2003

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 2003

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

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The Annual Report of the Comptroller and Auditor General and the Appropriation Accounts is published in two Volumes

- Volume 1, this volume, contains the Report of the Comptroller and Auditor General on matters arising from his audit of the Appropriation Accounts for 2003

- Volume 2 contains the individual Appropriation Accounts for 2003 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, 2003

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 2003 in accordance with Section 3 of the aforementioned Act.

John Purcell
Comptroller and Auditor General

13 September 2004

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Chapter 1 General Matters

1.1 Financial Outturn etc.

The audited accounts are summarised on pages xii and xiii of Volume 2. The amount to be surrendered as shown in the summary is €313.96m arrived at as shown in Table 1.

Table 1 Outturn for the year 2003

	€000	***€000***	***€000***
Estimated Gross Expenditure			
Original Estimates	33,364,399		
Supplementary Estimates	301,726	33,666,125	
Deduct			
Estimated Appropriations-in-Aid			
Original Estimates	2,572,887		
Supplementary Estimates	52,239	2,625,126	
Estimated Net Expenditure			31,040,999
Actual Gross Expenditure	33,416,678		
Less expenditure requiring Excess Vote			
Civil Service Commission (Vote 16)	81		
Office of the Ombudsman (Vote 17)	25	33,416,572	
Deduct			
Actual Appropriations-in-Aid	2,689,572		
Less excess appropriations-in-aid to be applied, subject to the approval of Dáil Éireann, to meet excess expenditure on the Office of the Ombudsman's Vote (Vote 16)	35	2,289,537	
Net Expenditure			30,727,035
Amount to be surrendered			**€313,964**

The amount to be surrendered represents 1.01% of the supply grant as compared with 1.56% in 2002.

Excess Votes

Expenditure amounting to €81,560 over and above the gross provision made by the Oireachtas has been incurred on Vote 16 — Civil Service Commission and will require an excess vote. There were surplus receipts of €35,383 under Appropriations-in-Aid realised resulting in a net excess of €46,177. (See also Chapter 5)

Expenditure amounting to €25,103 over and above the gross provision made by the Oireachtas has been incurred on Vote 17 — Office of the Ombudsman and will require an excess vote. (See also Chapter 6)

Extra Exchequer Receipts

Extra Receipts payable to the Exchequer as recorded in the Appropriation Accounts amounted to €215,603,000.

Surrender of Balances of 2002 Votes

The balances due to be surrendered out of Votes for Public Services for the year ended 31 December 2002 amounted to €491.41m. 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.

Chapter 2 Central Fund

2.1 Returning Officers' Expenses

Appointment of Returning Officers

Section 30 of the Electoral Act, 1992, designates as Returning Officer

- The Sheriff, in relation to the county and county boroughs of Cork and Dublin, and
- The County Registrar, in relation to any other county or county borough

Sheriffs and County Registrars are officers of the Courts.

Administrative Arrangements

Under the terms of Section 32 of the Electoral Act, 1992, a Returning Officer is entitled to be paid, out of the Central Fund, the reasonable charges in respect of his/her services and expenses incurred by him/her in conducting an election to Dáil Éireann. The amounts chargeable are subject to limits set out in regulations (Charges Order) made by the Minister for Finance in respect of each election. The Minister may make advances on account of such expenditure, if so requested by a Returning Officer.

An account of charges incurred must be submitted to the Minister in a manner and form prescribed by him within 26 weeks of an election having taken place. Accounts are checked by the Department of Finance and any balancing amounts are paid from, or to, the Central Fund. Neither the Act or the regulations provide for any sanctions in the event of accounts not being submitted in a timely manner.

Similar statutory bases and administrative arrangements exist in the case of elections to the European Parliament, Presidential elections, local elections and referendums.

Audit Findings

Department of Finance Records

In the course of audit, it was noted that the Department's records in this area were not fully written up and in many cases were in conflict with each other. The poor quality of some of the records maintained by the Department in the area led to difficulty in accurately establishing some relevant facts. Particular difficulties were encountered on audit in relation to the

- Recording of when accounts had been submitted by Returning Officers
- Establishing the extent to which the accounts had been checked by the Department.

