood (now Mahon) Tribunal and payments on account of €17,572,640 have been received in respect of eight cases.

2.7 Prosecutions for Serious Tax Evasion

Under Revenue prosecution strategy, audit districts are required to forward cases to Investigation and Prosecutions Division for investigation with a view to criminal prosecution where there is prima facie evidence of serious revenue offences having been committed. These cases are further evaluated within the Division before commencement of the very resource intensive criminal investigation work which can take several years before reaching the Courts. Convictions were obtained in all 3 of the cases decided in Court in 2002.

- A cattle dealer/haulier was convicted of failing to submit Income Tax returns and was fined €3,000.
- An individual was convicted of delivering incorrect VAT returns and information. A six month prison sentence was imposed but was suspended on payment of a €12,000 fine.
- A house builder was convicted of delivering an incorrect Income Tax return and incorrect VAT returns. A fine of €2,540 was imposed.

Of a total of 27 cases on hands at the end of 2002, convictions have been obtained in five cases, 17 are still under investigation, bench warrants issued in two cases and three cases have been closed.

2.8 Prosecution of Non-filers of Income Tax Returns

Background

The self assessment system requires every chargeable person to submit a return of income, profits or gains for each chargeable period by a specified filing date. As the timely filing of properly completed returns is the bedrock of self assessment, it is Revenue policy to bring criminal prosecutions under Section 1078 of the Taxes Consolidation Act, 1997 against those who ignore their filing responsibilities. Non-filer prosecutions are taken by way of summary proceedings in the name of the Director of Public Prosecutions in the District Courts. Prosecutions in Dublin are taken by the Revenue Solicitor, while outside Dublin the State Solicitors perform this work.

In 1998 Revenue decided to substantially increase the number of cases being referred for criminal prosecution for non-filing offences. This decision was based on the view that criminal prosecution would be:

- The best method for obtaining outstanding returns
- A deterrent against future non-submission.

The prosecution results for Income Tax non-filers for the past six years, which indicate the growth in convictions from 1998, are summarised in Table 2.7 below.

Table 2.7 Results of Prosecution of Income Tax Non-Filers 1997 to 2002

	1997	1998	1999	2000	2001	2002
Warning letters (Rev. Solicitor)	1,917	5,450	5,399	6,457	9,818	9,348
Cases referred for issue of summons	853	1,968	2,369	1,951	2,401	1,839
Number of taxpayers convicted	223	659	1,159	936	1,050	972
Total Fines[12]	**€0.2m**	**€0.9m**	**€1.5m**	**€0.9m**	**€1m**	**€1m**

Objectives and Scope of the audit

The objective of the audit was to examine, in relation to Income Tax returns, the effectiveness of the prosecution approach

- As a method to ensure submission of outstanding returns
- As a deterrent against future non-submission.

The audit work included interviews, the issuing and review of questionnaires and the examination of internal reviews, correspondence and operational instructions. While Revenue has adopted various approaches to non-filers under other taxheads, these areas were not covered by this audit.

The role in the prosecution process of the central Compliance Policy Unit, four selected tax districts (Dublin, Cork, Letterkenny and Limerick) and the Revenue Solicitors Office was examined, together with recording and tracking databases in those offices. The reported results of the prosecution work in the four tax districts were reviewed and analysed.

An examination was also carried out on a sample of 99 Income Tax cases with 275 outstanding returns that were referred for prosecution by the four tax districts. The sample was selected on a generally random basis with the intention of achieving an even split between cases where convictions were actually obtained (in the event 56 fell into that category), and cases which did not reach that stage (43). Computer records, tax returns and correspondence relating to each case were examined and analysed.

The findings set out in the report reflect this approach to the audit, and fall into two sections that relate to:

- The general review of the operation and administration of the prosecution process both centrally and in the districts
- The more specific findings arising from the review of the sample of cases.

Operation of the Prosecution programme

A bulk issue of the standard income tax return form is made annually to all taxpayers required to make a return. Reminders are issued to those who fail to file a return by the due date i.e. 10 months following the end of the tax year. After a further 3 months, lists of cases with annual returns still outstanding are forwarded to tax districts for further investigation and, if necessary, prosecution.

[12] Includes fines for Corporation Tax.

Table 2.8 provides details of the number of Income Tax return forms issued for the tax years 1999/00 and 2000/01, and of the number of cases with a return outstanding referred on to tax districts.

Table 2.8 Tax Return Forms Issues and Non-Return Cases Referred to Tax Districts

	1999/00		2000/01	
	General Issue of Income Tax Return Forms	Non-Filer Cases referred to Tax Districts[13]	General Issue of Income Tax Return Forms	Non-Filer Cases referred to Tax Districts[13]
All Areas	321,398	67,102	328,887	72,273
Dublin	72,434	16,846	75,942	22,412
Cork	40,129	7,845	40,719	8,410
Letterkenny	11,022	2,162	11,206	2,604
Limerick	27,290	6,033	29,494	6,510

Cases are categorised by the number of outstanding returns - most cases are persistent non-filers. The tax status of each case is checked on the Revenue databases prior to a visit and cases which should not be pursued are excluded. A programme of visits to assess the extent of tax at risk is organised for cases which have still failed to submit returns and are deemed possibly suitable for prosecution. A visit report is subsequently completed by the Field Officer with a final recommendation as to suitability for prosecution. Lists of cases deemed suitable for prosecution are forwarded by the tax districts to the Revenue Solicitor who then issues a 21 day warning letter to the non-filer. Cases that fail to respond to the warning letter are forwarded for summons. A separate summons is instituted for each outstanding return. Court times are arranged and summonses are served by the Gardaí. The Gardaí require at least 6 weeks to serve a summons. Each offence is liable to a fine of €1,900 (which can be mitigated by a maximum of 75%) and/or committal to prison for up to 12 months. The fine was increased to €3,000 by the 2003 Finance Act. A provision to allow Revenue to apply for a Court order compelling convicted defendants to submit the outstanding returns of income was included in the 1999 Finance Act. The powers available to Revenue in dealing with Court orders were further extended by the 2002 Finance Act which created an additional offence of non-compliance with the Court order, with the same fine or committal provisions as those for non-filing. Fines are collected by the Fines Office administered by the Department of Justice and paid over quarterly to the Revenue Commissioners. Revenue is obliged by law to publish details of convictions of non-filers.

While Table 2.8 indicated the annual flow of non-filing case referrals to the four tax districts under review, Table 2.9 details the disposal of that workload for 2001 and 2002, including by summons, conviction and Court order.

Table 2.9 Results of Prosecution Activity in Four Districts in 2001 and 2002

	Dublin		Cork		Letterkenny		Limerick	
	2001	2002	2001	2002	2001	2002	2001	2002
Warning Letters	992	802	717	553	366	361	835	688
Referred for issue of summons	448	320	380	344	155	186	92	174
Convictions	373	371	256	301[14]	112	99	88	64
Court orders	5	72	1	5	-	-	3	6
Returns submitted	4,182	3,471	3,564	2,436	1,120	519	3,399	2,534
No returns needed	3,562	2,977	461	619	101	30	393	719
Unsettled Cases	9,102	15,964	3,820	5,355	941	2,055	2,241	3,257
Total Caseload	16,846	22,412	7,845	8,410	2,162	2,604	6,033	6,510

[13] The general issue relates to returns due for that year whereas cases referred to tax districts includes returns not submitted during the previous 5 years.
[14] Includes 54 struck out cases.

An analysis of cases handled by Dublin tax district in 2002 revealed that nearly one third of referred cases were 'settled', with 15% submitting returns while the remainder were deemed not due to make returns. Within that figure, the rate of returns submitted ranged from 24% of those with only 1 outstanding return to as little as 4% for persistent non-filers. 4% of cases were referred for prosecution with the emphasis on persistent non-filers; half of those proceeded to summons stage.

Findings from General Review

Deterioration in Compliance Behaviour

There were indications of a hardcore of non-compliant individuals and their numbers have increased substantially in recent years:

- The number of cases referred to Dublin and Limerick tax districts increased by 60% in two years;
- While a prosecution can only be taken once for an outstanding return some individuals have several convictions for non-filing (one case had seven convictions). Up to 10% of those convicted are repeat offenders. The Dublin prosecution database had 891 (13%) cases with previous convictions, with the bulk coming from persistent non-filers. In 2002 Letterkenny fast tracked the prosecution process for 152 repeat offenders whose current returns were outstanding.

Revenue Response

Compliance trends show that timely filing rates are holding and for the most recent year have improved from 74% to 75%. This figure is significant in the context of the 2002 change to the calendar-year basis of return, which meant that taxpayers and their agents had to deal with two income tax returns in one year. Specific compliance programmes viewed in isolation may not provide the best yardstick by which to measure compliance trends. There are other strategies besides prosecution to encourage timely compliance. Late filers are subject to 10% tax surcharge and interest on late payment of tax due. More importantly, to minimise tax at risk Revenue may raise assessments to tax in the absence of a return and pursue the liability to enforcement if necessary.

System and Resources Under Pressure

The holding back of distributions to districts, the emphasis on the multiple non-filer, the extended period before issue of summons and the serious backlog in Dublin district and in the Revenue Solicitor's Office suggest a system under pressure to cope:

- The 2002 download of cases of outstanding returns was not distributed to tax districts until August of that year. There was insufficient time in the tax districts to work these cases and outdoor visits were reduced from previous years. The bulk of cases heard by the courts in 2002 were taken from the download for 2001
- The larger tax districts are unable to work the full download. Priority is given to categories of cases, mainly the persistent non-filers with returns outstanding for all 5 years. Due to the workload in Cork a distinction on the degree of suitability for prosecution is made following the outdoor visit with the result that some suitable cases are dropped from the programme. Cases which are excluded may be worked from future downloads
- The recommended interval of 4 weeks to referral for summons from the date of warning letter was generally followed by Limerick, Cork and Letterkenny while Dublin allowed up to 6 months to elapse prior to referral for summons. 1,050 Dublin cases referred for summons are held in the Revenue Solicitors Office. In consequence of that backlog, a further 1,382 cases are held in the tax district ready for summons

- Limerick tax district initiates their compliance programme with a telephone campaign followed by a warning letter from the district and then a visit for those who fail to submit returns. Other districts limit their telephone campaigns to agents.

Revenue Response

Technical developments taking place in Revenue's computerised taxpayer ledger system delayed the distribution of the 2002 download of non-filer cases to tax districts. By contrast the 2003 download was issued in March. Some tax districts did not work all 2002 cases because of the impending second return date in October. With regard to tackling non-filers at district level, it is not expected that all districts will do exactly the same thing. Districts are allowed to take account of local factors and to try different approaches if they feel this will achieve a better outcome.

Delays in Processing Cases

The maximum impact on the Non-Filer arises from a prompt and firm Revenue response to each outstanding return of income. That may not always be achieved:

- The prosecution process is lengthened in some cases by delays in serving summonses, arranging court times, and numerous adjournments to facilitate requests for more time to submit returns. The length of time from the warning letter to getting a case to court varies from 3 months to over 2 years;
- Up to 2001 the annual 'download' extracted cases which had outstanding returns in any of the previous 5 years. In 2002 the application of a different programme identified and downloaded additional cases outstanding for more than 5 years and up to 10 years. In effect, prior to 2002, these latter 'hard' cases were not included in the compliance and prosecution programme. Dublin received 400 such cases. Revenue have pointed out that these cases were previously subject to the debt management programme, which pursued both the tax due and the return.

Court Hearings

The course of the hearings in Court does not always run smoothly from the Revenue viewpoint. Instances include mitigation and a high level of adjournments.

- Judges generally mitigate fines by or near the maximum limit of 75% when returns have been filed. The level of mitigation varies from court to court. In some courts fines were mitigated even though the returns were not filed. Other courts impose maximum fines in cases where the defendant fails to attend or submit outstanding returns. In other instances the benefit of mitigation was applied to repeat offenders. Revenue estimate that the average level of mitigation of fines is 62%.
- Finalisation of cases is delayed by the high level of adjournments allowed by the Courts. There are many instances of cases with up to 5 or 6 adjournments. Revenue estimate that 37% of all cases brought to court were granted adjournments.
- In cases of individuals with several offences before the Court, Revenue withdraw 50% of charges when returns are submitted in time for the court hearing and the defendant is in attendance. Only one charge is pursued in hardship cases. Judges have expressed reservations about convicting individuals who have filed returns.
- Prosecution costs are awarded by some Courts to the State Solicitor. There is no evidence of subsequent transfer of costs to Revenue even though State Solicitors are remunerated by the State for this work. Revenue is not opposed to State Solicitors seeking costs provided such costs are transferred to Revenue on behalf of the DPP. However, Revenue have pointed out that neither the DPP nor Revenue have any contractual relationship presently with the State Solicitors whose contracts are with the Chief State Solicitor.

Fines and Court Orders

The tasks following conviction are fine collection and, in cases where the defendant has not already submitted returns, obtaining and enforcing an order of the Court for all outstanding returns of income. Performance is less than satisfactory in both areas:

- The collection of fines imposed by the courts is not monitored by Revenue. The quarterly payover from the Fines Office does not provide a breakdown by case. A comparison of fines received by Revenue with fines imposed by the courts indicates that one third are not collected. There is little point in having fines imposed by the courts if there is no follow-up to ensure the fines are paid. Revenue has pointed out that the collection of fines is a matter for the Court Service.
- Instructions to State Solicitors to apply for court orders in respect of outstanding returns did not issue from the Revenue Solicitor until 15 months after the provision became law in the 1999 Finance Act.
- There is a lack of consistency in the approach adopted to the use of court orders. In Dublin and Limerick, court orders are sought in all cases where returns are not submitted on conviction. In Cork, court orders are sought in larger cases and/or cases with previous convictions where despite the conviction returns remain outstanding. In these cases following the application of the State Solicitor the decision on the imposition of fines is deferred to an adjourned court hearing as an encouragement to the defendant to influence the level of fines through the submission of the returns. In Letterkenny, court orders have not been sought but will be sought where it is deemed appropriate.
- In all, 31 court orders were obtained nationally in 2000 while a further 40 were obtained in 2001. 19 non filers in Dublin and 14 in Cork have failed to comply with court orders.
- As at June 2003 the offence of non-compliance with court orders, created in March 2002, has not been utilised by Revenue in any case to-date.

Revenue Response

The Revenue Solicitor's Office is in the process of advising State Solicitors to actively pursue appropriate cases to prosecution for failure to obey the court order to file the outstanding return.

Audit of Non-Filer Cases

The selection of cases for criminal prosecution for failure to file returns follows the refusal of the taxpayer to respond to Revenue contacts, and a case review and visit to establish the likelihood of a reasonable level of tax at risk. It would be expected that such cases would receive strong consideration for selection for audit. The extent to which such cases are audited is unclear:

- Dublin referred 20 cases to Dublin audit districts in 2002 as specifically suitable for audit. Dublin also forwards all late returns received from prosecution cases to audit with a recommendation that they be included in the next screening programme for audit selection. Cork forwarded 21 cases and Limerick forwarded 14 cases in 2002 as suitable for audit. There was no feedback on any cases referred to audit.
- Letterkenny do not forward returns obtained through the prosecution programme to audit.

Revenue Response

It does not follow that a case considered suitable for prosecution is necessarily suitable for audit. In many cases it may be more efficient to deal with risk to Revenue through the assessment and debt management programmes. However, all late filers are included as part of the screening programme used to select cases for audit. Cases are selected for audit purposes by tax districts, including Letterkenny, based on risk assessment criteria. The Revenue audit programme selects some 200 non-filers for audit each year. A

computerised risk analysis system currently being developed is likely to bring more convergence to the prosecution and audit selection criteria.

Findings from Audit Sample

The results of the examination of a sample of 99 cases with 275 outstanding returns which were referred by the four selected districts for prosecution are analysed in this section. Features noted include the difficulty of obtaining returns in all cases even following conviction by the Court, the extent to which those who had been pursued by legal means for outstanding returns again failed to file a return for the current year, and the surprisingly low level of tax liability which was accepted without audit in respect of many of the cases which had gone to such lengths to avoid making a return of income.

Returns Obtained

Of the 99 cases, 79 submitted the outstanding returns, returns were not needed in 8 cases and 12 were still not resolved at 30 June 2003. In 5 of the unresolved cases returns have not been made despite a court order. Of 79 cases which ultimately submitted outstanding returns due to the prosecution programme, 33 have again not submitted returns for the most recent year – 2001.

Assessment and Collection of Tax Due

An analysis of the liabilities set out in 194 returns received from the 79 recalcitrant filers is shown in Table 2.10 and indicates that 50% of returns had a declared tax liability of less than €500 for the year under review. That the individuals appeared to require Revenue to utilise the full extent of its compliance procedures to establish that fact must raise questions as to the completeness of such returns. Revenue initiated an audit of the returns of two of the recalcitrant filer cases. Notwithstanding the extent of the delay in making a return and payment, computer files did not record interest charges in any cases. The self assessed amounts due totalled €371,615 but €63,134 remains unpaid by 21 individuals. The Field Officer report on outdoor visits generally did not record an assessment of the materiality of tax liabilities.

Table 2.10 Tax Liabilities Declared on Non-Filer Returns of Income Obtained under the Prosecution Programme

Total Tax Liability Declared	No. of Returns	% of Returns
Nil	55	28
€1 - €500	43	22
€501 – €2,000	49	25
€2,001 – €5,000	25	13
€5,001 – €10,000	15	8
Over €10,000	7	4
Total	**194**	**100**

The business status of the self-employed individuals whose returns are included in Table 2.10 covered a wide range of occupations including company directors, accountants, small manufacturers, publicans, builders, farmers, tradesmen, taxi drivers and hairdressers.

Revenue Response

Officers are instructed to make every effort to determine and record customers' circumstances as well as their general disposition towards compliance and capacity to pay. A reminder drawing compliance officers' attention to these instructions is being prepared. Comprehensive audits are ongoing in 2 of the sampled cases. Interest was charged on four late filers and collected from one to date. There have also been two VAT and one Relevant Contracts Tax audit relating to taxpayers in the sample.

Pre-Prosecution Activity

Analysis of the sample indicated the time intervals which elapse at the different stages of the process, and the extent to which cases can be resolved before a Court hearing

- The time intervals which elapsed between outdoor visits and issue of the 21 day warning letter were
  - Dublin 3 –12 months
  - Cork 4 – 6 months
- The time intervals from issue of the warning letter to referral for summons were
  - Dublin 6 –12 months
  - Cork 5 – 6 weeks
  - Letterkenny 2 – 3 months
  - Limerick 2 – 3 months

- 37 of the sampled cases were settled and not brought to court, of which 27 were settled without the necessity for referral for summons.

Prosecutions and Convictions

The sample confirmed the findings of the general review in relation to number of charges, repeat offenders, mitigation of fines, and multiple adjournments. It also raises a question as to whether all convictions in the sample were published.

- Seven cases had previous convictions.
- Fines were mitigated in all but 3 of the 56 convictions.
- Of the 20 Dublin cases sampled, adjournments ranging from 1 to 6 occasions were noted in 10 cases.
- A sample of 15 convicted Dublin cases were checked to the published quarterly list of defaulters. However, 8 of the cases could not be traced.

Conclusions

In its Annual Report for 2002 Revenue notes that as a result of a major project to introduce the Pay and File procedure, together with coordination with tax practitioners and An Post and a public information campaign, 80% of the 2001 returns issued had been returned within a few weeks of the due date together with €1.7bn. The focus of this report was on a later phase of compliance activity when cases which had failed to respond to the promptings of the central compliance programme are distributed to tax districts for local investigation and, in particular, the use of the prosecution option to ensure that a return is finally filed. Dealing on a case-by-case basis with a hard core of cases for which prosecution is considered the only suitable method of obtaining a return of income is in strong contrast with the annual high profile compliance campaign. Equally the final tax yield will be insignificant in comparison, and the overheads will be greater. However that phase is of equal importance as it ensures that the equity of the income tax system is preserved, and ultimately that the success of the mainstream tax system is maintained.

For these reasons, Revenue has increased the use of prosecution as a method of obtaining outstanding returns and the results of the revised approach can be seen from the annual statistics of convictions of non-filers which show an increase from just over 200 in 1997 to an average of over 1,000 per annum in the period 1999-2002. In addition there have been two amendments to the law to strengthen the power of Revenue to obtain the outstanding return as well as a fine in conviction cases. However the audit findings raise the question as to whether the policy as implemented is achieving its maximum impact.

The system would appear to be under pressure to meet the demands of full implementation of the non-filer prosecution policy as indicated by:

- The late distribution of 2002 cases to districts, the focus on the persistent non-filer as opposed to hitting all initial instances, and the large backlogs in Dublin district and with the Revenue Solicitor
- The length of time from warning letter stage to getting the case into court can be up to two years

- Instructions to State Solicitors to apply for Court orders for returns of income did not issue until fifteen months after the provision became law under the 1999 Finance Act
- Lack of consistency between districts in the approach adopted to the use of such Court orders
- The offence of non-compliance with Court orders, created by the 2002 Finance Act has not been implemented to date.

A review may be necessary to establish how the various bottlenecks can be addressed in order to ensure that the prospective non-filer can have a strong expectation of being subject to an early firm response for each offence.

While the annual number of convictions and the imposition of over €1m in fines undoubtedly makes a significant contribution towards improved compliance levels, a closer examination gives rise to concern that the overall impact at case level is not as clear cut as might have been expected. There were inconclusive outcomes to many prosecution cases:

- One third of the total fines imposed may not be collected
- Returns remain outstanding in all of the five cases in the audit sample where Court orders had been obtained
- The tax due remained unpaid in 25% of a sample of 79 cases in which returns had been obtained as a result of prosecution activity
- Only seven cases from a sample of fifteen convicted cases were traced to the published quarterly list of defaulters.

Only full implementation of available penalties including the enforcement of court orders will change the behaviour of persistent non-filers. This is confirmed by data from the report indicating that at present up to 10% of those convicted are repeat offenders, and that of a sample of 79 cases settled through prosecution activity returns for the latest year are outstanding in 33 cases.

194 returns were submitted in 79 cases only after an extensive compliance effort by Revenue, and a commensurate degree of reluctance on the part of the taxpayer. It was noted however that 50% of these returns declared annual tax liabilities of less than €500. Most of the 194 returns were accepted by Revenue without audit.

In general, the prosecution of non-filers is established as an effective method for extracting returns and is a vital part of the compliance programme. The shortcomings identified, when addressed, should improve the effectiveness of an extensive and costly but very necessary process.

Revenue Response

Compliance levels for the most recent year, as they relate to timely filing, continue to improve with 75% of all returns received on the due date rising to 80% within a few weeks. Initiatives to assist taxpayers through electronic filing via Revenue Online Service (ROS), streamlining of processes, the introduction of the calendar year basis of return and Pay and File in 2002 will facilitate improvement in this area.