Returning Officers' Accounts

From information supplied by the Department the position as at 31 December 2003 was as follows

- Advances totalling €45,262,066 were made to 23 Returning Officers in respect of the 14 elections, bye-elections and referendums, held in the period 1997 to 2002. (This figure excludes amounts issued under Section 37 of the Electoral (Amendment) Act 2001 in respect of electronic vote counting)

- Accounts in respect of 190 advances should have been submitted to the Minister
- Accounts in respect of 35 advances, valued in excess of €13m, were outstanding
- Three of the outstanding accounts related to 1997 elections
- Three Returning Officers are responsible for 19 of the outstanding accounts - the value of advances in these cases is almost €6m
- The highest advances outstanding are €4,162,336 and €3,697,697
- The Department had only fully checked and signed off on 29% of accounts
- The Department had not commenced checking 46% of accounts.

Table 2 shows the extent to which accounts were submitted on time while Table 3 indicates the extent to which the Department had checked accounts submitted.

Table 2 Submission of Returning Officers' Accounts 1997 – 2002 as at 31 December 2003

	Accounts Submission Status				*Advances Outstanding*
Election	***Total***	***On Time***	***Late***	***Outstanding***	***€***
1997 General	23	5	17	1	679,309
1997 Presidential/Referendums	23	9	12	2	162,526
1998 Referendums	23	8	12	3	653,280
1999 European & Referendum	23	5	15	3	433,617
2001 Referendums	23	4	16	3	853,505
2002 Referendum (Nice I)	23	7	12	4	1,091,638
2002 General	23	4	12	7	2,425,000
2002 Referendum (Nice II)	23	3	8	12	6,852,692
Bye-Elections (1998-2001)	6	3	3	0	NIL
	190	**48**	**107**	**35**	**13,151,567**

Table 3 Checking of Accounts by Department of Finance as at 31 December 2003

Election	***No. of Accounts Due***	***No. of Accounts Submitted***	***No. of Accounts Signed Off***	***No. of Accounts Being Queried***	***No. of Accounts Unchecked***	***No. of Accounts Outstanding***
1997 General	23	22	19	3	0	1
1997 Presidential/ Referendums	23	21	`15	4	2	2
1998 Referendums	23	20	15	3	2	3
1999 European & Referendum	23	20	0	3	17	3
2001 Referendums	23	20	1	0	19	3
2002 Referendum (Nice I)	23	19	0	0	19	4
2002 General	23	16	1	0	15	7
2002 Referendum (Nice II)	23	11	0	0	11	12
Bye-Elections (1998-2001)	6	6	3	0	3	0
Total	**190**	**155**	**54**	**13**	**88**	**35**
%		**82**	**29**	**7**	**46**	**18**

As I was concerned by

- the Department's failure to ensure that Returning Officers submitted accounts in a timely fashion
- delays in the Department's checking of accounts received
- the quality of records maintained by the Department.

I sought the views of the Accounting Officer.

Accounting Officer's Response

After each election or referendum, the Department takes steps to facilitate Returning Officers in submitting their accounts. The Department sends each Returning Officer a set of forms on which they are to account for the imprests they have received. The forms reflect the items in the Charges Order for the election or referendum concerned. In order to facilitate earlier return of accounts, the Department inserted in the Charges Order, for the elections and referendum held in June 2004, a new provision that will enable the Returning Officer to pay for any support necessary to facilitate the timely submission of their accounts. Other possibilities are also being considered. The Accounting Officer stated that it would be necessary to discuss any proposals for improvement with the Department of the Environment, Heritage and Local Government and with representatives of the Returning Officers.

Advances issued from the Exchequer to Returning Officers have always been accurately recorded in the Department's Exchequer Section and accounted for in the Finance Accounts. The current practice is that moneys refunded by Returning Officers are immediately recorded in the Central Fund ledger and lodged to the Central Fund, and receipt of the accounts recorded. The status of accounts vis-a-vis checking by the Department has been established on spreadsheets that cover all elections (including referendums) from 1994 onwards.

The Accounting Officer stressed that the Department does conduct an initial check of all Returning Officers' Accounts on receipt. They are checked to ensure that all the required forms have been submitted, that the total value of advances received from the Exchequer has been correctly stated, that the amounts being charged have been correctly totalled and that the refund due to the Exchequer is correctly calculated. Any such refunds are lodged immediately to the Exchequer. At a later stage the accounts are examined in greater detail. It is at that stage that any other defects or omissions in the accounts are detected and follow-up queries with the Returning Officers put in train.

The Department has long been concerned at the delay between the initial checking of the accounts and the full examination of them. In November 2001 the process was reorganised so as to concentrate the work in a single section. At that point a staff member was assigned full-time to this work and in addition a second person was assigned full-time to it in 2003. These changes have brought about some improvement but clearly the situation is still far from satisfactory. The Department is continuing with its efforts and plans to add further resources to the area with a view to resolving outstanding queries, carrying out a full examination of accounts which have so far only been subjected to an initial check, and getting in outstanding accounts, before the accounts due in respect of the June 2004 elections and referendum begin to be received.

It is the responsibility of Returning Officers to ensure that they submit their accounts within the 26-week deadline set out in the Charges Order issued to Returning Officers in advance of an election or referendum. The Department does not have power under the Act to compel Returning Officers to submit accounts, nor does the Act provide for sanctions for non-submission or late submission of accounts. The Department did not have plans to seek powers to impose such sanctions.

The Accounting Officer stated that it is not acceptable that accounts are outstanding. Advances made to Returning Officers are based on their estimates of the fees and expenses arising from the election or referendum in question. Returning Officers base their requests for advances on their experience in running elections, and, in general, experience shows their estimates are soundly based. Departmental checking has never detected any instance of fraudulent claiming.

The Department has written to each Returning Officer who has accounts outstanding, listing them and asking that they be submitted as soon as possible. The Department will monitor developments going forward and issue reminders if necessary.

Chapter 3 Office of the Revenue Commissioners

3.1 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 3.5 to 3.8 refer to matters arising from this examination.

Revenue Collected

Revenue collected under its main headings in 2003 is shown in Table 4.

Table 4 Revenue Collected*

	Gross Receipts	Repayments	Net Receipts	2002 Net Receipts
	€m	€m	€m	€m
Income Tax	11,471	2,315	9,156	8,979
Value Added Tax	12,321	2,605	9,716	8,844
Excise	4,928	192	4,736	4,595
Corporation Tax	5,537	382	5,155	4,804
Stamps	1,696	32	1,664	1,139
Customs	148	11	137	134
Capital Acquisitions Tax	222	9	213	150
Capital Gains Tax	1,449	13	1,436	619
Residential Property Tax	1	—	1	1
Total	**37,773**	**5,559**	**32,214**	**29,265**

* Total gross collection amounted to €43.9 billion as levies and fees such as PRSI (€6 billion), Health Levy (€125m) and Environmental Levy (€13m) are collected for other Departments.

Of the net receipts of €32,214m, a total of €168m was paid during 2003 under Section 3 of the Appropriation Act, 1999 from the proceeds of tobacco excise to the Vote for Health and Children. €32,098m was paid into the Exchequer which represented a prepayment of €368m. The amount prepaid at the end of 2002 was €316m. 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. An enhancement to Revenue's systems during 2004, introduced procedures which will allow most payments on account to be allocated and processed as tax receipts.

3.2 Tax Written Off

The Revenue Commissioners have furnished me with details of the €119m of taxes written off during the year ended 31 December 2003. Details of the total amount written off and the distribution according to the grounds of write-off are shown in Table 5 and Table 6.