Revenue's programme of prosecution of non-filers is one of the measures used to address taxpayers who fail to meet their obligation to file a return. As can be seen from analysis provided in the report at Table 2.9, a percentage of cases with an outstanding return will, on examination, be reclassified as no return needed. This may arise where an individual has ceased to operate a business, moved into PAYE employment or the source of income giving rise to the return e.g. investments rental income, no longer exists.

The remaining hard core of cases who fail to lodge a return are pursued through criminal prosecution by Revenue. Notwithstanding the success of the prosecution of non-filers programme in securing outstanding returns, prosecution has done little to change behaviour amongst hard-core non-filers. The Revenue response throughout this report highlights how Revenue will target such cases using improved audit selection, greater knowledge of the taxpayer and their business through "whole case management" which will lead to the raising of accurate assessments which will be pursued through the debt management programmes to enforcement where necessary. Furthermore this whole case management approach will be fundamental to addressing the relationship between returns compliance and audit as raised by the report.

The shortcoming highlighted in the report relating to the timeliness of non-filers programmes and backlogs throughout 2002 have been addressed by Revenue in detail. 2002 was an atypical year given that:

- The change from the tax year basis to the calendar year meant that uniquely two tax returns were due in 2002 at end January and end October respectively.
- IT developments used to extract cases for the year 2002 led to a more comprehensive but later issue of cases to the tax districts i.e. August 2002 as opposed to May/June 2001 for the previous years returns.

As part of the Revenue's current development of a New Compliance Strategy all operations will be reviewed with a view to ensuring that the most efficient and effective systems are in place so as to maximise the use of resources towards targeting the non-compliant. The main findings of an internal Revenue review of non-filers prosecutions, taken by way of summary conviction, were:

- The threat of criminal prosecution, i.e. the Revenue Solicitor's pre prosecution warning letter, has a success rate of some 70% in securing outstanding returns but there is little evidence that it changes future compliance behaviour for the better.
- Criminal prosecution is -
  - a slow process,
  - reasonably, though not 100%, effective in securing outstanding tax returns,
  - not effective in changing future returns compliance behaviour in all cases.

Amongst other recommendations the review concluded that the threat of prosecution is a useful tool in securing outstanding returns and should continue as one of the compliance options for dealing with non-filers.

Issues relating to the pursuit of outstanding fines, court adjournments and mitigation of penalties, even in the case of repeat offenders, remain a matter for the Courts. The Revenue Solicitor's office is in the process of advising State Solicitors to actively pursue appropriate cases to prosecution for failure to obey the court order to file the outstanding return.

2.9 Random Audit

Background

Self-Assessment

Since 1988, Revenue has increasingly used systems of self-assessment as a means of administering the various taxes and duties. In essence, such a system places the onus on taxpayers to file returns and pay taxes correctly and on time without any prompting from Revenue. The corollary of this from Revenue's point of view is that returns are processed and assessments made on a non-judgmental basis. While it is a feature of a self-assessment system that the majority of returns are accepted by Revenue with limited or no checking being carried out, a key control in such a system is the detailed checking of selected returns by

means of Revenue audits. Revenue's programme of audits of selected taxpayers is central to its efforts to deter tax evasion and maximise compliance with tax law.

Revenue audits in relation to income tax, corporation tax, capital gains tax and value added tax can range from desk checking specific aspects of a tax return to comprehensive audits where all aspects of tax returns for all taxes are examined during a visit to the taxpayer's premises. The length of time taken to complete the audit depends both on the type of audit carried out and the nature and size of the taxpayer's business. Table 2.11 sets out, for each of the last five years, the number and type of audits completed under Revenue's main audit programme. Audit activity in a year is not confined to audits completed. At any point in time a large number of audits are at varying stages of the audit process. In addition to audits under the main audit programme, audits are also carried out as a result of special investigations, anti avoidance schemes and in relation to other taxes and duties such as Capital Acquisitions Tax and Customs and Excise.

Table 2.11 Audits Completed 1998 to 2002

	Number of Audits Completed				
	2002	**2001**	**2000**	**1999**	**1998**
Comprehensive	2,424	2,200	2,270	2,512	2,844
VAT	4,300	4,223	4,409	5,101	6,886
PAYE Employers	862	1,443	2,104	2,768	2,824
RCT	169	383	352	384	261
Combined Fiduciary	582	626	670	892	735
Verification	7,594	7,107	6,126	5,248	4,314
Total	**15,931**	**15,982**	**15,931**	**16,905**	**17,864**

Principles and Code of Practice

Revenue's audit programme is an important part of its strategy for deterring and detecting evasion and maximising compliance with tax laws. The principles underpinning the conduct of Revenue audits are set out in the "Code of Practice for Revenue Auditors", a revised version of which was published in August 2002. The revised Code defines a Revenue audit as an examination of:

- A return of Income Tax (including DIRT and other fiduciary taxes), Corporation Tax, Capital Gains Tax or Capital Acquisitions Tax (either in whole or in part)
- A declaration of liability or a repayment claim, for VAT, PAYE/PRSI or Relevant Contracts Tax
- A statement of liability to Stamp Duties.

It may also include an examination of an individual's or a company's books, records and tax obligations so as to establish the correct level of liability, and collect arrears of tax. The Code guides Revenue auditors on how audits should be conducted. It outlines taxpayers' rights and addresses issues such as location of audits, access to taxpayers' records, periods to be audited, review procedures, audit settlements, penalties and disclosures by the taxpayer.

Objectives and Scope of this Audit

The majority of audits are selected from cases with identified tax at risk. A proportion of audits are, however, selected at random each year. The objective of this examination was to review Revenue's programme of random audits. It specifically set out to

- Establish the objectives set for the random audit programme and their measurement, monitoring and achievement
- Establish the extent to which the results from random audits can be used to assess the level of compliance in the tax system generally

- Examine Revenue's approach to random audits including selection, process, finalisation and review of audits.

Documentation was reviewed and discussions were held with the Audit Policy Branch of the Operations Policy and Evaluation Division. The database of completed audits maintained by that Branch was also examined. Discussions were held with Statistics Branch of the Revenue Commissioners on how random audits were selected. The random audit process was examined in three tax districts by means of discussions with District Inspectors, Audit Managers and individual Inspectors as well as examination of a sample of completed audit cases.

Revenue Audit System

General Objectives and Targets

Over the period 2001 to 2003 Revenue sought to develop its audit and investigation programmes by increasing the use of risk analysis techniques. The introduction of a computer based risk assessment and case selection system for audit and investigation was identified as a means of achieving this. Revenue's latest Statement of Strategy (2003 – 2005) re-asserts the importance of a risk based audit programme to achieving its goal of maximising compliance with tax legislation.

The overall objective of the audit programme is to ensure maximum compliance with relevant legislation. Revenue's annual business plans set targets for the audit programme in terms of the number of audits to be completed and expected yield. Targets compiled by each district underpin these overall targets.

Selection of Cases for Audit

At present, Revenue's risk based approach to the selection of audits involves:

- Screening of taxpayers' returns
- Intelligence gathering by each tax district
- Knowledge of industry practices affecting tax at risk
- Extracting information from Revenue records such as returns compliance and payment patterns
- Interaction with other areas of Revenue such as Revenue Mobile Service and Customs Audit Units
- Sectoral projects
- Cases previously audited.

The Steering Group on the Review of the Office of the Revenue Commissioners (2000) recommended that case selection for audit be based on computerised risk assessment procedures and that all relevant information available to Revenue be fully exploited to inform the selection. In 2001, Revenue sought information by way of a Request for Information (RFI) on how it might develop more sophisticated approaches to risk assessment for selection of cases for audit. The responses to the RFI were reviewed and evaluated and it was decided that tenders should be sought for a 'rules based' solution to risk analysis. In 2002, contractors were appointed to provide such a system for audit and investigation as well as an associated system to support Revenue's management information requirements in the area.

The risk analysis software was commissioned in March 2003 and the process of implementing a risk based approach to Revenue audit has commenced. A team is training in the use of the software and is collecting and formalising rules for the system. Tools for selecting cases and for facilitating auditors in managing their caseloads are also in development. It is intended to run a pilot programme in October 2003 but the first major programme will be in the first quarter of 2004 when Income Tax and Corporation Tax risk

profiles will be prepared. An important factor in when this risk analysis program is run will be the capture of certain data, such as financial accounts information, from the 2002 tax returns when submitted.

The objective of the risk analysis program is to analyse taxpayers across a number of profiles by applying 'rules' to all data available. Taxpayers will then be scored with regard to their risk to Revenue: i.e. evasion, non-payment, failure to file returns, etc. Revenue sees the benefits of this approach as enabling them:

- To highlight cases with most risk
- To anticipate cases which are becoming a risk
- To target risk cases in a timely fashion
- To free resources to tackle evasion by switching to electronic analysis
- To demonstrate the fair application of processes across the entire taxpayer base as for the first time all taxpayers will be screened
- To minimise contact with the compliant taxpayer by identifying risky cases.

A key part of the process will be the feedback cycle. In its first iteration, the risk analysis system will be driven by rules collected from auditors which will be tested by the rules team and validated by an expert group. However, this is a subjective process. When the profiles generated are used on audit and the results analysed, the rules will be reviewed and re-written or dropped as deemed necessary. While Revenue are reasonably confident that the new system will produce results from commencement, there is a possibility that the full potential of the new system will not be realised until it incorporates any amendments which may be deemed necessary as a result of the testing of the rules in a live environment.

Audit Results

Table 2.11 set out the number of audits completed for the last five years under Revenue's main audit programme. Table 2.12 below shows for the last three years the targets set in Revenue's Business Plans and the actual outturn for audit activity. The average yield and the percentage of audits where the yield is nil are also shown for each category. In each of the last three years, the target yield from audits has been exceeded even though the target number of audits was reached only in 2002. The large increase in the number of verification audits in 2002 and to a lesser extent in 2001 and the very significant yield from those audits is related to a particular focus on taxpayers exercising share options. As can be seen from the table, the comprehensive audit programme seems to be more successful than the other audit programmes in terms of targeting tax at risk. The average yield per comprehensive audit, rising from €30,387 in 2000 to €36,542 in 2002, is considerably higher than the average yield in any of the other audit programmes or the overall average yield for the audit programme as a whole. Also, the percentage of comprehensive audits which produce nil yields (between 34% and 39% over the three years) is lower than for the other audit programmes. The relative success of the comprehensive audit programme is hardly surprising given that the majority of audit resources are devoted to comprehensive audits and that such audits examine all taxes and are therefore more detailed and in general take longer to complete. Nevertheless, Revenue should consider what factors are contributing to the better return from comprehensive audits. Possible factors could include better risk selection procedures, more detailed examination during the audit and greater use of more experienced auditors on such audits. Revenue has stated that the new computerised risk analysis system will focus the audit resources more effectively on cases with more risk and may result in a change in the balance between comprehensive and fiduciary audit programmes.

Table 2.12 Audit Results 2000 to 2002

	Target Number	Actual Number	Target Yield	Actual Yield	Average Actual Yield	% with Nil Yield
2000						
Comprehensive	2,587	2,270	€56m	€68m	€30,387	34%
VAT	5,218	4,409	€34m	€35m	€7,955	58%
PAYE	2,205	2,104	€14m	€12m	€5,721	63%
RCT	270	352	€5m	€2m	€4,767	49%
Combined Fiduciary	677	670	€2m	€6m	€8,846	50%
Verification	5,543	6,126	€5m	€10m	€1,633	
Total	**16,500**	**15,931**	**€116m**	**€133m**	**€8,392**	**53%**
2001						
Comprehensive	2,916	2,200	€57m	€74m	€33,792	37%
VAT	4,843	4,223	€32m	€61m	€14,490	55%
PAYE	2,016	1,443	€13m	€10m	€7,138	62%
RCT	429	383	€3m	€3m	€7,726	58%
Combined Fiduciary	917	626	€6m	€12m	€18,834	42%
Verification	5,450	7,107	€11m	€37m	€5,206	
Total	**16,571**	**15,982**	**€122m**	**€197m**	**€12,363**	**51%**
2002						
Comprehensive	3,000	2,424	€67m	€89m	€36,542	39%
VAT	5,510	4,300	€50m	€61m	€14,207	58%
PAYE	1,248	862	€7m	€6m	€7,320	52%
RCT	560	169	€3m	€2m	€10,296	50%
Combined Fiduciary	901	582	€10m	€10m	€16,993	42%
Verification	3,000	7,594	€14m	€88m	€11,650	
Total	**14,219**	**15,931**	**€151m**	**€256m**	**€16,074**	**51%**

In the current programmes it is not considered unusual that the returns from the comprehensive programme exceed the returns from the single taxhead and joint fiduciary programmes, bearing in mind the screening process for the comprehensive programme, the time and resources involved in it and the method of case selection. Revenue has indicated that many cases, particularly in the VAT programme, are selected to check repayment claims. This policy, in particular, will be reviewed when the risk analysis system is operational. Revenue has also pointed out that the extensive training programme for new auditors results in a significant number of single taxhead audits being selected initially for new trainees.

Random Audits

Each year a number of comprehensive, VAT and PAYE/PRSI audits are carried out for cases which have been selected at random from those taxpayers who have submitted returns. The purpose of the random audit programme is to maintain and improve levels of voluntary compliance by giving all taxpayers at least some chance of being selected for audit and to create among the taxpaying public the perception of Revenue as active within all sectors and at all levels of economic activity. Random audits are conducted in the same manner as targeted audits and the principles as set out in the Code of Practice apply equally to random audits.

Selection of Cases

Each year the Statistics Branch of Revenue selects a random sample of cases for possible audit. Generally, a specified number of cases are selected for each Tax District and therefore the selection is not random across the entire taxpayer base but only within each district. This was considered an appropriate method of ensuring that each district partook in the programme. It ensured a wide geographic and sectoral spread of random cases. The central selection of cases ensured that the district had no input into the selection of cases. The cases are selected from those taxpayers who have submitted returns for the most recent tax year. Up to 1998 the random audit programme was applied to comprehensive audits only. The objective was that 2% of comprehensive audits undertaken would be selected at random. In 1998, random audits were extended to the VAT and PAYE/PRSI audits with the 2% target remaining in place. In 1999, the selection criteria were further refined so that only cases where the aggregate income was less than €127,000 were included. The reason stated for this was that larger cases would be subject to regular screening and would be selected for audit if necessary but the exclusion has resulted in the selection being less random.

For 2001, it was decided to increase the number of random audits to 6% of total audits which would mean about 1,000 audits would be selected randomly. As random selection up to 2001 had produced many very low income cases due to the high number of such registered taxpayers, it was decided to select cases using parameters for income levels. These parameters were set to make more effective use of the skilled audit resources available. The selection criteria for 2001 were therefore:

- For Corporation Tax, 20 cases were selected for each district from those companies who were showing profits on their latest tax return
- For Income Tax
  - 20 cases for each district where income did not exceed €25,395
  - 20 cases for each district where income was greater than €25,395 but less than €1.27m
  - 20 cases for proprietary directors
- For PAYE/PRSI, 10 cases per district
- For VAT, 10 cases per district.

For each year, the Audit Policy Branch of the Operations Policy and Evaluation Division allocates cases to districts from those selected by the Statistics Branch using the current criteria in order to achieve the desired number of audits. For 2002, cases allocated to each district were to be screened by the district and the tax at risk under each taxhead identified. One half of the cases were to be audited on the basis for which they were selected and the other half were to be audited on the basis of perceived tax at risk from the screening process i.e. if the screening of the tax at risk of a case selected for comprehensive audit indicated that VAT was the tax at risk then a VAT audit would be carried out rather than a comprehensive audit.

The policy of selecting cases based on income levels has not been repeated for 2003. Instead a specific number of cases were selected at random for each District (1,000 nationally) and these were to be thoroughly screened by each district. The intention was that as a result of the screening a total of 500 cases would be selected for audit (250 for comprehensive audit and 250 for fiduciary taxes audits). The objective was that the screening would reduce the number that were producing a nil yield thereby reducing the amount of unproductive work for Revenue and the associated cost to the taxpayer. These were some of the concerns that district managers and Revenue staff associations had expressed in relation to random audits. A further consideration was the necessity to free up resources to deal with the DIRT Bogus Non Resident programme. The effect of this will also be to reduce the level of random audits to approximately 3% of all audits.

These amendments to the selection of random audits each year indicate that Revenue are reviewing and adjusting the programme. However, with each adjustment the selection moves further away from being random. The focus has shifted from selecting cases at random to ensuring that the random audit programme produces a yield. If the purpose of random audits is to create the prospect that any taxpayer can be audited then any system other than pure random selection will not achieve this objective. The resultant yield should not be important in deciding which cases to audit. In the absence of a random audit programme based on pure random selection it is difficult to see how an indication of the overall level of compliance among taxpayers can be obtained. Revenue has stated that the random audit programme was not designed to measure, in a statistical sense, general levels of compliance among taxpayers. Revenue also stated that the selection criteria had changed in recent years, and that it could be argued that in 2003 an attempt was being made to revert to initial random selection with a screening process kicking in after the random selection. Revenue is conscious of the limited audit resources available and considers that damage can be done to the credibility of the audit programme (both externally and internally) if Revenue is seen to be auditing large numbers of small businesses with little yield. Revenue indicated that the random audit programme will be reviewed during 2003 and one of the issues which will arise is the question of whether the programme can be used as a measure of the general level of tax compliance. If this is accepted it will mean changes in how the programme is conducted.

Random Audit Process

Audits carried out under the random audit programme are no different from audits based on targeted selection. The Revenue auditors carry out the audits in accordance with the relevant legislation and the Code of Practice. As part of this examination the audit files for a sample of 40 completed audits were examined — 28 random audits (carried out under the old Code of Practice) and 12 targeted audits (carried out under the revised Code) — and issues arising are noted below.

- In two of the audits examined there were considerable delays by the taxpayers or their agent in supplying information required to finalise the audit. These audits were not finalised until 13 months and 21 months after the notice of audit was issued. The option of reducing the mitigation of penalties for lack of co-operation was not considered. Revenue stated that in the first case the auditor considered that there had been no attempt to obstruct or hold up completion of a complicated audit, while in the second a reason proffered for the lack of cooperation was accepted as genuine.
- The Code states that auditors require payment of all unpaid tax on record as well as the amount due under the audit settlement. In one of the cases examined the taxpayer paid the audit settlement but was unable to pay the other arrears on record. The taxpayer was instructed to enter into an instalment arrangement with the Collector General but this was not done and the arrears are still outstanding. Revenue has indicated that arrangements are now being made to set up an instalment arrangement in this case to ensure that the arrears are collected.
- Under the new Code where a taxpayer makes a full disclosure accompanied by payment – a qualifying disclosure – there is significant mitigation of penalties. For a disclosure to be a qualifying disclosure it must be in writing, state the full liability for tax, interest and penalties and be accompanied by payment of the total liability. In two of the cases examined where settlements totalled €20,000, the disclosures were treated as qualifying disclosures but did not seem to satisfy the criteria. Disclosures were deficient because they were not accompanied by payment and they did not include calculation of interest and penalties. Revenue has pointed out that there is a learning curve for auditors due to the significant changes in the Code of Practice.
- In one case, the auditor did not open for audit, periods other than those being audited even though the audit findings indicated that earlier periods merited review. The auditor noted that the taxpayer would not have had the resources to pay any liability arising. Revenue indicated that the absence of any unexplained build up of assets and the time required for an extended audit were also factors in the decision.

In cases where earlier periods are not opened, any liability is not computed and put on record. This effectively means that tax is being written off without going through Revenue's write off procedures. Revenue has stated that as it was decided not to open earlier years, there was no question of computing a liability and putting it on record. The opening of earlier periods in audit cases would not necessarily lead to increased tax liabilities for those periods.

- Under the Value Added Tax Act there is a fixed amount penalty for failure to register and for non-submission of returns. In one case examined, the taxpayer was not registered for VAT for a year in which he should have been. The auditor assessed the liability to VAT in the relevant year as €15,237 but the only penalty that could be charged was the fixed sum of €1,523. This seems relatively lenient when compared with a taxpayer who understated his return where the penalty could be as much as 100% of the amount of the understatement. This issue has been addressed in the Finance Act, 2003 which provides for tax geared penalties for failure to file VAT returns.

Results of Random Audits

The total number of random audits completed in each of the last five years is shown in Table 2.13 together with the total yield each year and the average yield per random audit completed. The increase in the number of random audits completed since 1998 can be seen from the figures in the table. Although, 20 less audits were completed in 2002 than in 2001, the total of 720 completed is still significantly higher than in earlier years. The target of completing 1,000 random audits, introduced in 2001, has not been achieved to date. The average yield has increased significantly in recent years from €771 per audit in 1999 to a high of €4,570 per audit in 2001. The significant increase in average yield in 2001 and 2002 over earlier years could be due to the selection of cases from within specified income bands thus reducing the number of lower income cases selected. The system of screening of audits in 2002 prior to deciding what type of audit to carry out did not result in an increase in the average yield, which has fallen in 2002 compared to 2001, or in a change in the percentage of nil yielding audits. However, it should be borne in mind that more than one third of random audits completed in 2002 were selected under the programme for earlier years. As was seen in

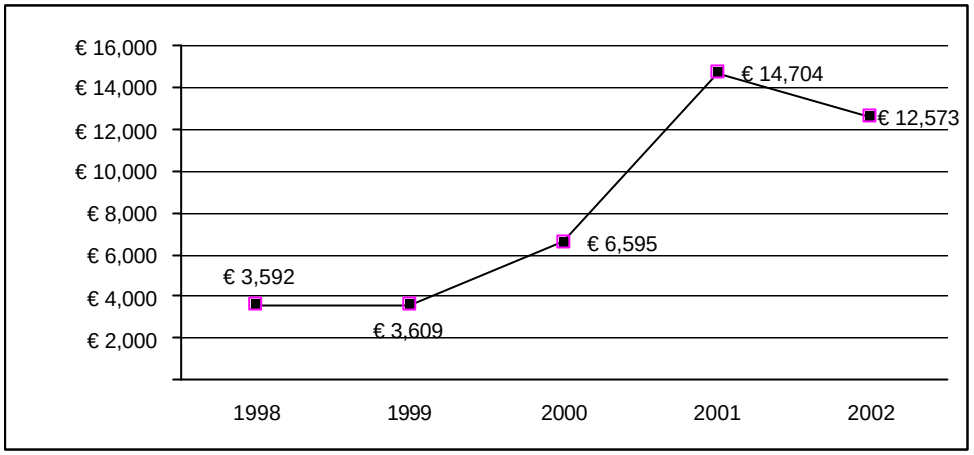
Table 2.12, around 50% of targeted audits produce no yield. Table 2.13 shows that between 68-70% of random audits have nil yields. The difference in the proportion of nil yields between targeted and random audits is not as large as might be expected. Revenue is confident that if the cases were selected totally at random the average yield would be reduced and the number of nil yields would significantly increase.

Table 2.13 Random Audit Results 1998 to 2002

	Total	Nil	Yielding	Total Yield	Average Yield Including Interest and Penalties	Average Yield Tax Only
	Number of Audits			€	€	€
1998	243	182 (75%)	61	219,086	902	728
1999	192	151 (79%)	41	147,975	771	577
2000	437	342 (78%)	95	626,564	1,434	1,127
2001	740	510 (69%)	230	3,381,890	4,570	3,174
2002	720	491 (68%)	229	2,879,121	3,999	2,879

The average yield figures shown in Table 2.13 are based on the total number of random audits completed — both those that yield additional taxes and those that don't. The increase in the average yield is more dramatic if the average yield for each random audit where underpayments are found is calculated. This is represented in Figure 1 and shows an increase from €3,592 in 1998 to €14,704 in 2001 reducing to €12,573 in 2002.

Figure 1 Average Yield per Yielding Random Audit 1998 to 2002



An analysis of the annual results of the random audit programme would be expected to provide a means of assessing the overall level of compliance by taxpayers that had submitted returns i.e. the extent to which reliance can be placed on the 'self assessment' of tax liability. Key performance indicators might be: the % of audits with no yield (returns accepted as originally submitted), the average tax yield in other cases (the extent to which taxpayers are under-declaring tax due), and an estimate of the possible total tax underpayment in relation to returns submitted. However the possibility of deriving an accurate extrapolation from recent programme results has been damaged by the ongoing changes to the methods of selection. Such changes were made by Revenue in an effort to maximise yield from this relatively minor component of the overall audit programme.

Table 2.14 attempts to show how such an extrapolation might be done. It also notes the yield-focused refinements introduced by Revenue in recent years which have moved the process further away from simple random statistical selection.

Table 2.14 Attempted Extrapolation of 'Random' Audit Results 1998 to 2002

Year	Average Yield per Audit (Tax Only)	Total Returns	Possible Tax Underpayment Indicated	Refinements which may distort Statistical Results
1998	€728	340,000	€248m —	Random Audits Extended to VAT and PAYE/PRSI
1999	€577	349,635	€202m —	Only cases with aggregate income <€127,000 included
2000	€1,127	360,323	€406m	
2001	€3,174	367,395	€1,166m —	No. of audits increased, and income parameters introduced
2002	€2,879	400,407	€1,153m —	Screening at district level, to focus on tax at risk

However, it is clear that the availability and application of statistically sound data would provide a realistic and significant indication of the performance of the self-assessment system. Revenue has pointed out that the current random audit programme was not designed to measure, in a statistical sense, general levels of compliance and non-compliance among taxpayers, and it would have difficulties with any extrapolation exercise based on programme results. A review of the random audit programme was underway and these issues would be taken on board in that review.

Review and Quality Control

It is the responsibility of each auditor to agree the amount of the audit settlement with the taxpayer/agent. All settlements require further approval and in this regard the District Manager or Audit Manager can approve settlements up to €50,000. An Assistant Secretary may approve settlements up to €100,000 and any amounts over that require the approval of a Revenue Commissioner. A short one page report setting out the results of the audit and the details of the settlement forms the basis for these approvals. Audit files are not reviewed in each case. Consideration should be given to including on the audit unit report the category of penalty which has been applied in each case. Revenue has indicated that this is being provided for in the audit case management system which is being updated. Such information could provide a useful insight into trends in compliance by different taxpayers or classes of taxpayers and could feed into Revenue's risk selection system. Revenue ensures quality control in the conduct of audits by the requirement that 5% of audits are reviewed within the district and 25 are reviewed each year by the relevant Regional Director.

One of the aims of the audit programme is to ensure that as a result of the audit the taxpayer becomes compliant in the future. Revenue seeks to assess this by re-auditing a number of cases. The re-audit programme is not of course confined to random audits but includes all audits which yielded €6,349 or more. These cases are then reviewed four years after the original audit and the aim is to re-audit 10% of such cases based on the districts' assessment of the tax at risk. Summary results of re-audits for 1999, 2000 and 2001 are in Table 2.15 below. These results would appear to indicate that up to one half of taxpayers may remain non-compliant following an audit. It should be borne in mind that the selection of cases for re-audit is subject to some risk assessment so that possible non-compliance is identified prior to the re-audit. Nevertheless, with more than one fifth of these audits yielding more than on the original audit, the success of audit as a means of ensuring long term compliance needs to be assessed. This significant level of taxpayers who remain non-compliant even after an audit may also be an indication that the penalties imposed did not act as a deterrent. Revenue has stated that in addition to monitoring the compliance records of previously audited taxpayers, an important aspect of the re-audit programme is also to ensure that taxpayers are aware that Revenue has not gone away just because the audit is finalised.

Table 2.15 Re-Audit Programme Results

	1999	2000	2001
Number re-audited	226	194	118
Nil Yield	86 (38%)	79 (41%)	51 (43%)
Yielding	140 (62%)	115 (59%)	67 (57%)
Lower yield on re-audit	89 (39%)	75 (39%)	n.a
Higher yield on re-audit	51 (23%)	40 (20%)	n.a
Original Yield	€8,291,743	€7,468,587	€3,466,700
Yield from re-audit	€4,926,565	€3,459,220	€1,678,644
Re-audit yield as % of original	59%	46%	48%
Average original yield	€36,689	€38,498	€29,379
Average re-audit yield	€21,799	€17,831	€14,226

Conclusions

The Audit Programme is a key component of Revenue's policy of deterring evasion and maximising compliance with tax law. The programme is targeted at areas of perceived revenue risk. Nearly 16,000 audits were completed during 2002 with a total yield of €256m. In approximately one half of these cases, the taxpayer's return was accepted as submitted. The total number of audits included 720 which were selected under a Random Audit Programme which is intended to improve compliance by giving every taxpayer a chance of audit selection, and to indicate that Revenue was active within all sectors and levels

of economic activity. The random audits yielded €2.9m including interest and penalties, while returns were accepted as submitted in two thirds of the cases reviewed.

While an average tax yield per audit of €2,879 for the 2002 Random Audit Programme may appear on extrapolation to indicate a potential overall tax yield of about €1,000m, such a conclusion is not sustainable at this stage as the final case selection is not made on a purely random basis. Under the current approach there are distortions arising from the exclusion of high value cases which are already subject to a screening programme, adjustments to ensure a geographical spread, and efforts to increase yield by a focus on higher income bands and indications of risk.

While the increasing yield from the overall Audit Programme (2000 €133m, 2001 €197m, 2002 €256m) is no doubt welcome from a collection viewpoint, it must also give rise to some concern as an indicator of the extent to which tax returns may be understated and of the extent of the overall tax shortfall to the Exchequer without giving any clear picture of the level of overall non-compliance. That key management information, which would allow benchmarking of the impact of compliance initiatives and of the overall Audit Programme, would be provided by the random audit segment of the programme if cases were selected and examined from each year's returns on a purely random basis. Any reduction in random audit yield would have little impact on the overall yield from the Audit Programme (random audit provided only 1% of the total yield in 2002). A possible preponderance of small cases would underline the current objective of the universality of audit check. Equally, it is not unknown for sizeable tax evaders to submit minimal level income returns. In response to this report, Revenue has stated that the use of the random audit programme as a measure of the general level of tax compliance will be examined during 2003.

The results of the re-audit programme of taxpayers that had significant liabilities on the original audit four years previously may indicate a requirement for an ongoing monitoring procedure of such cases during the years immediately following the original audit. The number of taxpayers that remain non-compliant would also appear to indicate that the original Revenue audit and settlement did not provide sufficient deterrence to make future non-compliance an unattractive proposition.

2.10 Environmental Levy

The Waste Management (Amendment) Act, 2001 amended the Waste Management Act, 1996 and provided for the introduction of an environmental levy on plastic shopping bags. The Act gave the Minister for the Environment and Local Government the power to make regulations to specify matters in relation to the collection of the levy and other administrative matters. These regulations – Waste Management (Environmental Levy) (Plastic Bag) Regulations 2001 - were made in December 2001. They provided for the introduction on 4 March 2002 of a 15 cent levy on each plastic bag supplied by retailers to customers. The levy is imposed at the point of sale. Certain types of bag are exempt – re-usable bags sold for 70 cent or more, bags used to contain fresh meat, fish, poultry, cooked food or ice and bags used to contain loose fruit and vegetables and other foods that are not otherwise packaged. Under the regulations the Revenue Commissioners are the collection agency for the levy and returns must be made to them by the 19th of the month following the end of each accounting period — each calendar quarter is an accounting period. The amount due is deducted by Revenue directly from the retailer's bank account. The regulations require the retailer to authorise Revenue to debit the amount payable. Retailers are required to maintain stock records of their plastic bags. Revenue officials are empowered to inspect the books and premises of retailers.

In preparation for the introduction of the levy, Revenue scanned the records of those who were registered for VAT and whose trade classification (NACE) code indicated retail activity that could involve the supply of plastic bags. This produced a database of some 36,000 retailers. A manual examination of these cases was then carried out to remove cases where it was obvious that there was no potential liability to the levy.

This reduced the database to 29,000 cases and these were issued with returns for the first period of the levy. In the period 4 March to 31 December 2002, Revenue collected €7,188,973 on foot of the levy.

As the levy was only introduced during the year of account, my objective was to establish the extent to which assessment and collection procedures had been put in place, and how they were operating. An examination of a random sample of 100 traders[15] known from audit records to have been registered for VAT indicated that approximately 80% of the VAT registrations which were still 'live' were registered for the levy. Returns had been submitted by 60% of cases registered, of which two thirds were 'nil' returns. I asked the Accounting Officer for Revenue's assessment of the current level of compliance with the Environment Levy regulations. I also sought information as to when audits and inspections would commence.

The Accounting Officer supplied details of the returns compliance rates as measured at 15 August 2003 for the first five accounting periods, and these are set out in Table 2.16. He stated that while the database of 29,000 for the first issue had since been reduced to approximately 23,000 cases, Revenue's assessment was that the 'true' compliance rates were significantly higher than shown in Table 2.16 as the database, on which the percentages are based, still contained many cases that had no liability to the tax. That was supported by the result of a limited campaign of telephone contact by Revenue with non-compliant cases which indicated that approximately 80% of non-filers had no liability to the levy. The tax registration process was currently being examined with a view to identifying and registering any new cases that may be liable for the plastic bag levy at the time of general tax registration.

Table 2.16 Environmental Levy Compliance Rates

Period	Number of Returns		% Compliance
	Issued	Accounted For	
30 June 2002	29,307	23,039	79%
30 September 2002	26,520	19,844	75%
31 December 2002	24,850	17,751	71%
31 March 2003	23,094	14,696	64%
30 June 2003	22,688	12,073	53%

The collection system now had the capacity to issue estimates for levy cases that fail to file returns. The issue of estimates would commence in September 2003 and it was expected both to improve compliance and to identify cases that had no liability to the levy. Revenue has stated that the charging of interest on late payment of the levy, which was provided for in the Protection of the Environment Act, 2003[16], should also improve compliance.

The Accounting Officer indicated that a Service Level Agreement entered into between Revenue and the Department of Environment and Local Government provided that Revenue was responsible, inter alia, for:

- Carrying out verification checks relating to the accuracy of returns
- Pursuing accountable persons who failed to deliver returns and payments within the statutory time limits.

Revenue had not carried out any audits or inspections in relation to the levy to date, but intended to carry out audits in conjunction with the existing programme of audits under other taxheads once the relevant

[15] Only traders whose NACE code indicated retail activity which could involve the supply of plastic bags were included. The sample was reduced to 46 'live' VAT registrations as 54 of the sample of 100 had ceased trading.

[16] Implementation of this provision is subject to the signing of a commencement order by the Minister for the Environment and Local Government.

Revenue staff have been duly authorised, as required, under the Levy regulations. Audits were expected to commence in the final quarter of 2003.

Revenue expected that the additional measures would improve compliance and clean up the register and considered that, as the levy had only been in existence for little over a year, that a compliance rate ranging up to 79% was satisfactory particularly in light of indications that the vast majority of non-compliant filers did not appear to have any liability to the levy.

Chapter 3 Office of Public Works

3.1 Provision of Accommodation for Probation and Welfare Service

It was noted in the course of audit that the Office of Public Works (OPW) leased the properties as shown on Table 3.1 to provide office accommodation for the Probation and Welfare Service (PWS).

Table 3.1 Properties Leased

Property	Location	Rent Commenced On	Term Years	Lease Signed	Annual Rent Payable €	Annual Service Charge €	Square Feet	Cost of Fit-Out €	Date of Completion of Fit-Out	Date of Occupation
A	Dublin	1/6/01*	10	Not signed	152,368	49,460	7,500	1,530,000	Ongoing	October 2003
B	Dublin	1/5/00	10	Not signed	45,802	-	3,000	360,000	August 2003	August 2003
C	Midlands	1/2/00	20	Not signed	26,664	3,631	2,100	110,599	25/9/00	February 2001
D	South East	14/2/00	20	Not signed	19,046	-	2,000	87,106	28/1/00	June 2000
E	North East	17/9/00	9	Not signed	48,885	-	2,806	**	**	July 2001

*Lease commenced 1/6/00, first year free. Service charges commenced 1/6/00.

**Fit-out carried out by the Department of Justice. Details not available.

An examination of the files relating to the leasing of the properties revealed the following:

Delays in signing lease agreements

At the time of audit in June 2003, lease agreements had not been signed in respect of any of the properties, even though lease payments had begun from as early as February 2000.

As I was concerned that delays in the signing of the lease agreements may have given rise to the State not having the protection against risks which it would normally have in a signed agreement, I enquired from the Accounting Officer as to the reason for the inordinate delay in signing the lease agreements subsequent to the commencement of lease payments, and whether he thought the delays were justified.

The Accounting Officer stated that the process of completing the formal legalities associated with the signing of lease agreements could at times be somewhat protracted. Invariably detailed issues relating to such matters as insurance, repairs and maintenance, rent reviews, service charges, etc, arose which required clarification, discussion and negotiation. All of this could result in extensive correspondence and consultation before agreement was reached.

Notwithstanding this, he accepted that the completion of the legal process had taken longer than it normally would. He attributed this in part to discontinuities in work-flow which occurred following the re-organisation of the work in the Property Management Services area of the Office and also, in the case of property A, to uncertainties surrounding the project's future following objections from local traders and residents to the location of a Probation and Welfare Service unit within their locality. He stated that leases for properties B, C, D, and E would soon be signed and that the Chief State Solicitor was continuing to pursue all outstanding issues in relation to property A with a view to finalising matters as soon as possible.

Fitting Out

Cost of Fitting Out

The cost of fit out of property A was estimated to be between €127,000 and €152,000 at the time the building was being initially assessed as to its suitability in May 2000. However in June 2001 the OPW consultant architect estimated that the cost of the fit out would be €1.2m, (excluding design fees) and in August 2002 expressed concern that some of the work included in the proposed fit out would not normally be included in a fit out project. Her concern centred on proposed work on the boiler room, plant room, replacement windows, insulation to external walls, mechanical and engineering services, new felt on roof, access ladders, fireproofing, fire alarms and emergency lighting. The actual cost of fit out, work on which was commenced in April 2003, is expected to be about €1.53m.

I asked the Accounting Officer if he was satisfied that all of the works carried out were properly the responsibility of and should be paid for by the OPW rather than the landlord, particularly in the light of the reservations expressed by the consultant architect, and that they will not be used by the landlord at rent review stage to increase the rent.

I also sought information from him on the huge disparity between the estimated and actual fit out costs, and the wisdom of carrying out such major works without a lease agreement being in place.

The Accounting Officer stated that the landlord was carrying out all works proper to his remit and that there were no works being carried out by OPW that were the responsibility of the landlord.

He also stated that in these situations OPW always insisted that any fit out works carried out by OPW were excluded at rent review, and that although the lease had yet to be signed, the Chief State Solicitor had made it clear to the landlord's solicitor that OPW would not agree to any rent review clause which did not except the OPW fit out from the rent review.

The original estimate of €150,000 was a preliminary estimate based on a walk through inspection. This estimate did not take into account the final brief of requirements. It also did not include mechanical and electrical costs, structural partitioning works, air conditioning and the costings were not based on any detailed sketch design drawings. The final cost of €1.53m was in line with current OPW cost norms.

He went on to state that in situations where a customer Department had a priority need to gain access to a premises, a judgment had to be made by the OPW between the obligation to satisfy the customer Department's requirements on the one hand and the practicalities of completing the legal formalities on the other hand. Bearing in mind the fact that the detailed legal formalities could take some considerable time to complete, the decision had been taken that the fit out works should commence prior to the finalisation of the lease so as to facilitate occupation of the premises by the PWS.

Delays in Completing Fit-Out

Even though lease payments had begun on properties A and B in June 2001 and May 2000 respectively, the fit out work will not have been completed by OPW in the case of property A until October 2003, and in the case of property B was not completed until August 2003.

I enquired from the Accounting Officer as to the reasons for the inordinate delay in having the fit out works completed and bringing the buildings into productive use, subsequent to the commencement of lease payments, and whether he thought that the delays were justified.

The Accounting Officer informed me that the main reason for the delay in completing the fit out works for property A was the fact that local traders and residents had been uneasy about the proposed use of the

premises. Furthermore, various works had to be completed by the landlord before the premises were deemed suitable for the PWS, such as replacement of stairs, installation of fire doors and installation of a lift.

In relation to property B he stated that the OPW fit out could not be progressed until necessary remedial works had been carried out by the landlord, and that as soon as the landlord's works had been satisfactorily completed, OPW had commenced the fit out and the premises had been occupied by the PWS in August 2003.

Delays by Landlord in carrying out Repairs

In October 2001 the consultant architect for OPW raised concerns over the condition of the brickwork, roof and drains in relation to property B, and indicated that there were no drainage or water services provided for the unit. In May 2002 he produced a further report containing details of matters to be completed before the fit out could go ahead, including water and drainage. Despite writing to and meeting the Landlord in July 2002, it seemed from documents on file that the repairs had still not been satisfactorily completed by November 2002, when the Fitting Out was in progress.

I asked the Accounting Officer if the building had been inspected prior to the commencement of lease payments, and if so the reasons why the structural repairs needing to be carried out by the Landlord, which had still not been completed by November 2002, had not been identified and completed before any rent was paid.

The Accounting Officer stated that the building had been inspected prior to the commencement of lease payments, but that this acquisition must be viewed in the context of the prevailing market conditions at the time, when there was a scarcity of suitable accommodation available and conditions were advantageous generally to landlords. Because of the priority requirement of the PWS it had been decided to secure the premises as quickly as possible. At all times discussions had been ongoing with the landlord, regarding the works to be completed by him prior to the commencement of the OPW fit out. A consultant architect had been appointed by OPW to oversee the project and the landlord's works had been clearly identified. The consultant Architect involved had clearly certified that all necessary landlord works had been satisfactorily completed prior to the commencement of the OPW fit out in late 2002.

Rent Levels

The OPW valuer estimated that the rent payable for property A should have been €11.50 per square foot. Rent at the rate of €20.31 was subsequently agreed. The lease term was 10 years, the rent would be payable in advance and the first year would be free. A rent review would take place after five years to open market value.

I asked the Accounting Officer if he was satisfied that the rent agreed, which was almost twice the going rate in the area as estimated by the OPW valuer, was justified in the particular circumstances.

The Accounting Officer stated that while the rent agreed was €20.31 per square foot, per annum, the fact that the first year was rent free had effectively reduced this to €16.25 per square foot. This was practically half the initial asking price of €29.20 and compared extremely favourably with rents being paid by other tenants in the shopping centre. This level had been achieved despite the urgency of the requirement and the lack of suitable alternatives, and it was the professional advice of the OPW Valuer that these were the best terms achievable.

He informed me that the leasing of property A should be viewed in the context of the extremely location specific requirements of the PWS particularly in the greater Dublin area. The general policy was to relocate from central city locations to local communities and the availability of suitable accommodation in such circumstances was often problematic.

OPW Management Processes

As the audit findings seemed to raise serious questions as to the adequacy of OPW's procedures in relation to the renting of property, I put it to the Accounting Officer that there needed to be a greater emphasis by OPW on bringing properties into productive use within a much shorter timeframe following the commencement of lease payments, clearer rules needed to be determined in relation to the expenditure which would come within the definition of fit out costs, and procedures needed to be streamlined so that there was no undue delay in signing lease agreements once the terms had been agreed, to ensure that the State's interests were adequately protected.

The Accounting Officer stated that in the past year a full set of business procedures had been prepared and approved to clarify the administrative process in the property management area of the OPW. These procedures had recently been endorsed by the National Standards Authority of Ireland (NSAI) and had been accepted by the Authority as being in compliance with I.S.O. requirements. The application of these procedures was being regularly monitored both internally by the OPW Quality/Compliance Manager, and externally by periodic NSAI audits. It was expected that this would lead to a more consistent and effective operation of the OPW property business unit. The Commissioners further expected that the consistent application of the new business procedures would result in property acquisitions, particularly leases, being completed in a timely manner. This was dependent on the cooperation of the landlord, as some matters such as structural works were issues which necessarily had to be agreed between OPW and the landlord. Notwithstanding the foregoing, there would, in exceptional circumstances, be instances where all of the agreed procedures could not be followed to the letter.

3.2 Use of Limited Liability Companies

In my Annual Report for 2000, I referred to the acquisition by OPW of land which is thought to include a significant part of the lands on which the Battle of the Boyne was fought. The acquisition was effected in August 2000 through the purchase for €9.4m of the share capital of a company, Deepriver Limited, which owned most of the site and the direct purchase of the rest from another company for €570,000. The shareholders of Deepriver Limited insisted that the sale of the main portion of the site should be through the purchase of the company for tax purposes.

An examination of correspondence between OPW and the Department of Finance subsequent to the acquisition of the company revealed that the Department strongly advised that the company should be liquidated as soon as possible. However, I noted at the date of audit in June 2003 that the company was still in existence under another name and incurring expenses associated with its status as a company. Since its acquisition in August 2000 company related expenses of €55,000 were paid to cover tax advice and audit services, legal advice and insurance. I also noted that during that period, the activities of the company were confined to matters such as grazing and fishery rights and the provision of security at the site – matters that would otherwise in the normal course be dealt with directly by OPW. In view of what appeared to me to be unnecessary expenditure, I sought the Accounting Officer's justification for the company's continued existence.

He informed me that, having acquired the company, the question arose as to whether it should be liquidated. In considering the matter, the Commissioners for Public Works were conscious of their strategic responsibility to develop innovative and commercially minded approaches for the provision and development of State property. Concepts such as public private partnerships and collaborations were

being actively considered. At the time there was no clear structure, legal or otherwise, or precedents in place to allow Government Departments undertake such activities. In that context it was thought that the coincidence of the availability of a limited company – Deepriver Limited – might perhaps provide an opportunity or vehicle to pursue non-traditional approaches. It was decided therefore to take no immediate steps to liquidate the company. He stated that the name of the company was changed to Public Property Development Limited to demonstrate a clear break with its previous private sector existence and because it was considered desirable to reflect in its title the fact that the company and its assets were now publicly owned.