Table 5 Taxes Written Off

Tax	2003 €'000	2002 €'000
Value Added Tax	41,792	80,197
PAYE	17,505	42,657
Corporation Tax	5,895	6,094
Income Tax	34,683	23,707
Capital Gains Tax	977	—
Other Taxes	1,986	2,600
PRSI	16,607	22,843
Total	**119,445**	**178,098**

Table 6 Grounds of Write Off

Grounds of write-off	2003 No. of Cases	2003 €'000	2002 No. of Cases	2002 €'000
Liquidation/Receivership/Bankruptcy	337	29,442	360	31,137
Ceased trading – no assets	2,277	32,390	2,236	42,765
Deceased and Estate Insolvent	200	2,022	251	2,813
Uneconomic to pursue	38,844	39,322	152,543	75,047
Unfounded Liability	151	1,688	167	2,547
Cannot be traced / Outside Jurisdiction	331	5,978	510	7,427
Compassionate Grounds	81	926	234	2,185
Uncollectable due to financial circumstances of taxpayer	520	7,677	954	14,177
Totals	**42,741**	**119,445**	**157,255**	**178,098**

The write off in 2003 included the write off on an automated basis of 30,600 cases totalling €11.8m in respect of VAT, PAYE, PRSI, Income Tax, Corporation Tax and Capital Gains Tax. All cases related to periods between 1991 and 1998 and no amount exceeded €1,000. 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. The 2003 audit examined file papers and computer records for a sample of 109 cases, representing approximately 17% of the value of non-automated write offs. In addition, the computer files relating to each of the twelve 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. The main finding of the Internal Audit related to commonality checks which are designed to establish, prior to tax being written off, whether related entities had outstanding tax liabilities. These checks were introduced in 2002 following my in-depth examination of write offs. The Internal Audit found that commonality checks were not recorded as having been carried out in 13 of the 41 cases that met the criteria for such checks. As a result of the Internal Audit finding,

instructions were issued to all staff in June 2004 as a reminder that the guidelines in relation to these checks should be strictly adhered to.

3.3 Revenue Audit Programme

Overall Audit Programme

In a self-assessment system returns filed by compliant taxpayers are accepted as the basis for calculating tax liabilities. The validity of returns is established by the auditing of a selection of cases either through reviewing and seeking further verification of particular details or by the examination of documents and records at a taxpayer's premises. While the total number of audits completed has fallen by 408 since 2002, there has been an increase of almost €160m in the total yield, mainly due to audit settlements of €139m in 3,910 bogus non-resident account cases.

The outcome of the 2003 programme of Revenue audits is summarised in Table 7, which also includes 4 audits arising from investigation and anti-avoidance activity.

Table 7 Revenue Audit Programme

	2003		2002	
Audit Type	**No. of audits completed**	**Yield €m**	**No. of audits completed**	**Yield €m**
Comprehensive	4,359	226.3	2,424	88.6
Value Added Tax	3,951	76.4	4,300	61.1
PAYE Employers	874	18.1	862	6.3
Relevant Contracts Tax (RCT)	231	1.6	169	1.7
Combined Fiduciary (VAT, PAYE and RCT)	544	13.2	582	9.9
Capital Acquisitions Tax	112	5.6	225	3.1
Verification Audits and Desk Reviews	5,695	86.8	7,594	88.5
Investigation Branch	1	0.4	8	5.0
Anti-Avoidance	3	0.3	12	4.4
DIRT	8	0.8	10	1.0
Total	**15,778**	**429.5**	**16,186**	**269.6**

Comprehensive Audits

The selection of cases for comprehensive audit is made on the basis of such factors as screening of annual returns, re-audit of cases with previous undercharges, other information available to Revenue and random selection. For 2003, selection was also based on information relating to bogus non-resident accounts obtained from financial institutions under High Court orders — 2,460 comprehensive audits were completed in bogus non-resident account cases in 2003. Generally, a settlement is agreed following completion of the audit and any outstanding amount is paid. A number of settlements involve the restriction of losses which may be carried forward against future years' profits. Where an Inspector is unsuccessful in collecting the additional amount of tax and interest arising on audit adjustments, the amounts are referred to the Collector General for collection.

The outcome of the 4,359 comprehensive audits completed in 2003 is detailed in Table 8. The highest individual settlements were €3.9m for Income Tax and €13.2m for Corporation Tax. The overall yield of €226.3m includes interest charges of €68.1m and penalties of €32.2m.