The Accounting Officer also informed me that by June 2003 precedents had been established and the National Development Finance Agency had been created to deal with non -national funding of State capital projects. The Commissioners were therefore satisfied that the intended use for which the company was retained was no longer relevant and they as directors resolved to wind up the company. The necessary steps have been put in place and the estimated timescale is six months.

As regards the property itself, he stated that preliminary plans had been drawn up by OPW to deal with how the site and buildings could be developed. The indicative cost of development was €40m but at this stage funding is not available to undertake the work. To date, only minor work such as surveys of the house and grounds have been carried out to the value of €212,000.

Acquisition of a limited company was also used to purchase an office building in Dublin in September 2000. I noted that this company, Colmstock Properties Limited was also still in existence at the date of audit to no apparent purpose and that €59,000 had been paid out in the period since then to cover company related expenses. The Accounting Officer informed me that the process of winding up Colmstock Properties Limited was underway and it was expected to be concluded by the end of 2003. The estimated cost of the winding up is €36,000.

Chapter 4 Department of Justice, Equality and Law Reform

4.1 Provision of Accommodation for Asylum Seekers

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

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

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

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

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

The Department's Response

Management of Acquisition Programme

General Approach

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

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

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

Planning Challenges

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

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

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

Community Consultation

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

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

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

Strategy Co-Ordination

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

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

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

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

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

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

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

Table 4.1

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

*Indicates not yet operational.

Issues Relating to Unused Properties

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

Devereux Hotel - Rosslare

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

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

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

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

Department's Response

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

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

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

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

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

OPW Response

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

Site at Leggetsrath Co. Kilkenny

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

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

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

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

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

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

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

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

Department's Reponse

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

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

OPW's Reponse

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

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

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

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

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

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

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

Broc House - Donnybrook, Dublin

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

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

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

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

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

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

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

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

Department's Response

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

OPW's Response

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

Ionad Follain – Myshall, Co. Carlow

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

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

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

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

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

Department's Response

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

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

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

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

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

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

OPW's Response

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

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

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

Lynch's Lodge Hotel - Macroom, Co. Cork

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

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

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

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

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

Department's Response

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

OPW's Response

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

4.2 The Management of Sick Leave in Prisons

Background

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

The sick leave rules governing Prison Officers are similar to those applying in the civil service generally. As with most occupations, there is an entitlement to a limited amount of uncertified sick leave. Civil service sick leave rules set this at a maximum of seven days in any twelve-month period. Sick leave in excess of this requires the officer to submit a medical certificate to the prison authorities on an ongoing basis while on such leave and on returning to work. Full pay is allowed to a prison officer (as it is to civil servants) up to a maximum of six months in any one-year period and half-pay thereafter, subject to a maximum of twelve months sick leave in any period of four years or less. On reaching this limit, the staff member may be taken off payroll and awarded unpaid sick leave[17].

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

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

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

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

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

Audit Objectives and Scope

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

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

Audit Findings

The staff complement of the Prison Service, working from sixteen prison establishments[19], at the end of each of the years 2002, 2001 and 2000 was 3,318, 3,235 and 3,200 respectively. These figures exclude those working in administration, management, a dedicated stores unit and a staff Training Centre.

The Incidence of Sick Leave

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

Sick Leave over Time

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

Table 4.2 Sick Leave taken in the Period 1997-2002

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

Comparisons With Other Employments

In order to put prison officer sick leave in context, my examination included a request for annualised statistical information in respect of the entire Civil Service. The latest full year statistics available was for the period 1 July 1996 to 30 June 1997. From the data collated, 213,429 days were taken in that year by 22,869 civil servants[21], giving an average 9.3 days per person. An analysis of certified and uncertified leave was not available. The civil service statistic of 9.3 days is computed on the basis of total numbers serving. The comparable figures for prison officers were 17.8, 18.9 and 18.0 for each of the three years 2000, 2001 and 2002. The closeness of these averages to the averages per prison officer shown in Table 4.2 reflects the very high number of prison officers who avail of sick leave.

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

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

[20] Availing of sick leave.

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

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

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

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

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

Sick Leave by Prison

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

Table 4.3 Analysis of Average Days Sick Leave 2000-2001 by Prison[22]

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

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

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

[23] The Midlands prison opened in November 2000.

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

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

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

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

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

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

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

Prison[25]	No. of Officers taking over 183 days in the period[26]	Total Sick Leave Involved	Total Sick Leave by Prison[27]	As a % of Prison Total
Cork	41	13,679	25,061	55%
Limerick	22	8,208	17,213	48%
Loughan House	2	752	1,990	38%
Curragh	5	1,540	4,299	36%
Castlerea	10	2,997	8,538	35%
Training Unit	4	1,000	2,972	34%
Portlaoise	22	7,624	23,777	32%
Fort Mitchell	3	1,231	4,180	29%
Cloverhill	13	3,584	12,916	28%
St. Patricks	7	2,350	9,407	25%
Mountjoy	21	7,332	32,657	22%
Shanganagh	1	306	1,861	16%

[25] Midlands Prison is excluded from the analysis as it only commenced operation in November 2000.
[26] The days taken would not necessarily be continuous absences, hence the figures differ from those given above for continous absences.
[27] Excluding the Midlands prisons.

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

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

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

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

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

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

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

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

Medical Factors Giving Rise to Sick Leave

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

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

Table 4.5 The Causes of Sick Leave 2000-2002[28]

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

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

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

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

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

The Cost of Sick Leave

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

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

[28] Source: Office of the Comptroller and Auditor General.

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

Table 4.6 The Cost of Sick Leave in Overtime 2000-2002[29]

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

Operational Response to Sick Leave

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

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

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

[29] For comparative purposes, costs for all years are stated in terms of the average overtime rate applying in 2002 which was €28.50 per hour.
[30] Mountjoy data unavailable for 2000.

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

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

Control and Management of Sick Leave

General Policy Approach to Control and Management

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

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

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

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

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

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

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

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

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

Performance Management

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

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

Monitoring and Control Procedures

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

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

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

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

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

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

Prison-wide Programmes to Manage Sick Leave

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

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

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

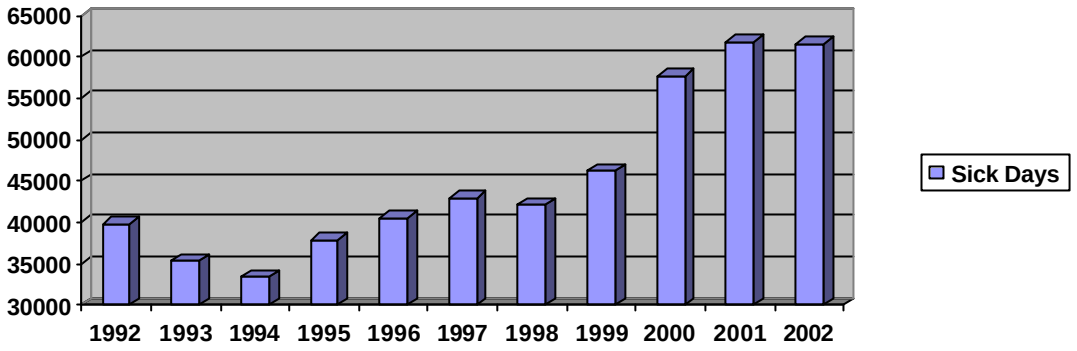
Under the Programme, eight meetings are to be convened between the Governors, the prison officer facing dismissal proceedings and the POA, with the intention of obtaining a resolution to the benefit of the Prison Service and the employee by the end of the eighth meeting. It is understood from the Prison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

Disciplinary Procedures

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

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

Figure 2



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

Retirement on Medical Grounds

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

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

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

Chapter 5 Courts Service

5.1 Refurbishment of Cork Courthouse

Introduction

Under the Courthouses (Provision and Maintenance) Act, 1935, local authorities were obliged to make premises available to the Department of Justice, Equality and Law Reform for the conduct of Court business.

With effect from 9 November 1999, the provisions of that Act were repealed and responsibility for the provision and maintenance of court buildings and facilities was conferred by the Courts Service Act, 1998 on the new Courts Service.

The capital cost of acquiring new premises, or expanding, refurbishing or improving existing court buildings and the cost of their maintenance and equipping are borne on the Courts Service Vote.

Refurbishment Project

In 1995, the Department commenced a process of refurbishment of Cork Courthouse, Washington Street, Cork, which housed Courts staff and the Cork City and County Sheriffs and their staff. Refurbishment of the exterior stonework of the building referred to as Phase I was approved by the Department in June 1995. Cork City Council (the Council) placed the contract for the work which was completed in 1999 at a cost of €3.8m which was borne on the Department's Vote.

Around the same time in 1995, the Council submitted plans to the Department for Phase II – internal refurbishment of the building.[32] The Department was concerned to ensure that all aspects of the refurbishment and, in particular, project management and the architectural heritage aspects of the development were properly managed. Accordingly, the Department considered that:

- An architectural competition be instigated for the works, administered by the Royal Institute of the Architects of Ireland and OPW
- OPW be involved in the process of appointing the design team consultants.

However, the Department did not progress these objectives at that time and design work continued under the control of the Council.

By July 2001, the scale and projected cost of the project had escalated from an estimated €6.35m to over €20m. The original plans were revamped to provide additional accommodation including incorporating the original basement areas. According to the Accounting Officer, the alternative, because of the increasing demand for the rapidly expanding Cork area, would have required abandoning the existing courthouse and providing a new courthouse on a new site.

In October 2001, the OPW was asked to nominate a project manager to ensure timely and within budget delivery of the project. OPW appointed a project manager in February 2002.

[32] The Cork City Architect supplied further plans for the internal refurbishment, referred to as "conceptual plans" by the Department, in March 1998.

A contract for the refurbishment was awarded to the lowest bidder on 29 April 2003. The Phase II project contract is to be completed within 18 months for the sum of €26.5m (including design team fees, furniture and equipment costs amounting to €6m).

As I was concerned about the delays in getting the project underway and the financial impact of midstream changes in the overall management of the project I sought the views of the Accounting Officer.

The Accounting Officer informed me that in his opinion it was not within the power of the Department to organise an architectural competition or the involvement of OPW in the project without the agreement of the owners (the Council). It appeared to him that such agreement might not have been forthcoming. However the position changed with the passing of the Courts Service Act, 1998 which gave statutory responsibility to the Service for the provision and maintenance of court buildings. It was possible to involve OPW after November 1999.

The Accounting Officer also informed me that the original design team was retained as it was prepared to take instructions from the Courts Service on requirements for the project, given the changed statutory role which the Courts Service then had in the provision of court facilities. They were also prepared to consult with all court users in conjunction with the staff of the Courts Service Estate and Buildings Directorate.

With regard to the escalation in cost of the project, the Accounting Officer observed that the estimated cost of €6.35m referred to was a very provisional cost and, as far as he was aware, was not based on actual plans. Construction inflation between 1995 and 2003 would have accounted for a 60% increase and would have raised the provisional cost to €10.16m. The original estimate also did not include the cost of consultancy fees, capital contributions, site investigations, furniture, fittings and equipment and contingencies totalling €6m.

With regard to the delay, from 1995 to 2003, in proceeding with Phase II of the refurbishment project, the Accounting Officer stated that it had been necessary to review the draft plans in existence when the Courts Service was established. The Courts Service was not satisfied with the plans which it had inherited from the Council. There had been no consultation with court users regarding requirements, and the plans fell far short of the accommodation and facilities required for a city of the size and population of Cork. In addition the plans did not take account of future needs in terms of office accommodation for court facilities or the need to ensure proper arrangements for holding and transferring prisoners to Court.

The Accounting Officer added that the Project Manager appointed in February 2002 reviewed the plans and costings for each element of the work, prior to tenders being sought. He stated that the revised plans bore very little resemblance to what was originally envisaged in 1995 and that the substantial changes and improvements to the original plan also contributed to the higher costs.

In all the circumstances, it was necessary for the Courts Service to undertake an extensive consultation and needs assessment examination. Although the Accounting Officer does not believe that there was an inordinate delay in having the planning completed, he acknowledged that there was a delay in obtaining approval for the financial arrangements to enable the project to proceed.

Funding the Project

It has been the practice since the establishment of the Courts Service in 1999 to fund capital expenditure on courthouses directly from the provision in Subhead B of the Courts Service Vote. The Courts Service considered having this project carried out under the Public Private Partnership (PPP) model. However this did not occur. Following negotiations between the Courts Service and the Council, it was agreed that

the Council (which remains the owner of the building) would finance the project by means of a commercial loan arranged by the Council. The Courts Service agreed to rent the courthouse at an annual rental of approximately €2m from the Council over 20 years - the term of the loan.

The Accounting Officer stated that the total cost of this project could not be met from the Courts Service capital budget. The proposal to have the project carried out under the PPP model was not proceeded with because sanction was not obtained to do so. The Accounting Officer attributes this to considerations which emerged in connection with the impact of PPP schools projects on the General Government Balance[33]. In addition, the plans had already been prepared and there would have been significant further delays if the project were to be undertaken by way of PPP.

The Department of Finance approval which was obtained for this proposal in February 2003 noted that any recourse by the Council to borrowing to finance the improvement works would be included in the calculation of the General Government Balance.

Additional Costs of Providing Interim Accommodation

Up to the time that the Courts Service Act, 1998 became law, responsibility lay with local authorities to provide accommodation for court purposes. Therefore, the burden of rent was borne by them. With effect from November 1999, the Courts Service became responsible for the cost of such rentals.

The Courts Service rents properties mostly from the private sector in order to facilitate court business. Such properties include community halls and hotels. The total annual rental charges for all rental accommodation runs to approximately €5.2m, with a negligible proportion of this being in respect of local authority premises.

Department of Finance sanction was sought by the Department of Justice, Equality and Law Reform in 1998 to enter into an agreement under which the Council would rent and adapt alternative accommodation for the Courts Service arising from the need to fully vacate the Washington Street premises for the duration of the refurbishment works. These were then expected to take up to two years. The expected total cost for a two-year period was €1.5m approximately (made up of €500,000 rental and €1m for necessary adaptation works). This was to be borne by the Department (50%) and by the two Cork local authorities.

As it seemed that rental accommodation was acquired earlier than necessary and subsequently leased for a period well beyond the anticipated completion date for the refurbishment works and at a substantially increased rental cost, I asked the Accounting Officer to provide details of the leases concluded and the costs associated with these leases. As the Courts Service assumed responsibility for providing accommodation for the staff of Cork City and County Sheriffs' Offices who had been housed in the Washington Street Courthouse premises until October 2002, I also sought details of these arrangements.

The Accounting Officer informed me that the Council leased accommodation at Camden Quay in the city for court facilities with effect from 1 May 1999 for a two-year period at a cost of €761,843 per annum (including rental and necessary refurbishment costs). As agreed, the Department met half of the cost.

After the Courts had been using the premises for some months a number of shortcomings were identified which required additional works. These works ultimately cost the Courts Service a further €565,033 leading to total Exchequer expenditure under this lease of €1,326,876 as against €750,000 originally estimated as the cost of the interim accommodation. Notwithstanding the initial expenditure on adapting

[33] See section 7.3 — Observations of the Department of Finance.

the premises to the court's needs it was noted from papers, dated February 2003, that substantial remedial work would now be necessary to deal with serious health and safety issues associated with these premises. However, the Accounting Officer informed me that these works would only have been necessary had the refurbishment not proceeded. The users of the premises, judges, staff practitioners and others are prepared to work within the constraints and deficiencies of the building.

Because of the delays in getting the project underway OPW was asked to negotiate a new lease on behalf of the Courts Service on the expiry of the original arrangement in May 2001. The landlord had been unwilling to sell the property. The minimum lease period that could be negotiated was 9 years and 11 months with a break option after five years subject to nine months penalty rent. The rental agreed was €761,842 per annum. This is a threefold increase on the rental element of the lease agreed two years earlier. The Courts Service has the option to assign the lease to another State Agency when it vacates these premises at Camden Quay.

The Accounting Officer also stated that the Courts Service has now rented accommodation for the Sheriffs. The alternative would have been a lengthy dispute with the Sheriffs, which would have frustrated and delayed the commencement of the refurbishment and possibly resulted in costly litigation. The Accounting Officer said that the arrangements in respect of the leases for the Sheriffs are personal to them and do not confer any entitlements to their successors. The annual cost of these leases is €39,489.

Chapter 6 Department of the Environment, Heritage and Local Government

6.1 Urban and Village Renewal

A continuing programme of urban and village renewal and regeneration is sponsored by the Department of the Environment, Heritage and Local Government and funded by a combination of European Structural Funds (ERDF and EAGGF[34]), Exchequer, local authority and contributions from other participating bodies. EU involvement is through Sub-Programme 3 of the Operational Programme for Local Urban and Rural Development 1994 – 1999 (OPLURD) which was designed to support a wide-ranging programme of urban and village renewal and encourage social and economic development at local level. The programme was categorised under 5 measures.

- Flagship projects in the five main cities for the economic and social regeneration of their central areas.
- Landscaping, pedestrianisation and physical improvements to streets and the eradication of derelict sites in urban centres throughout the country.
- Village renewal measures, including general amenity improvements and the development of focal meeting points as well as a range of other improvements designed to underpin the economic future of the villages concerned and the agriculture-based community on which they are dependent.
- Assistance to civic trusts, local authorities and other local development bodies to rehabilitate the built environment in urban areas, through the conservation and restoration of urban architecture and heritage buildings.
- A programme of cultural initiatives in the Temple Bar area of Dublin.

The Urban and Village Renewal Measure of both the Border, Midland and Western and the Southern and Eastern Regional Operational Programmes continues and expands the work undertaken with OPLURD assistance under 4 categories over a planned period 2000 to 2006. Works on physical, social and economic rejuvenation of the Dublin Docklands replaced Temple Bar in this programme.

Funding for the programme in the period 2000 to 2006 is provided from Exchequer and local sources and, to a lesser extent than the 1993-1999 programme, by the ERDF. The programme is managed by the Border, Midlands and Western and the Southern and Eastern Regional Assemblies. The individual projects are carried out under contract to the relevant local authorities and other promoting bodies. Exchequer and EU funding for the projects are channelled through the Vote for Environment, Heritage and Local Government.

EU regulations require that a minimum of 5% verification checks be made on expenditure incurred on projects under each Sub-Measure. These checks are undertaken by the Department's EU/Internal Audit Unit at Implementing Body level and are in addition to the annual audits carried out by the Local Government Audit Service, which is charged with the responsibility for auditing local authorities.

Table 6.1 gives an overview of Vote funding for years 1998 to 2002 – the period covered by my examination.

[34] European Regional Development Fund and European Agricultural Guarantee and Guidance Fund.

Table 6.1 Overview of funding and expenditure on the combined programmes 1999 - 2002

Year	Original Estimate €m	Expenditure €m	Saving on Original Estimate €m	Supplementary Estimate €m	Surplus surrendered by the Vote €m
1999	27.45	14.65	12.80	(10.16)	7.05
2000	28.64	13.19	15.45	(13.46)	1.72
2001	25.88	15.26	10.62		0.76
2002	56.44	29.36	27.08		47.57
	138.41	**72.46**	**65.95**	**(23.62)**	**57.10**

Shortcomings in the Estimating Process

Analysis of these figures indicates that the Estimates provision under this subhead has been consistently far in excess of the outturn over the period 1999-2002.

I asked why the slow rate of draw-down by beneficiaries has apparently not been factored into Annual Estimates calculations and what measures the Department is taking to align the Annual Estimates provisions with the expected outturn.

The Accounting Officer informed me that despite evidence of strong demand from local communities for funding under the urban and village renewal measures of the programme, take up under the schemes has been slow, leading to the savings under the relevant subhead for the period from 1999 to 2002. It appears that a combination of factors affected the start up of the new regional programmes, and to a lesser extent, OPLURD

- There was a lack of continuity between OPLURD and the current Operational Programmes because of the delay in securing EU approval for the new programmes
- Urban renewal projects tend to be of a relatively small scale, and there were difficulties engaging contractors prepared to undertake such projects, at a time when the construction industry was operating to full capacity
- The public consultation process concerning these schemes has become increasingly protracted – in particular, the major initiatives in the five main cities entailed a lengthy period of preparation and consultation
- High tender prices gave rise to delays - with less competition, tenders received in some instances were above the range anticipated by the local authorities and a further call for tenders was considered necessary.

He stated that new programmes tend to start slowly and gather momentum. In this regard, he pointed out that overall outturn expenditure rose from 34% to 70% of the revised estimates provisions over the years 2001 and 2002.

He gave the following more detailed observations concerning the years in question.

- In **1999**, there was no one specific reason for the under-spend under OPLURD. Due to a variety of circumstances - including the timescale necessarily involved in public consultation and securing planning approvals, and difficulties in engaging contractors or finding suitably experienced craftsmen - not all of the 1999 allocations under OPLURD were drawn down by local authorities or conservation bodies. In many cases work was ongoing on these urban and village renewal and conservation projects at year-end. In particular, two of the major initiatives were slow to draw down their expenditure and a number of the smaller village renewal projects proved difficult to get underway in time to draw down moneys by year-end.
- Local authorities were not in a position to enter into contracts unless funding for the urban and village renewal projects was allocated, yet under the EU's programme closure rules, contracts had to be entered into for urban and village renewal and conservation projects by 31 December 1999.

Consequently, it would not have been possible to allocate anything less than the balance of the outstanding moneys profiled in the programme, without jeopardising EU aid commitments. Under OPLURD, there were a few local authorities that were unable to complete their expenditure by the end of 2000, for reasons similar to 1999. Under the applicable EU programme closure rules, payments were allowed by Implementing Departments up to 30 June 2001 in circumstances where funding had been contractually committed to projects by 31 December 1999.

- In **2000,** the bulk of the under-spend related to the urban and village renewal measures under the Regional Operational Programmes, 2000-2006. When the 2000 estimates were being drawn up (in 1999), it was anticipated that the negotiations between the Government and the European Commission would be completed in a timely manner and it was considered reasonable to include provision for spend in 2000. In the event, the programme was not approved by the Commission until the end of November 2000, and it was not possible to approve projects for funding until the final outcome of the negotiations (in particular the level of local funding required) was known.
- Accordingly, **2001** was effectively the start-up year for the urban and village renewal measure under the Regional Operational Programmes. When the estimates were provided, it was not anticipated that there would be such a loss of momentum between OPLURD and the new programmes. The operational guidelines published by his Department required all city and county councils to draw up strategy plans outlining proposals for the towns and villages and major city initiatives to be selected for funding over the life of the programmes. Allocations issue each year and details of specific elements of the projects are submitted for approval. Workshops were held to facilitate local authority staff involved in the planning and administration of the schemes. All of this took time and it was not possible for all the local authorities to draw down their full allocation in 2001.
- The initial **2002** estimate sought funding of €41.147m, which included the amount profiled for 2002 in the programmes and the balance of 2000 and 2001 moneys (€19.62m). However, even at that stage it was not envisaged that local authorities would be in a position to spend such an increased allocation in 2002. It was pegged at this high level to catch up with the agreed expenditure profile for the Regional Operational Programmes. A provision of €32.17m was further reduced early in 2002 to €24.286m. Of this allocation to local authorities, a spend of some 76% was achieved, a considerable increase on the previous year.

The Accounting Officer considered therefore, that the initial estimates were based on the best expectation of expenditure in any given year. These estimates are monitored on an on-going basis and are revised as required. Local authorities are requested to indicate if they are in a position to draw down their full allocation – if not, this can be re-allocated on the basis of capacity to spend. For example, the city initiatives all indicated that following protracted preparation, planning and consultation, they will require considerable spend this year. Expenditure in 2003 is expected to align closely with the Estimates provision.

Budgetary Control

My examination noted that for the years 1999 to 2001 cumulative under-expenditure from this subhead amounted to almost €39m. The total sum surrendered by the Department to the Exchequer amounted to €9.5m. In 1999 and 2000, the savings were reallocated to other subheads in the Vote by Supplementary Estimates passed by Dáil Éireann late in both years. In 2001, the saving was reallocated to other subheads of the Vote by 'virement', approved by the Department of Finance. In 2002 the savings of €27m were surrendered as part of the overall surrender of €47m. It will be noted that Government had demanded significant savings from a number of major spending Departments as a result of the worsening budgetary position.

As I was concerned that the principles of budgetary control may have been circumvented by the persistent use of savings on the subhead as a reserve fund to offset excess expenditure in other areas of the Vote in the years 1999 to 2001, I asked the Accounting Officer for his observations.

The Accounting Officer stated that the provisions included in the Department's estimates for the EU co-financed urban renewal programme were sought having regard to best expectations as to what would be expended in the years in question. It was never the Department's intention to use the programme, or any other programme, as a reserve fund.

He argued that the Department's ability to exercise budgetary control is best evaluated in the context of the overall Vote, as there will always be some individual programmes on which savings are realised or excesses are incurred. The extent to which funds have been vired between different programmes has not been large in the context of the overall funding provided to the Department, and outturns have been brought in close to overall spending limits without any excess over gross or net voted spending.

Receipt of EU Funding

In response to my inquiry as to whether any EU moneys had been lost to the Exchequer under OPLURD as a result of failure to meet EU deadline, the Accounting Officer informed me that in all, the Urban and Village Renewal sub-Programme of OPLURD came in at 0.67% (€0.533m) under-spend of EU funds. Measures 1 and 5 came in slightly over the forecast while, in the other measures, the eligible spend in a number of the final projects came in under the amounts allocated. A number of approved conservation projects could not meet the 31 December 1999 deadline for contracts, largely due to lack of availability of skilled craftsmen and contractors experienced in conservation works.

6.2 Financial Difficulties in Kilkenny County Council

Background

The Local Loans Fund (LLF) was the vehicle used by central government up to 1987 to provide Exchequer moneys to finance certain capital programmes by local authorities, including the provision of loans for house purchase to eligible persons. From 1988 onwards, funds for the provision of such loans were made available to local authorities through the Housing Finance Agency (HFA).

Typically, funds were provided by either the LLF or the HFA at the prevailing fixed interest rates and were on-lent by local authorities to house purchasers at a slightly higher fixed rate – in order to cover administration expenses. Loan repayments by householders were intended to finance local authorities' repayment of LLF/HFA loans.

Until 1989, loans from the LLF and HFA together with loan redemptions from borrowers and a percentage of the proceeds of the sale of local authority houses were used to finance loans for new eligible persons. From 1989 onwards, all new loans by local authorities to house purchasers are sourced from the HFA.

By the late 1980s, very substantial reductions in interest rates, the introduction of the variable interest rate and the ready availability of mortgage finance from commercial lending agencies, led to the redemption by a great many mortgagees of their loans with the local authorities. Local authorities, on the other hand, were not in a position to redeem their loans from the LLF without a financial penalty at that time. The unprecedented rate of redemptions undermined, at least partially, the principle of self-financing of local authority housing loans, as redeemed funds, borrowed at high fixed interest rates, were re-lent at considerably lower interest rates.

In February 1989, following agreement with the Department of Finance, local authorities were permitted to redeem loans, without penalty, to the LLF on condition that there should be a match between LLF loans and the individual housing loans redeemed, *e.g.* redemption moneys in respect of a 10% house purchase loan could only be used to redeem a 9.5% LLF loan.

Management of Housing Loan Redemptions

The Department of the Environment, Heritage and Local Government noted in early 1994 that Kilkenny County Council was experiencing difficulty when they sought sanction to refinance €5.27m with the HFA to repay 12% fixed rate LLF loans. At that time, (May 1994) the gap between the amount outstanding to the LLF/HFA and the amount outstanding from borrowers was €7.24m. The Council accepted that they should have redeemed to the LLF considerably more early redemptions from borrowers in the previous five years and they were now seeking to rectify this situation by refinancing. Refinancing of £2.5m with the HFA was approved at that time. The Accounting Officer informed me that the Department had indicated to the Council that the circumstances that gave rise to the need for the refinancing should be avoided. It had also pointed out that using high fixed rate redemption money to finance new variable rate mortgages carried a risk of serious loss to the Council and that the use of routine housing loan capital repayments for revenue purposes should be avoided in the interests of sound financial management; at that point in time the accounting policy was to credit both the principal and interest repayments to the local authority revenue account.

Kilkenny County Council made further requests to refinance and redeem in October 1994 (€1.9m) and in December 1998 (€7.6m). These requests were approved. In the Department's letter of approval of 1 December 1998 it was again pointed out that using high fixed rate money to finance variable rate loans carried a risk of serious loss to the Council.

In November 1999, the Council sought further approval to the redemption of all its HFA and LLF fixed rate loans (a total of €10.9m) and to refinance part of these loans at a variable interest rate. Their request highlighted the difficulty they were in and referred to the fact that there was a mismatch in tenures in the borrowing *i.e.* while their LLF loans were drawn down over 30 and 35 years, they were subsequently re-lent by the local authority over a shorter period, of 15 or 25 years. At that time, of the €10.9m owed to the LLF/HFA, only €5.8m was owed in turn by borrowers to the local authority. The Department sanctioned redemption of €5.0m.

The Accounting Officer, in response to my enquiries, observed that while the mismatch of the tenure of the loans in the early 1990s resulted in a short-term financial benefit to Kilkenny County Council, the implications of the mismatch would not have been evident to the Department at that time from the annual accounts. Mismatches would not necessarily be apparent until the level was such that it created a significant and identifiable imbalance or deficit.

Up to 2001, the accounting systems of local authorities operated on a straightforward cash and expenditure basis. The then Annual Financial Statement (Abstract of Accounts) did not provide the information capable of identifying the problems experienced by Kilkenny County Council.

He informed me that a billing module in the new financial management system, which is nearing full implementation in local authorities, will provide a comparison between the principal outstanding on loans receivable and loans payable at year end and set out clearly any instances where there is an imbalance between the repayments due to local authorities and those in turn due to the lending institutions. The financial statements will record any such imbalance.

Action taken by the Department

The Accounting Officer outlined some of the more important interventions made by the Department since 1994 when it became aware of the difficulties with the finances of Kilkenny County Council.

- In September 1994 the Department met Kilkenny County Council officials to discuss its financial position
- In August 1995 the Department raised its concerns with County Manager
- In September 1995 the Department sought a report on the Council's finances and the measures to be taken to eliminate the then revenue deficit on a phased basis
- In November 1996 the County Manager undertook to seek the Council's agreement to take a number of steps to improve the finances of the Council
- In July 1998 the Department again asked the County Manager to comment on the revenue position and his proposals to reduce the revenue account deficit
- In October 1998 the County Manager outlined the circumstances of the deterioration of the revenue position in 1997 and undertook to take certain measures to improve the revenue deficit, including the application of an additional grant from the Local Government (Equalisation) Fund directly to the revenue deficit in 1998, to maintain improvements made in collection areas and to carefully monitor all areas of expenditure to ensure that no overexpenditure occurred in 1998
- Again in August 2000 the Department asked the reasons for expenditure in excess of the annual estimates in 1998 and the Council's plans to reduce the revenue deficit
- In October 2000 the Council made further commitments to reducing the revenue deficit and also outlined the decision of the elected members to take debt reducing actions
- In a follow up letter dated 24 November 2000, the Council requested approval to take out a 15 year loan to redress the revenue deficit and to redeem capital debt. Approval was given on 11 December 2000. This action put a structure on the revenue deficit and provided for the balancing of the loans mismatching over the period
- Finally in June 2002, the Council requested Departmental agreement to refinance non-housing related borrowings of €15.7m having regard to falling interest rates. The Department provided its agreement on 18 November 2002.

Rate Caps

Departmental papers indicate that despite the fact that the *'rate in the £'* for Kilkenny County Council fell significantly short of the average for all local authorities, the Minister refused to approve an increase for the council above the global cap on increases in 2001 and 2002.

I asked the Accounting Officer if he was satisfied that the failure to lift the 'cap' in this instance was justified.

He stated that decisions in relation to the capping of rates were, and are, the prerogative of the Minister and, in the years referred to, the Minister decided to cap rates in line with the Government's commitments to local government contained in "An Action Programme for the Millennium".

Elimination of Deficit and Loans Mismatch in Kilkenny

The Accounting Officer provided updated information on the position in Kilkenny County Council.

- The loans mismatch amounts to €8.4m as of 31 December 2002 - down from €9m in mid 2002 - and is being provided for in the Council's annual budgets in equal annual instalments of €643,000 over approximately 14 years.
- Similarly, the 15-year loan raised in 2000 for the purpose of funding and eliminating the then Council revenue deficit is being provided for in the Council's annual budget in equal annual instalments (€460,000).
- The accumulated revenue deficit has been reduced from €6.2m at the end of 1999, to €3.5m at the end of 2002.

He further stated that one of the first areas to be tackled in achieving a balanced budget is the financing of any loan charges due to be paid by an authority. After this, the other expenditure elements of a local authority budget must be provided for on a priority needs basis having regard to the resources available. It is the intention of Kilkenny County Council in future budgets, to continue to make provision for the net expenditure for loan charges to eliminate the imbalance in the loans and the revenue deficit based on the structure put in place by the Council with the Department's agreement in 1999.

Kilkenny County Council, taking advantage of current low interest rates, re-financed the Council's non-mortgage related borrowings in 2002 resulting in interest payment savings of approximately €155,000 in 2003 and an estimated €1.4m over the remaining loan terms.

Similar Difficulties in Other Local Authorities

The Accounting Officer informed me that while references have been made in a number of other Local Government Audit Service audit reports to the redemption of amounts due to the LLF and HFA, to redemption moneys on hands in the local authorities and to the need for local authorities to review the matching of loans and corresponding debt, apart from the Kilkenny County Council report, there were no specific references to problems created by mis-matched funding.

A Value for Money study carried out by the Local Government Audit Service in 1998/9 noted that at the time of its preparation, details of the principal amounts outstanding (in respect of each local authority) on loans due by borrowers to the local authority, by the local authority to the LLF and by the local authority to the HFA were being collated for detailed examination and would provide useful information on the position of each local authority.

As the information available to me suggested that this exercise has not yet been completed and is unlikely to be completed in the near future I sought the Accounting Officer's views.

He informed me that the Value for Money Report covered a wide range of topics related to treasury management practices and policies in local authorities. As it was considered desirable to gather information on imbalances on housing loan repayments and capital debt in the other local authorities all local authorities were requested in letters to Finance Officers on 16 April 1999 to provide accurate information in the context of finalising the publication of the Value for Money Report. While a substantial number of returns were received, the information was not collated in sufficient time for inclusion in the final report. The returns received did not highlight any problems on the scale of that experienced by Kilkenny County Council, and thus did not warrant any further action. That said, approval has issued, from time to time, to other authorities for refinancing with the HFA.

In July 1999 all local authorities were informed by circular of the procedures to be followed in applying to redeem loans to the LLF and extended those procedures to the redemption of HFA fixed interest rate

loans. These procedures included a requirement to complete a table which showed the balance due from individual borrowers to the Council in respect of LLF/HFA loans and the amounts due by the authority to both the LLF and the HFA. Early redemptions would not be approved where the total amount of fixed rate loans outstanding to the Council at the redemption date exceeded the total amount of fixed rate borrowings from the HFA/LLF.

In May 2003, the Department requested that local authorities should as far as possible ensure that their loan books are matched in terms of interest rates and tenure of such loans.

Available Sanctions

I also asked the Accounting Officer what sanctions were available to his Department to deal with problems of this nature.

He informed me that responsibility for proper financial management in individual local authorities lies, in the first instance, with local authorities themselves and that while there is no specific sanction available to the Department where they incur deficits or realise surpluses, they are required to adopt balanced budgets annually. The Local Government Act, 2001 provides that

- In each local financial year, each local authority shall prepare a draft local authority budget setting out for the next local financial year:
  - The expenditure estimated to be necessary to carry out its functions
  - The income estimated to accrue to it
- the members of a local authority shall adopt the draft budget.

Where local authorities do not adopt budgets or adopt budgets that are so insufficient to enable the local authorities to perform their functions or meet expenditure requirements, there are specific powers available to the Minister under the 2001 Act. The Minister for the Environment, Heritage and Local Government can require an authority to amend its budget and do so within 21 days. Failing compliance, the Minister may remove the members of the authority from office.

Separate to specific legislative powers, where it is apparent to the Department that local authorities are incurring significant revenue deficits, it is open to it to seek, in conjunction with the local authority concerned, to have plans drawn up and measures taken that will eliminate such deficits. The action taken in the case of Kilkenny County Council was to take out a loan to reduce the revenue deficit and put a structure in place to address the mismatch on the housing loans over a period. There are no specific legislative sanctions available to the Department in relation to local authorities using loan redemptions or repayments of short tenure loans to finance current services.

Local Government Fund General-Purpose Grants

I asked the Accounting Officer whether the difficulties experienced in this instance would be likely to result in a charge in future years on the Local Government Fund.

He stated that Local Government Fund general-purpose grants are not made available specifically for deficit reduction or to fund any particular financial arrangements or programmes. General-purpose grants from the Local Government Fund are, by their nature, block grants that go towards bridging the gap between local authorities' expenditure requirements on their day-to-day operations and the income they generate from other sources of revenue. Income from general-purpose grants, just like any other income, is not hypothecated to any service. The question of linking such funding to individual expenditure headings does not arise.

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 2000[35]. 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 7.3[36].

[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 awards[37].

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.

- 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 data[38]. 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 2003[39].

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 410[40].

[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	884	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	410	1,188
Total potential claimants at 30 June 2003		6,850

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 schemes[42].

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.

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 cases[46] 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 10,800[47].
- 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 daim 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 €1bn[48].

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 2001[49].

- 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.

- 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 Canada[50].

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.

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 have 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.

- 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 State[51]. 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

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

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.

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 that 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**	**28.0**[57]	**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 projects[58]. Similar considerations apply in two cases where work may have to be retendered[59]. 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 Árainn	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 Finnin, 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 Ballytivnan	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 Ri	Cork	*
John Bosco Navan Rd	Dublin	*	Rathpeacon	Cork	2,176,172
S Cíaráin, 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 Gortahork	Donegal	*
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

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

- 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

	Temporary accommodation		Minor Grants	
Year	**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 Benchmarks[60] and Value for Money Comparisons[61] 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.

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 offenders[62]. 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.

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 schools[65] 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 costs[66]

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 7.22[70] Planned Number of Students per Psychologist[71]

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 Perfomance 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.

Chapter 8 Department of Communications, Marine and Natural Resources

8.1 Forest Service – Development of IT Systems

Background

The concept of developing a Forest Inventory and Planning System (FIPS), was first considered by the Forest Service in 1993. Following consideration of the results of a pilot study carried out in 1994, the Forest Service, which is a Division of the Department of Communications, Marine and Natural Resources (the Department), identified the continued absence of a national forest inventory and planning system as an impediment to securing optimum economic and social benefit from the forestry sector. In its 1996 Strategic Plan, it committed to developing a comprehensive inventory and planning system to provide geographical and environmental data on the national forest estate, for management, control and planning purposes. It was stated in the Operational Programme for Agriculture, Rural Development and Forestry (OPARDF) 1994-1999 that the compilation of an inventory which would entail identifying the location of forests together with their quality, species mix and production potential would also assist in ensuring the protection of forests from excessive or destructive exploitation. It was also felt that Geographic Information System (GIS) technology was the only realistic way in which Ireland could respond to requests from the European Commission for information on forestry resources, the development of which was largely funded by the Commission itself.

Projects Undertaken

Work on developing FIPS commenced in 1997. Five component projects were identified:

- Forest Inventory Project
  - Classification
  - Ground Survey
- Forest Planning Project - Soils Analysis
- Forestry Grants and Premiums Administration System (GPAS)
  - Pilot Study
  - Main Contract

The **Classification** project entailed the establishment of a Geographic Information System using satellite imagery to locate, map, classify and quantify the area under forest in the country. It was envisaged that when this project was completed, digital maps, capable of being produced and read electronically, would be available showing the areas of the country under forest, and in addition would show the broad categories of trees in each main forest.

The **Ground Survey** was to focus on the collection of volumetric inventory data to help produce statistically sound national data on, *inter alia*, production potential and entailed a more detailed analysis in which a representative sample of forests was to be surveyed for a range of information such as standing volume and timber production.

The **Soils Analysis** project entailed the undertaking of major research to establish the classification and productive potential of forest soils, which would assist in guiding the location and character of future afforestation by indicating the environmental, social, or economic sensitivity of areas proposed for afforestation. With the further integration of environmental data known to bodies such as the Office of Public Works, Fishery Boards and Dúchas, it was thought that the future planning of afforestation in the State would be greatly enhanced.

The purpose of the **GPAS pilot study** was to test the feasibility of transferring digital spatial data between remote locations, and in particular to integrate the Forest Service payments system / forestry classification system with forestry companies' own map based systems, evaluate the results of this integration, and set up linkages with several County Councils.

The purpose of the **GPAS main project** was to develop a computerised system to pay forestry premiums and grants. The system which was to be map driven and capable of being used in remote locations, would also be compatible with the Forest Classification system through linkages with that system. Furthermore it would allow for the updating of the inventory records of the Forest Classification system by creating digital maps relating to new forests on which grants and premiums were being paid for the first time, which could be transferred over to that system. The system would also be compatible with the Land Parcel Identification System (LPIS) of the Department of Agriculture and Food which shows land parcels in receipt of EU payments in relation to a number of land uses including forage, setaside and arable. It was envisaged that the system when completed would enable the efficient payment of forest premiums, and provide effective controls to ensure that premiums would not be paid more than once on the same area of forest, or in respect of land on which the Department of Agriculture and Food had paid EU area based premiums. It would similarly enable that Department to check, using its computer system, that it was not paying any area based premiums relating to lands which were also attracting forestry premiums. The EU has introduced Regulations requiring the two Departments to carry out such cross checks, known as cross compliance checks, with effect from 1 January 2003.

Expenditure to end 2002 on the projects totalled €9.2m. This comprised costs in relation to contracts, computer hardware and software, licences, consultancy etc. but does not include Department staff costs.

The EU, under the OPARDF 1994-1999, undertook to fund 75% of the expenditure on FIPS.

Audit Findings

Time and Cost Overruns

There were significant time and cost overruns on the four projects undertaken as detailed in Table 8.1 and Table 8.2. The Ground Survey project was not undertaken.

Table 8.1 Time Overruns

Project	Planned Time (months)	Actual Time (months)	Status
Classification	11	53	Completed
Soils Analysis	36	77*	Not Yet Completed
GPAS – Pilot	15	37	Terminated Before Being Completed
GPAS – Main	13	19	Terminated Before Being Completed

*Latest projected time.

Table 8.2 Cost Overruns

Project	Contract Value €m	Contract Cost to 31 December 2002 €m
Classification	2.00	3.00
Soils Analysis	2.17	2.70
GPAS – Pilot	0.30	0.55
GPAS – Main	0.85	1.45

Failure to Deliver Objectives

There were serious failures in relation to the GPAS project to deliver its intended objectives, and also some failures in relation to three of the other projects as follows:

While the Classification project did succeed in mapping areas under forest planted up to mid-1997, the data was not updated as envisaged, resulting in the Forest Service not having a complete and up to date picture of the national forest estate in digital format. It had been decided to achieve continuous updating through GPAS, but this functionality was not delivered, due to limitations in that system. Updating of the system will not be completed until a more sophisticated digitising component is developed which is being undertaken as part of a project which is due for completion at the end of 2004. While the lack of up to date data limited, to a degree, the use made of the system for planning, compiling reports on Ireland's compliance with environmental obligations, and answering queries from the public and a range of public and private entities, the new system was, according to the Department, a considerable improvement on the inventory records which had existed previously.

Department papers indicated that the completion of the national Inventory project, an integral part of which was the Forest Ground Survey, was considered vital if Ireland was to meet its national and international commitments to manage the country's forests in a manner consistent with the principles of Strategic Forest Management. While it was planned to commence the Ground Survey in 1998, it was delayed because of the transfer of staff resources to other elements of FIPS. Recently, the Department decided to commence the survey on a pilot basis.

The direction of the GPAS pilot study changed when it became apparent that the existing Forest Service grant administration database was not capable of being linked with the private forestry companies' computer systems. The study was terminated in November 2000, without having achieved its objectives. Essentially, it had been overtaken by the main GPAS project, which had commenced in January 1999. While no doubt some useful information was acquired, this fell short of what was expected when the contract was placed, and did not help in the planning and execution of the main GPAS contract to the extent that was envisaged. However the project did deliver a data capture/digitising tool that was used extensively in the main GPAS project.

The contract relating to the GPAS main project had to be terminated prematurely in March 2000 following the rejection by the Government Contracts Committee of a proposed extension to the contract which was estimated to cost €1.4m. The system delivered following termination of the GPAS main project, while capable of processing approximately 15,000 grant and premium payments each year, was limited in its functionality. It had been envisaged that data in the national Forest Classification system would be updated from the GPAS payments system as new forests were planted and as applicants were paid grants and premiums on these forests for the first time. However this updating has not taken place due to limitations in a digitising component, and so the data in the Classification system is incomplete, and cross checks with the Department of Agriculture and Food and the matching of all payments with discrete areas of land cannot be done electronically. The effectiveness of what was seen as a vital and useful payments control check is, therefore, greatly weakened.

The system was not installed at remote sites to enable forest ground staff to access it, and because GPAS is not map driven, environmental constraints must be checked by either referring to hard copy maps or to a separate Departmental computer system known as MAPS.

Furthermore because GPAS does not fulfil all Forest Service data capture requirements, different types of data relating to soils, tree classifications, etc. are held in different systems, which makes access more difficult and time consuming.

Because of the failure of GPAS to deliver its intended objectives a new project has been initiated (IForIS) to develop a computer system capable of delivering most of the original objectives of GPAS.

Following a tender procedure, a vendor has been chosen to build IForIS and contract negotiations are underway. The total cost of the IForIS project, including data migration elements, is expected to cost in the region of €3.5m and to be completed by the end of 2004.

Project Management Control Weaknesses

Because of serious cost overruns and delays experienced on the GPAS project, coupled with the refusal by the Government Contracts Committee to sanction any further extensions to the contract, the Department engaged consultants to carry out a review. The consultants' report identified major project management weaknesses in the handling of the GPAS project in the following areas:

- Invitation to tender
- Tender Evaluation
- Contract Negotiation
- Contract Changes
- Communications and Reporting
- Quality Management
- Administration

The main findings of the consultants are set out in Figure 3.

The time and cost overruns and failures to deliver objectives on some of the other projects would suggest that they also were not sufficiently well managed from the point of view of good planning, adequate quantification of required work, deployment of adequate resources to complete tasks, monitoring of progress, and taking effective action to deal with difficulties arising.

This view would appear to be supported by the fact that the Department did not endeavour to enforce penalty clauses on any of the contractors, which would suggest that it accepts that the majority of the blame for the time and cost overruns and output deficiencies was attributable to it.

Procurement Issues

In respect of the GPAS pilot study it was noted that:

- Three private forestry companies approached the Department in 1997 with a view to testing the feasibility of transferring data electronically between forestry companies and the Forest Service and other interested parties.
  - The Department agreed to assign responsibility for managing the pilot study to one of the companies and to provide funding of €219,508.
  - This proposal was treated by the Department as an application for grant aid and payments in respect of this project management function totalled €239,562 over the period of the study.
- As part of the study, tenders were sought from three suppliers for the provision of computer hardware, software and related services. A tender for €54,700 was accepted by the Department.
  - Between acceptance of the tender and the signing of the contract, the contract sum had increased to €113,000. Thereafter, additional modifications to the contract were made on four occasions. None of these was subjected to competitive tendering procedures.
  - In total, €303,346 was paid for computer hardware, software and related services.
- Total expenditure on the pilot study amounted to €542,908.

Figure 3

Invitation to tender (ITT)

- Work was not adequately quantified prior to going to tender
- Definitions and quantities in the ITT were sometimes ambiguous and open to different interpretations
- Time schedules specified in the ITT were unrealistic
- Gross underestimation of the volume of data which had to be captured
- Quality and Control procedures for data capture were not adequately defined
- Lacked comprehensiveness

Tender Evaluation

- Personnel who evaluated the tenders lacked experience and expertise
- The scoring system was flawed
- Reasons for large variations in tenders were not analysed
- Insufficient attention was given to quantifying the time which would be given by the key contractor personnel to the project

Contract Negotiation

- A large element of the work was carried out before an agreed contract was in place
- Many of the assumptions made by the Department in setting out the objectives and scope of the project were unsafe

Contract Changes

- Issues arising which gave rise to contract changes were not documented or reported other than receiving token mentions in project summary reports or Project Control Team (PCT) meetings
- Contract change control procedures were not always implemented

Communications and Reporting

- Information on progress, the management of changes to the project and revised schedules and deliverables did not appear to have been effectively communicated to senior management
- The Department lacked suitably skilled and experienced staff and was unable to evaluate technical statements made by the contractor
- Undue reliance on informal discussions and ad-hoc meetings

Quality Management

- Adequate quality standards and procedures were not agreed with the contractor
- Requirements for standards in data capture were not documented by either the Department or the contractor

Administration

- The Department did not allocate appropriately skilled or experienced staff to the GPAS project
- There was no Database Administrator in place nor were there suitable candidates for this role within the Department
- A high percentage (30%) of grant applications were treated as exceptions to standard Departmental procedures which was likely to make the newly installed system overly complex and costly to develop and maintain
- Significant staff resources were diverted from the project to other activities which adversely impacted on the efficient implementation of the project.

Accounting Officer's Response

The Accounting Officer stated that there were circumstances in the Department and the Forest Service in the period 1997-2000 that had either a direct or indirect impact on the FIPS projects.

The Classification project, the GPAS pilot project and the Forest Soils project had all commenced in 1997, when there was a general election, a change of Government and the Forest Service was transferred from the Department of Agriculture, Food and Forestry to the Department of Marine and Natural Resources.

The Forest Service had gone from a situation where it had the support and back-up of a substantial IT division to a Department where there were less than four full-time IT staff available.

In October 1998, the Forest Service moved to Wexford as a result of a Government decision on decentralisation. This move resulted in the loss of approximately 90% of the experienced Forest Service staff and the consequent introduction of new staff with no experience or knowledge of the Forest Service business. Furthermore, the senior manager position had remained in Dublin.

During this period, the IT Unit at the Department of Marine and Natural Resources was significantly under-resourced and under-staffed.

Following the move to Wexford in October 1998, electronic communications structures were poor, and it was late 1999 before an effective e-mail system was installed, and internet mail was available to all staff.

These factors put considerable strain on staff and management in delivering business outputs over the period and, inevitably, had an adverse impact on progressing all of these projects, especially the GPAS projects.

He offered the following responses to a number of specific questions which I put to him on the management of the project:

Time and Cost Overruns and Failure to Deliver Objectives

- *The main reasons for the time and cost overruns?*

In relation to cost overruns the Accounting Officer stated that poor quality national geographical datasets, and limitations in the satellite imagery, resulted in additional costs of €385,000 and €613,000 respectively on the Classification project. The latter increases resulted from the fact that the satellite images only enabled 504,333 hectares out of an estimated figure of 570,000 hectares to be mapped, and so digital maps had to be created from existing printed copies for the remaining area. The purchase of additional equipment and restrictions due to the threat of Foot and Mouth Disease resulted in higher costs of €104,000 and €177,000, respectively, on the Soils Analysis Project.

He stated that there was a delay of two years in formally accepting the Classification system because of bugs in the computer software. Eliminating these bugs represented only 1% of the overall project and skewed the completion date unfavourably. No additional costs were associated with this delay. Further delays resulted from dealing with the poor quality of datasets provided to the contractor by the Department and from making up the shortfall in the area mapped through satellite imagery. Delays in receiving Department of Finance sanction to hire contract staff, movement restrictions due to the threat

of Foot and Mouth Disease, and the poor quality of input datasets had caused a delay of about 2 years on the Soils Analysis project.

- *Why, in view of the cost and time overruns on the projects and the failures to deliver the intended outputs, the contract penalty provisions were not invoked?*

The Accounting Officer stated that the invoking of penalty provisions on the Forest Classification and Soils Analysis projects would have represented a risk for the Department, in view of the quality issues with the input data provided. Moreover, the invoking of penalty provisions was considered the option of last resort in terms of resolving what were complex difficulties. Adopting an adversarial approach would have added further to costs and time and the preference was to work through the problems with the contractors and this is what happened. He stated that there were no penalty provisions in the GPAS pilot project contract and in the case of the main GPAS project the findings of the independent review indicated that the invoking of penalty provisions was not an option.

- *The impact which the delays in completing the projects and the failure to deliver all of the intended outputs has had on the formulation of an indicative forestry strategy, the management and administration of the Forestry aid and plantation programmes, and the ability of the Department to fulfil its EU and International obligations?*

The Accounting Officer stated that its ability to undertake its functions in the areas outlined was not materially affected by the delays on the Forest Classification and Soils Analysis Projects.

The development of county-based indicative forest strategies, which could have commenced in August 2000, was delayed by the decision to devote relevant staff resources to the wrap-up phase of the GPAS main project.

While the GPAS project failed to deliver its objectives, the system did deliver a simpler Grant Payment System, which enabled the Forest Service to:

- Pay 15,000 premiums per annum
- Process approximately 8,000 new applications
- Complete the required EU documentation on recipients of grants and premium payments, and enable payment details to be issued electronically to the Department's Accounts branch.

However he also stated that the range of management information available was limited so that, for instance, lack of information on individual plantations has affected the Department's ability to fulfil EU obligations with regard to cross compliance.

Also, in relation to environmental checks, Forest Service staff were carrying out these checks at the present time on an existing Departmental platform called MAPS (Minerals Administration Programme Support Services).

- *When the Department expects to have a system in place to achieve all of the original objectives set for the FIPS project?*

The Accounting Officer stated that the IForIS system, which was currently being developed would, *inter alia*, deliver a map driven payments system that would enable the Department to process grant and premium payments in relation to over 16,000 customers and amounting to over €70m annually, in a secure database environment which would be subject to the latest national and EU auditing standards. It was expected that the project would be completed by the end of 2004.

Project Management Control Weaknesses

- *If the Department accepted the findings of the consultants' review in relation to the management of the GPAS project?*

The Accounting Officer stated that his Department accepted the review findings. In his opinion, the review which was commissioned by the Secretary General at the time, demonstrated an acknowledgement within the Department that there had been project management deficiencies but also demonstrated a willingness to identify these weaknesses, learn from the experiences and take steps to ensure that future projects were better managed.

- *If the time and cost overruns on three of the other projects, and the delay in commencing another, indicated that poor management control was also exercised over those projects?*

The Accounting Officer stated that he would agree that the findings of the consultants in relation to the GPAS project could also apply to the GPAS pilot project.

In relation to the Classification project, he stated that while the quality of input datasets should have been assessed prior to the issue of tenders which resulted in additional costs of €385,000, his Department had no control over the classification results of the satellite imagery which prompted the additional expenditure of €613,000.

In relation to the Soils Analysis project, he acknowledged that it had taken considerably longer than expected and that this was due in part to staff recruitment and data quality issues. However, he also stated that this project was unusual in that it was fundamentally a research and development project, the methodology for which was being revised and developed throughout, and that in all other respects the project had been well managed. Over 90% of original deliverables were to hand and the financial element had been managed very tightly such that the cost overrun has been limited to €400,000 or just over 15% of the original budget.

In relation to the Ground Survey component of FIPS, the reason why this had not been completed was due to the prioritisation of limited Departmental resources. The development of GPAS and the payment of grants and premiums had been designated as a priority over the Ground Survey.

- *The steps taken to ensure that future projects would be better managed?*

The Accounting Officer stated that there had been massive changes in the Department *vis a vis* the structures and the expertise to manage projects undertaken. The Department's Information Systems Division had increased in size from eight people in 1999 to its current level of sixty people comprising twenty management and administrative staff and forty technical staff, which included specialists in database administration, GIS development and project management. The Department had also implemented a Project Management Framework to manage the delivery of IT projects. The Department's Information Systems Steering Group was now chaired by the Secretary-General and it was through this forum that senior management approved new IT strategic programmes and projects, prioritised projects and monitored the progress of major IT investments.

He also stated that the Department reported formally to the Centre for Management and Organisation Development (CMOD) in the Department of Finance, which involved impact statements prior to instigating a new project, and final costs/impacts at the end of the project. In addition, there were

discussions with CMOD on technology issues and generally where it was considered that CMOD could add experience or knowledge to resolving issues encountered.

- *In view of the lack of experience and expertise, which existed in his Department at the time, on the management of complex IT projects, whether advice or guidance was sought from the Department of Finance on the management of the FIPS project?*

The Accounting Officer stated that in hindsight it was clear that the GPAS project would have benefited from close consultation with the Department of Finance at both the planning and implementation phases. However, this was not seen at the time because of the lack of experience of staff working on the project, until the wrap-up stage of the project in March 2000. At that stage, CMOD was approached for advice on how to achieve the best outcome in the prevailing circumstances, and a representative of CMOD attended GPAS steering committee meetings thereafter.

As neither the soils analysis nor forest classification projects involved developing complex IT systems and the necessary expertise in forestry existed in-house, it was felt that the Department of Finance did not need to be consulted.

- *In view of the serious errors and deficiencies found by the consultants to have existed in defining and quantifying the work required to be carried out on the GPAS contract, if consideration was given to seeking redress from the relevant service providers?*

The Accounting Officer stated that one of the fundamental errors highlighted in the GPAS review was the omission of a User Requirement Document before the contract went to tender. The document prepared by the advisers was a systems design document which wasn't based on a defined set of user requirements - this was to take place later as part of the GPAS project itself. Once the Department had begun the user requirements definition process, the systems design document became largely redundant as it did not reflect the requirements of the users.

Procurement Issues

- *Why national and EU procurement procedures weren't complied with on the pilot study?*

In regard to project management, the Accounting Officer stated that the records in this case show that the proposers presented the project as, and that it was treated as, an application for grant-aid under the OPARDF and not as a contract for services.

In regard to the provision of computer hardware, software and related services, the Accounting Officer stated that a tender process did take place to procure these services at the outset of the pilot project. However, as the focus of the pilot project changed, so did the financial extent of this element of the pilot project. Additional services were dealt with as extensions to the original contract for hardware, software and related services.

EU Aid

- *If the aid granted to the projects by the EU was conditional in any way on the projects being successfully completed according to plan and, if so, if it was possible that the cost and time overruns and deficiencies in outputs delivered might result in some or all of the funds having to be repaid to the EU?*

The Accounting Officer did not furnish a view on whether it was likely that the EU might impose financial penalties because of failure to complete the project to plan, other than stating that the Department had not made any financial correction to the final claim for assistance because of non-completion of the project.

He stated that €4.66m had been claimed and received in respect of the 1994 – 1999 OPARDF.

8.2 International Telecommunications Connectivity

Background

In my 2000 Report, I referred to the acquisition in 1999 by the State of large bandwidth capacity by way of a 25-year contract with Global Crossing Ireland Ltd (the company) for a significant block of fibre-optic communications links to a number of European cities and New York. The cost of the contract, which was subsequently re-negotiated at no extra cost, to include connections to other cities in Europe, the USA and Asia, was €77,140,240[72]. The project was designed to ensure availability of state-of-the-art competitively priced international connectivity to facilitate the development of Ireland as a significant centre for e-business. Connectivity was achieved by way of two submarine telecommunications cables landed in Wexford and terminating at an international high-speed bandwidth exchange (telehouse) in CityWest Digital Park in Dublin. The Government Decision approving the project, provided for the State to transfer to third parties its rights and obligations under the Agreement with the company on an investment recoupment basis. On foot of this, the State offered the capacity acquired, 160 STM-1s[73], to the Irish market, as a result of which, contracts to a value of €80,784,124 were agreed with 6 telecommunications operators for the sale of 154 STM-1s. Payment was to be made in stages up to December 2002. Government approval of the project also provided for a proportion of the capacity to be made available for public interest and strategic initiatives in areas such as education and research.

The Department of Communications, Marine and Natural Resources (the Department) has responsibility for the project, which is managed through an inter-Departmental /Agency Task Force. Funding for the project is channelled through the Vote for Enterprise, Trade and Employment and IDA Ireland, which is also responsible for making payments under the supply contract to the company and for the collection of revenues due in respect of the onward sale of capacity.

At the date of the 2000 Report, a balance of €23,287,620 was due to the company in respect of the supply contract.

At that time, as a result of financial difficulties experienced by certain telecommunications operators, only capacity-sale contracts with four companies were active. These were in respect of 73 STM-1s and had a

[72] Figures quoted are exclusive of VAT unless otherwise indicated.

[73] STM (Synchronous Transport Module). STM-1 is a unit of capacity equivalent to the transfer of data at 155 Megabits per second.

total value of €38,440,500. However, by 2001, the companies were falling behind with their payments for the allocated capacity.

The 2000 Report concluded that, while the primary objective of providing large capacity bandwidth with low cost connectivity had been achieved, the contractual arrangements for on-selling the capacity were not satisfactory. Specifically, it stated that bonds and guarantees should have been obtained and it recommended that outstanding instalments from purchasers should be vigorously pursued. It also suggested that any reduction in the demand by telecommunications operators or further difficulties in the execution of contracts would have serious implications for the State recouping its €77m investment.

The Department contended that the project's economic and commercial value to the country should be measured over its 25-year life span and that difficulties encountered in recouping investment should be viewed against the backdrop of the very considerable global downturn in the technology and telecommunications markets, something which could not have been foreseen at the time. It pointed out that the project had been managed very tightly and had been instrumental in attracting and retaining a number of prestigious international investment opportunities in Ireland. It also stated that it would shortly undertake a value for money review of the project.

Supply Agreement

In January 2002, the parent company, Global Crossing Inc, and a number of its subsidiaries became subject to Chapter 11 proceedings in the USA in order to restructure their debt profile. Initially, the Irish subsidiary was not party to this process. It continued to provide the contracted supply and invested in the Irish network by constructing a second point of connectivity at Ballycoolin, Dublin, at a cost of €4m. Contract enhancements and price reductions were also negotiated during this period. In September 2002, the Irish subsidiary became subject to the Chapter 11 proceedings. In light of legal advice received and proposed improvements to the contract with the company, the final instalment of €7,762,540 in respect of the supply contract, was paid by the State on 16 December 2002.

The Accounting Officer informed me that the Irish subsidiary was still subject to the Chapter 11 process in the USA but the company continues to provide international connectivity per the Agreement. He stated that in order to protect the State's investment, the Department had recruited US legal advisers and Irish counsel to monitor developments in the Chapter 11 process and to advise the Department and IDA Ireland on the appropriate courses of action. Among the significant improvements negotiated to the original contract was a wider more flexible product range and an option to request that the company transfer the Irish Ring[74] to a Special Purpose Vehicle (SPV). The Minister, IDA Ireland or a nominee may exercise an option to acquire this SPV in the event that the company is unable to meet its debts, fulfil its obligations under the agreements with IDA Ireland and the Minister or go into liquidation. These options would be exercisable subject to Government approval in the event of the company's liquidation.

The State did not exercise its options to purchase additional STM-1s or to purchase or lease dark fibres[75] on the submarine cables.

The Department commissioned consultants to carry out a review of the Agreement with the company. Some shortcomings from the State's point of view were identified and a number of recommendations were made in regard to future dealings with the company.

[74] The Irish Ring is the company's terrestrial network infrastructure in Ireland and between Ireland and Cornwall.
[75] Capacity capable of transmitting large amounts of data at very high speeds.

Sale of Capacity

It had been envisaged that the State, having acted as a facilitator in the provision of low cost bandwidth to the Irish market, would withdraw from the project having sold on capacity to telecommunications operators. Following the downturn in the global economy and the consequent fall in demand for connectivity, 80 unsold STM-1s remain in the ownership of the State.

The unsold STM-1s are reflected in the financial statements of IDA Ireland, where their net book value has been reduced from €24.1m at end 2001, to €3.1m at end 2002.

The Accounting Officer informed me that the Department and IDA Ireland had recruited a sales agent to sell unsold capacity on the Irish market but no further sales had ensued. He stated that it was intended to use some of the remaining capacity for national strategic purposes as appropriate.

Collection of Outstanding Debts

There have been difficulties in collecting moneys due on foot of the sales of the 73 STM-1s to four telecommunications operators. Although the main debtor made an agreed payment of €12.1m (VAT inclusive) in April 2003 in full and final settlement of amounts outstanding, the other debtors who have outstanding bills totalling €12.9m (VAT inclusive) have been slow to settle their accounts. The Accounting Officer informed me that IDA Ireland has commenced legal action to recover the moneys owed.

VFM Review

The Department commissioned a firm of consultants to conduct a study on the impact of the project *vis-à-vis* its original objectives and its direct and indirect impact on the Irish market.

It found that the project had achieved its objectives notwithstanding adverse market developments, but that gross costs to the State had exceeded original levels targeted due to a lower take up by the private sector. It arrived at this conclusion having noted the following:

Changes in the External Environment

Increases in the supply of interconnectivity since 1999 combined with weaker than expected demand had led to overcapacity. As a result, prices had fallen by more than the 20% per annum that was projected.

As well as the Global Crossing group being subject to Chapter 11 proceedings, there had been a dramatic fall in the value of telecom companies and a number had gone bankrupt.

The Cost of the Project

The likelihood was that the State would secure a lower than targeted take up by the private sector resulting in a significant direct cost to the State. This had also been the case for private sector investors in other telecom infrastructure internationally. In this case, however, there had been benefits to the State in terms of achievement of specific objectives of the project.

Effectiveness of the Project

The project had led to a significant increase in capacity and had contributed to achieving the objective of reducing the price of connectivity. The key industrial policy objective was to provide an important element of infrastructure in order to develop Ireland as an e-commerce hub in Europe and to encourage high-tech international companies to locate in Ireland. The achievement of this objective had been affected by adverse developments in the external environment. However, available data suggested that growth in the period to 2001 had been positive in those sectors that are large users of interconnectivity.

Information from surveys carried out by the consultants had suggested that most respondents believed that the project was important in achieving a range of industrial policy objectives.

Cost efficiency

In determining the level of cost efficiency achieved, the consultants accepted the importance of global rather than regional or European connectivity. This was confirmed by its research with leading companies and industrial development agencies. It believed that the necessity for Government intervention to incentivise operators to provide such connectivity should have been examined more comprehensively and explicitly as part of the planning process. It suggested that it would have been preferable for the State to have entered a joint project where all risks were shared between the public and private sectors as originally envisaged, but it understood that this did not prove to be feasible. The fact that the project had the potential to result in costs for the State was clear because of the uncertainty regarding demand. In the circumstances, the issue for Government should have related to whether the benefits of lower prices and other industrial development benefits had been sufficient to justify the costs. Except for this reservation, the consultants were of the opinion that the project represented good value for money.

Future prospects

The consultants' assessment was that while the demand for international connectivity was slow, growth prospects were positive. The prospect of significantly better performance depended on a pick up in Information Communications Technology (ICT) growth, the development of Ireland as a relatively attractive location for e-commerce, and the development of new applications. Under the most likely scenario, there was sufficient interconnectivity capacity for the foreseeable future.

The Accounting Officer said that the project achieved its stated objective of providing sufficient levels of competitively priced international connectivity for the ICT sector in Ireland. He stated that perhaps a more rigorous *ex-ante* evaluation could have been conducted but, in light of the timescale involved, the Department and IDA Ireland needed to move quickly and that if the Department and IDA Ireland had not acted when they did, there would be a real risk that Ireland would be without sufficient levels of competitively priced international connectivity with all the ramifications that that would have for the Irish economy. He also stated that the project remains a very important factor for IDA and Enterprise Ireland in retaining existing high technology companies and attracting high profile international operators to Ireland as evidenced by the recent decision by a leading internet company to locate in Dublin.

Chapter 9 Department of Agriculture and Food

9.1 Exhibition and Show Centre at Punchestown

The Initial Proposal

In November 1999 the Minister for Agriculture and Food (the Minister) received a proposal from the trustees and executives of Punchestown Racecourse (Punchestown) seeking funding for a development project. The project comprised an indoor exhibition facility, an entrance complex, a new stabling block, as well as additional car parking and landscaping. It was to be known as the National Agricultural and Eventing Exhibition and International Show Centre.

Punchestown indicated that on the basis of an exercise carried out by its Quantity Surveyors, costs would be €6.9m. The level of State support sought was not indicated.

On 19 January 2000 Departmental officials recommended to the Minister that funding of €6.9m should be given to Punchestown representing 100% of the anticipated construction costs. The Minister accepted the recommendation and on 20 January requested the Minister for Finance to provide additional funds of €6.9m in the Department's Estimates for 2000 to finance the proposal. The Minister for Finance acceded to the request on 27 January 2000.

The Revised Proposal

On 6 April 2000 Punchestown informed the Department of Agriculture and Food (the Department) of proposed changes to the project which would impact on costs, and on 2 June 2000 submitted a revised proposal costing €12.8m. The Minister accepted the revised proposal and on 23 June 2000 wrote to the Minister for Finance requesting additional funding of up to €6.4m for the project. The Minister for Finance agreed to the request for additional funding on 7 July 2000.

Table 9.1 compares the costs of the original and revised proposals.

Table 9.1

Element	**Nov 1999** **€**	**June 2000** **€**
Exhibition and Event Centre	3,174,000	6,488,000
New Stables Enclosure (147 stables + 7 rooms + toilets)	1,270,000	2,013,000
Entrance Complex - incorporating Entrance Canopy, Garda Rooms, communications/press room and Creche	1,143,000	1,130,000
Landscaping - incorporating grass arenas and all-weather cross country course	126,974	317,435
Allowance for Drainage and Site Services	63,487	126,974
General Hardstanding Parking	63,487	-
Roads, Access etc.	-	520,593
Sandstone to Parade Ring	-	188,556
Client Direct Items	-	126,974
Contingency Allowance and Inflation	317,435	507,895
Design Team Fees	761,843	1,363,937
Total (Excluding VAT)	**6,920,226**	**12,783,364**

The main changes to the first proposal were:

- An increase in costs of the centre from €3.17m to €6.49m
- A reduction in the area of the centre from 10,000 square metres to 7,535 square metres (due mainly to the removal of interior building supports)
- An increase in cost of stabling by €743,000 due to the provision of additional parking
- The addition of an access road costing €520,593.

Consulting the European Commission

On 26 April 2000 the Department wrote to the European Commission seeking its opinion on whether the Department's proposed financing of the centre constituted State Aid within the meaning of Article 87(1) of the Treaty of Rome. The Department said the proposed financing should not be considered a State Aid because:

- The project promoter was a non-profit making trust which holds the lands at Punchestown for the benefit of the farming community as a whole and would be required to operate the proposed centre on the same basis.
- The Centre would
  - Be available to all farm and farm related organisations on a non-discriminatory basis as part of the public infrastructure for the sector
  - Most likely operate in a breakeven situation and was unlikely to ever generate profits
  - Not operate in a competitive market situation either at national or international level
- Funding would only be provided in respect of the establishment costs of the Centre.
- The development could be viewed as a public good.

On 10 May 2000 the Commission said it was satisfied that State Aid was not involved.

Agreement and Conditions

An agreement was made with Punchestown on 9 August 2000 by way of an exchange of letters. The agreement provided that:

- The money would be repayable if the Event Centre was sold, leased, or its uses altered significantly without the prior written approval of the Department.
- The Centre would be used for:
  - Horse and Cattle Fairs/Shows
  - Eventing and other Competitions
  - Breed Congresses
  - General Agricultural and Machinery Exhibitions and Displays
  - Special Pedigree Cattle Sales
  - Other purposes agreed from time to time by the Department.
- There would be no call on Exchequer funding for:
  - Construction costs in excess of €13.3m
  - The costs of running the centre.
- Any profits made must be re-invested in the centre.
- The centre must be:
  - held for the benefit of the farming community as a whole
  - available to all farm and farm related organisations on a non-discriminatory basis.
- The Department could require repayment of the grant in whole or in part if the grant conditions were not met.

Further Contributions to Finalise the Project

In October 2001 Punchestown sought a further €1.5m mainly for works to satisfy the planning requirements of Kildare County Council. This was sanctioned by the Minister for Finance on 31 January 2002 bringing total State funding for the project to €14.8m.

Audit Concerns

The audit established that proper tendering procedures were observed in connection with the placing of contracts, and that the Department had satisfactory controls in place in relation the processing of payment claims in terms of on-site inspections and detailed administrative checks. However, I did have concerns as to the adequacy of the evaluation carried out by the Department on the project, and some apparent weaknesses in the agreement from the point of view of adequately protecting the State's interests.

Evaluation of Project

My concerns in relation to the evaluation of the project centred on whether the project had been comprehensively evaluated from a cost/benefit viewpoint prior to its approval – in particular if it met the criteria set down in the guidelines issued by the Department of Finance for the evaluation of major capital projects. The fact that the scale of the development changed soon after its initial approval lent weight to my concerns. Accordingly, I sought the views of the Accounting Officer in relation to these and other associated matters.

In response to my enquiries the Accounting Officer informed me that the project was considered worthy of support because for many years the Department had been aware of the need for a facility of international standard for the holding of agricultural shows and displays which could attract significant agricultural events to Ireland. Such a facility would be part of the infrastructure of the industry. The project put forward by Punchestown fully met the Department's objectives and in view of its benefits to the agricultural sector it was, in effect, a national facility and as such was considered worthy of 100% funding.

The 100% level of support given to the project (apart from the site) was agreed because the Department was aware that the Centre would require a considerable amount of finance to meet running costs such as maintenance, insurance, reinvestment etc. As Punchestown was obliged to operate the facility as an Event Centre indefinitely and were operating in an area where profits were difficult and as they were not allowed to dispose of the property, the running costs would be a constant liability on the organisation. In the circumstances the arrangement whereby the Department would fund the construction costs and Punchestown would use its own resources and considerable expertise to run the project was considered a good partnership arrangement, and one from which the agricultural industry as a whole would benefit. The Department was further satisfied that anything less than full funding for the construction of the facility would mean that the project would not proceed and the potential benefits to the agriculture sector and the country, in terms of attracting certain prestigious equine events in particular, would be lost.

In relation to the decision to accept the more expensive second proposal the Accounting Officer stated that the Department had for some time been aware of the need for a centre for agricultural events. The evaluation of the two Punchestown proposals had focussed on the extent to which the proposals met the Department's needs. Under both proposals Punchestown would provide the site and would run the Centre thereafter. The initial proposal was the one which Punchestown were at the time prepared to apply their resources and expertise to running. Having given the project due consideration it was decided that as it met the Department's basic requirements financial support was justified.

Having obtained approval in principle, the promoters set about progressing their proposals. They subsequently indicated that following more detailed consideration of the needs of the proposed Centre

which included inspection by the design team of similar facilities in the UK, Continental Europe and North America they proposed to make some structural and costly changes to the design of the main building in particular. The finalised proposal provided for the holding of a wider range of activities and made the centre more user friendly. Its clear span interior made it suitable for the holding of a wider range of machinery shows than could be accommodated in the first proposal and the general specification was also upgraded to cope with internal climate control. The finalised proposal was the Department's preferred option if funding could be made available.

The Department did not accept that the evaluation of the first proposal was not as thorough as it should have been. In the event that funding could not be made available for the revised more costly proposal the Department would have funded the original proposal as it met its basic need for a centre.

As to why the Department did not obtain independent technical advice on the proposals, the Accounting Officer stated that his Department was aware, and had sight of, the architectural and engineering advice obtained by Punchestown and all their plans. The Department had applied its own considerable experience and expertise to evaluating that advice and did not consider it necessary to acquire and pay for further independent advice. The Department had also ensured that proper procurement procedures were undertaken by Punchestown as the project progressed to ensure that the best value for money was obtained.

In relation to research carried out by the Department on the need for the facility the Accounting Officer stated that the Department was keenly aware, through its on-going interaction with societies such as the Pedigree Breed Societies and with the Irish Cattle Breeders Federation (ICBF), of the need for a facility such as the Event and Exhibition Centre for non-equestrian events. It was also aware that most of the Pedigree Cattle Breed Societies were linked to and participated in annual international and world congresses, fora, shows, competitions and sales, some of which it felt could be attracted to Ireland at reasonable intervals if the facilities were available at a suitable venue. It was further aware of the work being done through ICBF and other breed societies using Exchequer and EU co-financed Structural Funds to improve and market quality cattle breeding, and was anxious to complement that work by having the appropriate international status facilities in Ireland to promote the end products.

He stated that in the equine eventing area Ireland had been the lead stud book in the World Breeding Federation evaluations for many years, and in this context it was considered important to underpin this success with a suitable modern eventing facility in Ireland.

Formal research had not been carried out by the Department as it was considered that it already had sufficient information on these issues. The larger organisations had been informally consulted, they supported the venture and indicated that they would use the facility when it became available, and Punchestown had carried out research in relation to the Centre's equestrian activities and undertook a feasibility study on the tourism aspect.

In relation to the non-submission by the promoters of projections of costs and revenues for the Centre, the Accounting Officer stated that the principal issue for the Department was the provision of a national agricultural eventing and exhibition centre for the farming sector. While the Department was naturally concerned about its long-term viability it was satisfied that this could best be achieved as part of the wider Punchestown complex.

As to whether any attempt was made to quantify the financial benefits of the project to the farming community and the economy generally, the Accounting Officer stated that the Centre was envisaged as a public utility for the use and benefit of the agricultural industry. It was seen therefore as a public good development, the benefits of which were long term, reputational, and marketing through standards and presentation, and could not readily be measured in immediate and direct financial terms.

On the question of why no enquires had been made by the Department as to whether there may have been other promoters willing to provide such facilities at a possibly lower cost to the Exchequer, the Accounting Officer stated that the central and accessible location of Punchestown, its spacious setting, the synergies to be derived from the racecourse, its proven expertise in eventing shown through its successful hosting of a 3 day Eventing Competition since 1968 uniquely made Punchestown the ideal location for the Centre. Ireland had lost out in bringing the prestigious World Equestrian Games here in 1999 and an application had already been submitted to stage the 2003 European Eventing Championships. As Punchestown was recognised as the premier location for a National Eventing Centre it would have been unthinkable to have located it anywhere else. No other promoter had made an approach to the Department to provide such facilities, which was understandable in the context of the scale of the facilities required, many of which were already available at Punchestown.

The Accounting Officer stated that the Department operates a number of capital grant schemes under the National Development Plan. Applications under these schemes were subject to a thorough assessment and evaluation process. Detailed procedures manuals were in place for each scheme, and he stated that he was satisfied that the processes and procedures within the Department for processing capital grant applications were thorough. The Punchestown project was very much a "once off" and not part of any particular scheme, and the project work and all grant payments relating to it had been subjected to particular and intense scrutiny.

He also stated that all of the capital works relating to the project had been completed and that the centre had commenced operating. While it was still early days, demand for the Centre had been reasonably good, and feedback received by Punchestown had been positive. In its first 10 months of operation to the end of September 2003 the centre would have hosted an average of one event per month, the majority of which were agricultural in nature. Demand for the centre was expected to increase as it became established, and in September the highly prestigious European Eventing Championships which came around every 3 years, and the Endurance Championships would be held there.

In view of the fact that the Department was required by Government Financial Control Procedures to obtain the approval of the Department of Finance for the funding it provided for the project, I asked the Accounting Officer of the Department of Finance whether his Department was satisfied that the project proposal had been adequately evaluated by the Department and that the guidelines laid down by his Department on the evaluation of capital projects had been followed, and whether the withdrawal by the Department of its first proposal for funding of €6.9m and its replacement by a proposal for funding of almost double the original amount, raised any concerns within his Department on this question.

The Accounting Officer of the Department of Finance stated that it was the responsibility of the Department of Agriculture and Food to formulate, evaluate and deliver on projects such as Punchestown, and to ensure that proper procedures were in place to do so in a transparent, responsible, and accountable manner. In doing this they were assisted by and must have regard to appropriate guidelines (including the 1994 Capital Appraisal Guidelines), the formulation and dissemination of which were the responsibility of his Department.

The Agreement

My concerns in relation to the agreement centred on the fact that the conditions governing the State's financial support were covered only by an exchange of letters and had not been referred to the Department's legal advisers to ensure that they were properly constructed and legally sound. I also noted that the funding had not been made conditional on a certain minimum number of agricultural and equestrian related events being held there and that the agreement was silent as to a minimum length of time for which the Centre must operate. Moreover, the agreement did not cover the matter of payment by the racecourse company for use of the facilities of the centre including the stables and entrance

complex. I also felt that the wording in the agreement left some doubt as to whether the Department had the power to prevent the holding of events of a non-agricultural and non-equestrian nature, as intended, if it so wished.

The Accounting Officer stated that any concerns which the Department had with the holding of non-agricultural and non-equestrian events were mainly to ensure that they did not prevent, from a timing or structural viewpoint, the holding of the type of events for which the Centre was funded. The Department was satisfied that should it wish to do so, it could prevent the holding of certain types of events.

He also stated that as the Department considered it had the power to veto non-core events it was not considered necessary to seek an agreement as to number and type of events in the Centre. With regard to the minimum period during which the facility must be operated, he cited the Food Industry where the Department has operated a capital grant system for many years, and where beneficiaries are required to have the grant-aided facilities operated for the purpose for which they were funded for a period of at least eight years. However in the case of the Centre at Punchestown it was decided to be more restrictive and by not imposing a limit the requirement was left open ended, which meant that the facilities must be made available indefinitely for the purpose for which funded, and that this reflected the 100% grant paid.

The Accounting Officer informed me that, although not incorporated in the agreement, arrangements had been put in place to cover payment for use of the centre's facilities by companies in the Punchestown group.

However the Accounting Officer also informed me that in the light of my concerns on possible deficiencies in the agreement, he had referred it to the Legal Services Division of the Department for legal consideration. He understood that a new agreement may be considered which would where possible, address my concerns, and that Punchestown had indicated that they were willing to enter into a new agreement if the earlier one was found to be deficient and that the new agreement would be completed by one or all of the three companies within the Punchestown organisation, if required.

Chapter 10 Department of Transport

10.1 Shortcomings in Financial Control

Accounting Officers are required by law to sign and present for audit the Appropriation Accounts for their Votes to me before 1 April in the year following the financial year to which they relate. It is my responsibility to audit the Accounts and to report on them by 30 September of the same year. The Appropriation Account for Vote 32 for the year ended 31 December 2002 was signed on 31 March 2003 and submitted to me for audit on that date.

Following the commencement of the audit on 3 June 2003 it became apparent that the monthly statements received from the Paymaster General (PMG), who acts as the Department's bank, were not being reconciled to the Department's accounting records, the trial balance did not agree to the Appropriation Account, and the Appropriation Account as presented seemed to contain material errors.

The audit was suspended to enable the Department to complete the PMG reconciliations and to make whatever corrections were necessary to the Account.

A new account was submitted on 21 July which has been audited with satisfactory results and duly certified by me.

The new account significantly amended the original one. The main changes were:

- The gross expenditure increased by €2,281,000 and receipts by €890,000 resulting in a decrease of €1,391,000 in the surplus to be surrendered.
- The PMG balance reduced by €6,641,000.
- The Net liability from the Exchequer increased from €1,736,000 to €3,127,000.
- There was an overall increase in Suspense Account balances of €5,250,000.
- The EU funding details contained in Note 13 decreased by € 62,864,000.

The audit indicated that errors in the original account were mainly due to:

- A failure to carry out periodic reconciliations between the PMG statements and the accounting records maintained by the Department.
- Incorrect postings of certain receipts and payroll transactions to the accounting records.

The completion of bank reconciliations on a regular and prompt basis and the correct recording of transactions in the financial records are essential control functions to ensure that the risk of financial losses because of errors or irregularities is minimised, and that accurate and up to date information is available to management.

As I was concerned about the Department's failure to carry out these functions for a large part of 2002 and 2003 and the apparent lack of awareness of the deficiencies on the part of senior management, I sought information from the Accounting Officer on the matter.

The Accounting Officer informed me that the account had been submitted in good faith by the statutory deadline on the basis that it reflected the correct position.

However, the account had been prepared in difficult circumstances due to the restructuring of the former Department of Public Enterprise and the formation of a new Department of Transport following the

change of Government in June 2002. As part of the restructuring, certain functions and associated resources of the Department of Public Enterprise had been transferred to the Department of Communications Marine and Natural Resources and the Department of Environment and Local Government, and the Roads Divisions of the Department of Environment and Local Government, with a large associated budget, had transferred to the new Department of Transport.

A new accounting system had also been introduced during the year which proved to be a major undertaking and stretched the Finance Unit's resources to the limit. There had also been disruptions due to staff changes as three key experienced members of the Finance Unit out of a staff of four directly involved in the process of reconciling accounts, had transferred out of the Unit for various reasons leaving a skills deficit which had taken time to replace.

In the course of preparing the Appropriation Account it had been discovered that periodic reconciliations between the PMG records and the accounts had not been carried out, and the Finance Unit had moved immediately to remedy this situation, but she herself had only recently become aware that the reconciliations had not in fact been fully completed when the Appropriation Account was submitted. However, as the required PMG monthly adjustments had been made in the accounting records, it had been assumed that the Account was materially in order.

The Accounting Officer also stated that a number of the errors in the initial account could be attributed to inexperience, such as the incorrect posting of certain receipts to the accounting records. A further problem had arisen from a difficulty with the interface between the payroll and accounts computer systems which had given rise to a significant understatement of the expenditure on payroll. The fact that those errors had not been identified and remedied in a timely manner was, in most instances, a direct result of the failure to carry out bank reconciliations on a regular and prompt basis. This had been compounded by the absence of a control mechanism at management level to verify that such reconciliations had been carried out.

While a system of staff meetings had been in place where progress on issues was discussed, the Accounting Officer accepted that a significant shortcoming existed whereby there had been no procedure in place for senior management to ensure that the reconciliations had in fact been completed on the ground, as the procedure which was in place provided for sign off at too junior a level.

She stated that the Department had moved immediately to remedy the weaknesses in its systems and procedures. A project team had been established to revamp processes and procedures and to restructure the Finance Unit to ensure optimum efficiency and a comprehensive control environment. A new procedure had been put in place whereby the monthly PMG reconciliation must be signed off by a senior manager. Training had been organized and undertaken by staff and was ongoing to ensure that all financial systems were fully understood and documented and that all financial transactions were properly recorded. Progress on these would be reported regularly to the Management Board.

Chapter 11 Department of Enterprise, Trade and Employment

11.1 Administrative Oversight at Companies Registration Office

The Appropriation Account for 2002 for the Vote for Enterprise, Trade and Employment, records that fee income to the Companies Registration Office (CRO) in 2002 was in excess of €20.26m. The Department had originally estimated these fees at €7.86m. Fees for the late filing of annual returns by companies alone amounted to over €12.75m for the year. The explanation given in the Notes to the Account for the increased level of fees collected was that it was 'due to a vigorous enforcement campaign with the aim of forcing companies to bring their filing of returns up to date'.

The Company Law Enforcement Act 2001 altered the rules relating to the filing of annual returns with the CRO. Section 60 of the Act, which came into effect on 1 March 2002, set out a new deadline for filing the first annual returns after this date.

The Act and subsequent statutory instruments implemented significant changes in the factors which govern the late filing penalty, if any, that a company must pay in respect of the filing of its annual return.

These factors are:

- The rules that determine when the annual return is due to be filed with the CRO
- The rules that determine when the late filing penalty commences
- The amount of the late filing penalty itself and how it is calculated.

The Act provided that:

- Every company should have a statutory annual return date[76]
- The annual return should be filed within 28 days of the date up to which it was made, which date should be no later than the annual return date
- Companies should be allowed three months to prepare and file their first return under the new rules (the transitional arrangement).

The new provisions relating to the annual return date came into effect on 1 March 2002[77] and affected only those returns made up to a date on or after 1 March 2002. However, because of the three month transition provision, returns dated after 1 March which would otherwise have been due to be filed within 28 days could be filed any time up to and including 4 June 2002 without incurring a late filing penalty. New late filing penalty provisions to reflect the end of the transition period on 4 June should therefore have been made to take effect on 5 June 2002. Due to an administrative oversight the required new fees order was not made. The administrative oversight was not discovered until early December 2002. A new fees order was made by the Minister on 5 December 2002 to apply the 28 day rule.

Arising from the oversight in June, a number of companies were overcharged late penalties in respect of their annual returns. Audit inquiries established that some 9,876 companies were identified by the CRO as being affected and that the total amount to be refunded was €1,371,752 inclusive of interest at 8% - €37,780.

[76] Every company in existence on 1 March 2002 was assigned an annual return date by law. New companies incorporated on or after 1 March 2002 have an annual return date triggered by their date of incorporation.
[77] SI No 438 of 2001.

The CRO wrote to each company involved setting out the amount due to be repaid by the CRO enclosing a credit note for the amount. Each company was offered the option of:

- Using the credit note for future filing or company search fees in the CRO
- Lodging the credit note to an account in the CRO to pay filing fees or for online company searches
- Surrendering the credit note in exchange for a Payable Order.

Inclusive of interest, cash refunds totalling €498,670 have been made to companies. The Department has not yet computed the value of credit notes availed of.

I sought the views of the Accounting Officer as to how the administrative oversight arose and the steps taken to rectify the situation.

The Accounting Officer informed me that the Act was implemented in phases and required 19 statutory instruments to date to give legal effect to its various provisions. In order to ensure that as many as possible of the returns due under the existing provisions were filed before the new provisions took effect, a fees order[78] was made increasing the late filing penalty to €100 for the first day the return was late, plus €3 per day thereafter up to a maximum for any return of €1,200.

He agreed that a fees order to govern late filing penalties incurred after the 3 month transition period elapsed should have been made to take effect on 5 June 2002. However, no such order was made and the Statutory Instrument of 26 October 2001 remained valid for all annual returns. Hence, as and from 5 June 2002, the late filing penalty should legally have been calculated from 78 days after the date up to which the annual return was made (to remain compliant with the fees order which gave 77 days between the date the annual return was due and the date of applicability of the late filing penalty). However, the CRO proceeded on foot of a Ministerial decision to introduce the 28 day rule, which had been announced some time earlier, and as and from 5 June 2002, calculated the late filing penalty accordingly.

The Accounting Officer stated that the error came to light when the CRO's legal advisor, while examining a separate and unrelated matter, discovered that an order had not been made in respect of the 28-day filing period. The new fees order came into effect on 6 December 2002. With effect from that date, the late filing penalty applies to annual returns made up to 1 March 2002 or later which are delivered to the CRO more than 28 days after the newly defined statutory annual return date.

The only annual returns in respect of which an excessive late filing penalty had been charged were:

- Returns filed with the CRO between 5 June 2002 and 5 December 2002 and
- With an effective date of 1 March 2002 or later and
- Which were received late (more than 28 days after the statutory return date).

The Accounting Officer pointed out that the category of annual returns affected was clear-cut in that it only included annual returns with statutory return dates and received dates within specific ranges. These cases were readily identifiable on the CRO database. The CRO is satisfied that all potential cases have been identified.

[78] SI No. 477 of 26 October 2001.

With regard to the determination of the interest rate, legal advice requested by the CRO was that the then current Courts Act interest rate of 8% was appropriate. The approval of the Department of Finance was not sought. However, the Department of Finance had sanctioned the repayment of overpayments.

The CRO have made refunds in 3,376 cases to date. Requests for cash refunds have been received in 39 cases since the end of May 2003. These have not yet been processed. It was anticipated that small numbers of requests for cash refunds would continue to be received in the short term. Any amounts unclaimed will be brought to account as Appropriations in Aid of the Enterprise, Trade and Employment Vote for 2003.

He estimated that the administrative cost of rectifying the oversight amounted to €24,850.

The Accounting Officer concluded by stating that the chain of events that led to this oversight was extremely unusual and a similar combination of events should not occur in the future. A procedure has now been agreed with the CRO and Company Law Administration Section to prevent a similar oversight. When new legislation is due to be enacted a schedule will be drawn up detailing the sections of the Act and their commencement dates. In the future, any statutory instruments required in relation to each section will be identified and closely monitored. He is satisfied that this procedure is sufficient to prevent similar oversights occurring.

Chapter 12 Department of Social and Family Affairs

12.1 Reckoning of Pre-1953 Contributions for the Old Age (Contributory) Pension

Introduction

Prior to the introduction of this special pension scheme, contributions paid prior to 1953 could only be used to satisfy two of the three qualifying conditions for the Old Age (Contributory) Pension (OACP) i.e. that a person must have entered insurance 10 years before pension age and have at least 156 social insurance contributions paid since first entering insurance. Pre-1953 contributions could not be used for the third qualifying condition i.e. yearly average of contributions.

Contributions paid by insured persons prior to 1953 did not contain a pensions element. This continued to be the case until 1961 when the pension element was introduced at the same time as the introduction of the OACP. However, contributions made under the unified system of social insurance, introduced in 1953, were fully recognised for pension purposes from the outset. The Minister for Social, Community and Family Affairs introduced a special OACP from 5 May 2000 for people with pre-1953 contributions who otherwise might not qualify for a pension or only for a reduced pension (Social Welfare Act 2000, Part V, 16).

The new arrangement allows people who commenced insurable employment before 1953 and who had at least five years paid insurance comprising either pre-1953 contributions or a combination of pre and post-1953 contributions to qualify for a pension. To qualify a person must be aged 66 or over and have a total of 260 full rate social insurance contributions paid, at least one of which must have been paid prior to 1953. In determining how pre-1953 contributions are reckoned, each 2 contributions paid count as 3 so if all contributions are paid prior to 1953 a person can qualify for the pension with 173 paid contributions.

The pension payable is currently €78.75 per week - 50% of the maximum weekly personal rate of the normal OACP. Additions for adults and child dependants, where applicable, are also payable at 50%.

Estimating the Cost of the Scheme

The Department of Social and Family Affairs had identified two groups of people who entered social insurance before 1953 as likely to benefit from the amended qualification:

- People in receipt of a pension at rates less than the half rate pension
- People not currently in receipt of another social welfare pension including applicants previously found not to qualify and people who had never previously applied for a pension.

The Department estimated that 3,000 people would qualify for the new payment at a full year cost of €8.9 million and a cost of €6.7 million in 2000 when seeking Department of Finance approval for the scheme. The overall claim load was expected to be 5,000.

The Department's calculations were based on the fact that approximately 36,000 applications for the pension had been rejected since 1988. No statistics were available for reject cases prior to that date. Of the 36,000 cases rejected, 29,500 had no date of entry into social insurance recorded and 3,400 had a date of entry recorded as pre-1953. The Department had estimated that a further 10,000 persons were in receipt of EU/or Bilateral Agreement pro-rata pensions[79] from the Department. Many were paid at less

[79] These pensions are based on a combination of full-rate Irish social insurance contributions and reckonable social insurance in EU countries or a country with which Ireland has a Bilateral Social Security Agreement. The pension is a pro-rata payment based on the proportion of the Irish social insurance contributions to the total number of contributions paid and/or credited.

than half the maximum rate. This process gave the Department a total of almost 42,900 people with a potential entitlement under the new qualification discounting the unknown numbers refused pension prior to 1988.

The Department estimated an administration cost of approximately €760,000 (extra staff, overtime, etc) to:

- Identify cases with a date of entry into insurance prior to 1953
- Ascertain the total number of contributions paid in these cases
- Determine if the person was still living.

Initial Take-up of Scheme

About 2,700 claims were received before the scheme was advertised in the national and provincial papers in late June 2000.

At the end of December 2000, the Department had received 11,669 claims for the new pension. It had also identified 13,500 pro-rata pensioners who might qualify for the new pension at a higher rate than their existing pension. The outcome of the Department's processing of both groups at end December 2000 is shown in Table 12.1.

Table 12.1 Scheme Activity for period 5 May 2000 to 31 December 2000

Category	Applicants	Awarded ½ rate OACP	Awarded standard rate OACP	Not qualified	Not Processed at 31.12.00
New Applications	11,669	3,545	36	1,331	6,757
Existing pro-rata cases	13,500	7,332	448	3,663	2,057
Total	**25,169**	**10,877**	**484**	**4,994**	**8,814**

The annual cost of the 10,877 cases awarded the pension in 2000 was €33.4 million. The additional cost of the 484 cases found to be qualified for the standard pension was €1.8 million.

UK Applicants

Media coverage of the new scheme in November 2000 generated an increase in the number of applicants. The Department started to receive a significant number of applications from United Kingdom (UK) residents who accounted for over 40% of all applications at the end of the year. The Department advised UK applicants to submit claims through their local Department of Social Services (DSS) office in the UK - the standard arrangement under EU regulations.

In February 2001 the DSS Overseas Branch notified the Department that it had received around 2,000 Pre-1953 claims over the previous month. The Department had been under pressure since late 2000 from Irish societies in the UK and the Irish Embassy to have an advertising campaign in the UK. The Department was initially opposed to such a campaign, as it wanted to clear the existing backlog of cases on hand. The Federation of Irish Societies in the UK organised a series of presentations and workshops and Pre-1953 awareness Road Shows in early 2001 and, by May 2001, 2,258 out of the 2,947 new Pre-1953 claims unprocessed with the Department, were from persons resident outside the State.

In July 2001 the Department launched an advertising campaign in a number of UK daily newspapers that were considered to have wide circulation in the elderly Irish community and in two weekly Irish interest papers. Officials from the Pension Services Office (PSO) and the Department's Information Section attended seminars held in tandem with the newspaper campaign by the UK Irish societies in London, Manchester, Leeds and Birmingham.

Administrative Difficulties

The administrative problems caused by the number of unforeseen applications were exacerbated by the fact that processing individual claims was tedious and time consuming because of the necessity to trace social insurance and/or employment details which were over 50 years old and predated the Department's computerised record system. Significant overtime had to be worked in the Client Data Services Index section responsible for tracing old insurance numbers.

The Department calculated that at least one third of people rejected for the pension appealed the decision. In May 2002 the Department had 783 appeals on hand which could be broken down into two categories:

- 723 cases that required the issue of a clarification letter
- 60 cases that had been referred to the Appeals Officer.

People appealed mainly because no insurance number could be found for them, no complete insurance record existed or they were ex-public servants who felt they had not been treated fairly. Appeal cases were tortuous and required a check on all variations of the person's name and the county in which their employment was registered. Many applicants had more than one insurance number as it was found that people were given a new insurance number if they changed job.

Current Take-Up and Back Log

Table 12.2 shows the take up of the scheme at August 2003.

Table 12.2

Claim Status	UK	Ireland	Others	Total
Awarded ½ rate OACP	13,715	10,267	3,580	27,562
Awarded standard rate OACP	327	232	60	619
Not qualified	4,137	5,128	875	10,140
Not Processed	520	351	60	931
Pro-rata Review Cases Not Qualified[80]	-	-	-	4,552
Total Applications	**18,699**	**15,978**	**4,575**	**43,804**

Claims for pre-1953 pensions are currently being received at a rate of 60 per week. Over and above the backlog of unprocessed claims and the current intake, there is still a considerable amount of associated work to be carried out.

There are 3,000 claims for examination for entitlement to an EU pro-rata pension. These are in respect of people who did not qualify for the standard pre-1953 pension and were passed to the EU area for review. In addition, there are 2,840 cases with a pre-1953 pension that might have a possible entitlement to an EU pro-rata pension prior to May 2000. There are a further 2,420 pro-rata cases where entitlement may be affected by changes in the banding of rates introduced in Budget 1999.

Data provided by the Department indicates that 50% of claims awarded are from the UK as against 37% from Ireland. 7% of claims are from the USA, while Canada and Australia account for 3% and 2% respectively.

Actual Cost of the Scheme

The pre-1953 pension scheme was estimated to cost €6.7million in 2000 and €8.9million for a full year. Table 12.3 gives details of scheme expenditure for the period 2000 to 2002.

[80] These are existing pro-rata cases which did not qualify for pre-1953 pensions and did not receive a formal reject status as they were already receiving a payment. A breakdown by country is not available.

Table 12.3 Pre-1953 pension expenditure 2000 – 2002

Year	€m
2000	26.1
2001	70.7
2002	113.1
Total	**209.9**

The cost of the additional administrative arrangements put in place to cope with the workload amounted to €1.6m.

As the Department completely underestimated the cost and scale of the scheme, I sought the views of the Accounting Officer.

Accounting Officer's Response

The estimates of the cost of the scheme were derived from an analysis of previous claims to pensions that had been rejected on the basis of insufficient contributions. While it was originally estimated that 6,000 to 11,000 people could benefit under the proposal, this was reduced to 3,000 based on experience of take up of previous pension proposals where the costs had been overestimated. On this basis, the full year cost was estimated at €8.9m.

The reason for the underestimate was, essentially, that the Department did not anticipate the influx of claims for the pre-1953 pension from persons resident abroad. While the estimates that were made did anticipate that some persons from abroad would qualify, the actual numbers involved were seriously underestimated.

The Department is frequently required to estimate the costs of policy proposals and its record in this regard is a good one and this has been recognised by the Department of Finance. The experience in this case was highly unusual.

The unexpected high take-up rate from abroad was influenced by a major campaign by groups working on behalf of people living in certain centres of Irish population in the UK to raise awareness of this particular scheme together with the information campaign undertaken by the Department itself.

Estimating costs in cases like this involves the use of data from the Department's records system. In the case of pre-1953 insurance records, which are held on microfilm, the data are in some cases incomplete and need to be supplemented from other sources. The problem is lack of quality data rather than lack of expertise. The level of expertise in the Department is high and has been supplemented by the recent secondment of a statistician from the CSO. The Department also employs independent actuarial advice from time to time in costing proposals.

It is always difficult to estimate costs where comprehensive data are not available. The Department is conscious that the underestimation, which occurred in this case, had serious implications for expenditure on the Department's programmes and has emphasised the need to question in the most thorough fashion the costing of any expenditure proposals, which arise.

The Department will take on board the specific lessons of this project in estimating the costs of similar proposals in the future.

12.2 Telecommunications System Fraud

The Department of Social and Family Affairs voice phone network consists of 20 Private Automatic Branch Exchange (PABX) telephone systems located throughout the country and connected to the Eircom network. An external contractor maintains the Department's network of PABXs.

On Tuesday 6 August 2002 the Department's account manager at Eircom notified the Department that her risk management section had noticed an atypical telephone pattern of international calls from one of the Department's Dublin PABXs. The Department immediately instructed Eircom to bar international calls from that exchange. Inquiries found that the total value of international calls from the exchange over the previous weekend (August Bank Holiday) amounted to €12,000 approximately.

The Department requested its equipment supplier to help in investigating the matter. The investigation found that:

- One particular number on the PABX was an old feature originally used when technical personnel accessed the system for remote maintenance
- Remote maintenance had not been used for several years and the feature was obsolete
- The Department was not aware that the feature was still enabled
- The line in question had no handset attached
- Incoming calls to this particular number gave a dial tone rather than ringing
- Persons calling the number were in effect connecting to the public service telephone network by virtue of a PABX feature known as Direct Inward System Access
- Hackers were using the line to call international locations throughout the world mostly Africa and the Far East.

As part of the investigation a physical extension was attached to the number at the PABX. This allowed the number to be dialled but not to break out and make calls and also facilitated the capture of details of some incoming calls and their caller line identification number. These numbers, where captured, showed that the incoming calls were from Holland, Belgium and Italy. The access feature was then disabled.

The method used to hack the system was to target identifiable Direct Dial Inwards number ranges. Using specifically designed software, numbers in these ranges are dialled consecutively and if a dial tone, rather than a ring tone, is found the system has been compromised. That number is then used to dial out of the system at no charge to the caller.

The matter was reported to the Garda Bureau of Fraud Investigation and the equipment supplier was requested to carry out a full toll fraud audit on the Department's telephone system.

The Department's phone bill for mid-July to mid-August 2002 was €303,546 exclusive of VAT. This compares with the average monthly bill of €125,000. The previous bill was found to be slightly above average when normally it would be substantially less due to holidays.

The Department completed a detailed examination of the electronic version of the telephone bills received from Eircom for the two periods and extracted the total of international calls made from the exchange. Foreign calls totalled €85,297 in the July bill and €208,839 in the August bill giving a total estimated loss to the Department of €294,136.

Having regard to the magnitude of the loss and the failure of the Department's monitoring system to detect the illegal usage, I sought the views of the Accounting Officer.

Accounting Officer's Response

Scale of Telephone Network

The Department has an extensive telephone and data computer network, to support its 4,500 staff in carrying out critical business requirements, linking all 220 Department offices and 25 offices of other Government and social services agencies.

The Department makes every effort to maintain the integrity of the network in accordance with best-known practices. There are over 11,000 devices attached to its network. While it is not possible within the constraints of its resources, to carry out detailed examinations of all aspects of the network on a regular basis, the Department is satisfied that its network is managed in accordance with current industry standards.

Failure to detect illegal usage

The increase in the July bill was not noticed because, although there were fluctuations due to changeover from Public Service Telephone Network to Virtual Private Network billing on the one hand and factors such as increase uptake of LoCall services on the other, the overall total was not noticeably higher than the norm.

The telephone bill for August 2002 was received on 4 September 2002, one month after the breach had been detected and addressed. It was only then that the extent of the intrusion became apparent. On 17 September 2002 a copy of all international calls during the period of the breach was received and at that time the final figure was revealed.

The weakness revealed in the particular PABX was a little known feature that was enabled sometime in the early- to mid-nineties. The Department was not aware that this vulnerability existed and consequently could not have foreseen that it would be exploited.

Liability for Illegal Usage

The amount due to Eircom for the period in question was paid. An automatic discount in respect of high volume was received from Eircom, as was a rebate in respect of two days of calls inadvertently charged to the Department following the request to Eircom to suspend international dialling facilities from the office in question, and incurred while that technical work was being carried out.

The Department does not consider that compensation is due from its suppliers as it is not in a position to allocate responsibility to them for the breach.

Corrective Action Taken

Once informed of the problem the Department reacted swiftly to the intrusion and sealed off and made safe the danger area. The other telephone systems in the Department were checked and the feature was found enabled on three others. They were immediately disabled. Work on upgrading telephone systems in all 220 locations to the latest security standards is almost complete.

A software package is now used on all PABXs to monitor outbound call traffic. This service is outsourced and web access is available to local managers to review call traffic appropriate to their functional areas. A similar facility is being implemented for the 200 smaller telephone systems. The issue

of assigning responsibilities in some of the larger HQ buildings, which do not have a single business owner, is being addressed.

The reviews are conducted at local level. This will be extended to include all business function areas as quickly as is practicable. Managers will be reminded on a regular basis to ensure that all significant increases or decreases in the level of phone calls are thoroughly investigated and followed up.

Follow-up

The Department notified the Garda Bureau of Fraud Investigation promptly. The Bureau indicated that, at that time, they had a number of similar cases on hands, averaging €45,000 and some as high as €90,000 for one weekend. The Gardaí subsequently arranged to have the matter raised on RTE's Crimeline programme to heighten public awareness of the threat.

Full details, logs and statements were given to the Bureau. Typically, fraud of this nature is orchestrated from outside the jurisdiction and a successful prosecution is extremely difficult to achieve. Subsequent contact suggests that it is unlikely that any further progress will be made in this regard.

The Department of Finance's Centre for Management and Organisation Development (CMOD) was notified and asked to inform other departments of the threat. CMOD sent an advisory letter to all members of the Information and Communications Technologies Managers Forum, which consists of senior IT representatives from all departments.

Chapter 13 National Treasury Management Agency

13.1 Audit Reporting

Annual Accounts

The National Treasury Management Agency has the statutory function of borrowing moneys on behalf of the Exchequer and managing the National Debt on behalf of and subject to the control and general superintendence of the Minister for Finance. During 2002 the Agency assumed certain administrative functions in relation to the National Pensions Reserve Fund and the State Claims Agency. Expenses incurred by the Agency in the performance of its functions are met from the Central Fund.

Under the provisions of section 12 of the National Treasury Management Agency Act, 1990 I am required to audit the accounts of the Agency and when making my statutory annual report on the Appropriation Accounts, to also make a report to Dáil Éireann regarding the correctness of the sums brought to account by the Agency in the year. The Agency's accounts for 2002 have been audited and the accounts, including an administration account and accounts relating to the National Debt, have been presented to the Minister who has laid copies thereof before both Houses of the Oireachtas.

I am satisfied that the accounts properly present the transactions of the Agency in 2002 and its balances at year end.

Administration Expenses

The Agency's administration expenses were €13,678,899 (€9,735,098 in 2001). The greater portion of this increase relates to salaries and superannuation costs which increased to €8,740,576 in 2002 from €5,773,026 in 2001.

The charge for salaries and superannuation may be analysed as follows:

Table 13.1

	2002	2001
	€	€
Senior Management*		
Salary and other emoluments	2,576,991	1,683,364
Other Staff		
Salary and other emoluments	4,162,099	2,899,431
All Staff		
Pension and Employer PRSI	2,001,486	1,190,231
Total	**8,740,576**	**5,773,026**

*Senior Management comprised the Chief Executive Officer and five Directors. The Senior Management figures include salaries, non-pensionable allowances, bonuses, loan subsidies, payment of medical insurance premiums, but exclude the cost of pensions, employer PRSI and other non-cash benefits such as company cars.

The terms of the remuneration package of the CEO are sanctioned by the Minister for Finance on the advice of the Advisory Committee of the Agency. The remuneration of the senior management is set by the CEO who consults the Advisory Committee on the matter. In light of its assumption of additional functions in recent years, the NTMA commissioned a firm of consultants in 2001 to review the remuneration of senior management. The consultants evaluated the positions in the NTMA by reference to comparable positions in other Irish financial institutions. Their conclusions were accepted by the Advisory Committee of the Agency which agreed that substantial adjustments were needed to bring the

remuneration of senior management of the Agency into line with that available elsewhere in the Irish financial services sector.

The Accounting Officer pointed out that the large increases in senior management's remuneration had to be seen in the context of the substantial change in the scale and diversity of the Agency's remit in recent years e.g. activities connected with the National Pensions Reserve Fund, the State Claims Agency and the National Development Finance Agency.

The increase in remuneration costs for Other Staff is largely attributable to the employment of extra staff to meet the workload arising from the assumption of the additional functions. The number of Other Staff employed increased from 54 at the end of 2001 to 68 at the end of 2002.

National Debt

Table 13.2 shows the outturn for the National Debt in the five-year period 1998-2002.

Table 13.2 National Debt 1998 – 2002

	National Debt Outstanding €m	Debt Service Cost €m
1998	37,509	3,060
1999	39,849	2,800
2000	36,511	2,575
2001	36,183	2,379
2002	36,361	2,169

The composition of the National Debt[81] at 31 December 2002 is shown in Table 13.3.

Table 13.3 Composition of National Debt as at 31 December 2002

	€m
Medium/Long term Debt	25,288
Short term Debt	8,653
National Savings Schemes	4,200
Less: Domestic Liquid Assets	(1,780)
National Debt	**36,361**

The Agency's performance in regard to its activities is independently measured by an international investment bank specifically engaged for that purpose. The rationale and basis of the performance measurement was agreed with the Department of Finance. The bank determined that, measured on a net present value basis against an independent benchmark portfolio, savings attributable to the Agency's management in the year amounted to €28.2m.

Savings Bank Fund

The audit of the Post Office Savings Bank is carried out on my behalf by the auditors of An Post subject to my right to carry out further audit tests which I consider necessary.

In 2003 they reported to me on their audit of the 2002 accounts. I accept their opinion that the accounts of the Post Office Savings Bank give a true and fair view of its transactions for that year-end and of its year-end balance.

[81] The National Debt is stated on the basis of nominal amounts of principal originally borrowed.

National Treasury Management Agency

In addition to managing the National Debt, the National Treasury Management Agency is responsible for the investment and management of funds remitted to the Exchequer by the Post Office Savings Bank. The Exchequer is responsible for the repayment to the Bank of all such funds and for meeting interest charges thereon. The state of affairs of the fund at year-end is shown in Table 13.4.

Table 13.4 Post Office Savings Fund

	2002 €m	2001 €m
Liability in respect of funds due to depositors and creditors	976	814
Value of related investments held by Post Office Savings Bank Fund (at cost prices)[82]	983	823
Surplus at 31 December	**7**	**9**

[82] The market value of the investments held by the Fund was €2.1m more than their cost price.

Chapter 14 Miscellaneous

14.1 Financial Outturn etc.

The audited accounts are summarised on pages x and xi of Volume 2. The amount to be surrendered as shown in the summary is €491.41m arrived at as shown in Table 14.1.

Table 14.1 - Outturn for the year 2002

	€'000	€'000	€'000
Estimated Gross Expenditure			
Original Estimates	31,531,823		
Supplementary Estimates	290,404	31,822,227	
Deduct:-			
Estimated Appropriations-in-Aid			
Original Estimates	2,656,971		
Supplementary Estimates	(175,852)	2,481,119	
Estimated Net Expenditure			29,341,108
Actual Gross Expenditure		31,340,257	
Deduct: -			
Actual Appropriations-in-Aid		2,490,561	
Net Expenditure			28,849,696
Amount to be Surrendered			**€491,412**

The amount to be surrendered represents 1.56% of the supply grant as compared with 2% in 2001.

Extra Exchequer Receipts

Extra Receipts payable to the Exchequer as recorded in the Appropriation Accounts amounted to €169,240,714.

Surrender of Balances of 2001 Votes

The balances due to be surrendered out of Votes for Public Services for the year ended 31 December 2001 amounted to €515,075m. I hereby certify that these balances have been duly surrendered.

Stock and Store Accounts

The stock and store accounts of the Departments have been examined with generally satisfactory results.