Table 8 Yield from Comprehensive Audits

	Income Tax		Corporation Tax	
	Number	Yield	Number	Yield
Agreed Settlements:				
€1 to €12,700	1,981	€4.3m	105	€0.4m
€12,701 to €100,000	947	€36m	100	€2.6m
€100,001 to €500,000	259	€52.6m	51	€6.6m
€500,001 to €1m	25	€17.2m	10	€6.8m
Over €1m	15	€28.2m	16	€52.3m
Other Settlement Activity:				
Returns accepted – no additional tax payable	609	—	197	—
Settled by restriction of losses carried forward to future years	4	€0.4m	12	€17.7m
Referred to Collector General for enforcement action	23	€1.1m	5	€0.1m
Totals	**3,863**	**€139.8m**	**496**	**€86.5m**

Random Audits

Under the random audit programme 274 audits were completed in 2003 with a total yield of €3,434,791 including interest and penalties of €1,043,180. In 152 of the 274 audits, the taxpayer's returns were accepted as originally submitted. Table 9 compares the 2003 results with the outcomes for recent years which were set out in my 2002 report on this subject.

Table 9 Random Audit Results 1999 to 2003

	All Random Audits					Yielding Audits	
	Total Audits	Returns Accepted	Total Yield	Average Yield inc. Int.& Pen.	Average Yield Tax Only	Yielding Audits	Average Total Yield
1999	192	151 (79%)	€0.1m	€771	€577	41	€3,609
2000	437	342 (78%)	€0.6m	€1,434	€1,127	95	€6,595
2001	740	510 (69%)	€3.4m	€4,570	€3,174	230	€14,704
2002	720	491 (68%)	€2.9m	€3,999	€2,879	229	€12,573
2003	274	152 (55%)	€3.4m	€12,536	€8,729	122	€28,154

The table highlights the main trends for 2003:

- A reduction of over 60% in the number of random audits;
- An increase in the number of 'yielding' audits from 32% to 45%; and
- An increase of over €555,000 or 19% in the total yield.

These results are reflected in an increase from €3,999 to €12,536 in the overall average yield per random audit. When interest and penalties are excluded, the average amount of tax collected per audit increased three-fold to almost €9,000.

Revenue has indicated that the target for random audits for 2003 was 500 but due to the resources required to audit bogus non-resident account cases it was not possible to achieve the target. For 2003, cases were not selected purely at random with districts selecting cases representing the greatest risk from an initial random selection. This resulted in the increase in the percentage of yielding audits and in the average yield.

Revenue have completed a review of the random audit programme and it is proposed that selection for future random audit programmes will be on a purely random basis. Revenue has indicated that provisional proposals for the 2004 programme are that

- A random selection should be carried out for each of the four geographical regions.
- The selection should be based on taxpayers that have a live registration for the calendar year 2002.
- The audits should test compliance across all of the taxes for which the taxpayers are registered.
- The programme should commence in the latter half of 2004 and should be largely finalised in the first half of 2005.

3.4 Revenue Prosecution Activity

Prosecutions for Serious Tax Evasion

Under Revenue prosecution strategy, Regions and Divisions 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 resource intensive criminal investigation work which can take several years before reaching the Courts. In 2003, 46 cases were referred to the Division for consideration and 27 were accepted for investigation with a view to prosecution. Convictions were obtained in all 6 of the cases decided in Court in 2003 as set out in Table 10.

Of a total of 41 cases on hands at the end of 2003, 32 are still under investigation, 6 have been submitted to the DPP, bench warrants have been issued in 2 cases and one case is before the court.

Prosecution of Non-Filers

Taxpayers failing to submit returns of Income Tax and Corporation Tax normally receive a warning letter from the Revenue Solicitor. In the event that returns are still not submitted, legal proceedings are instituted. During 2003, 13,647 warning letters were issued, follow-up legal proceedings were initiated in 1,931 of these cases and convictions were obtained in 627 cases (575 Income Tax and 52 Corporation Tax) with fines totalling €702,511. Court orders requiring the convicted person to submit the outstanding returns were obtained in 47 of these cases.

In 2003, penalties were imposed by Revenue on 455 employers who failed to make P35 employer returns on time. The total amount of penalties paid in 2003 was €439,348.

Table 10 Convictions during 2003 for Serious Tax Evasion

Occupation/Activity	Offence	Sentence
Accountant	27 charges of false VAT and Income Tax returns	Fined €1,260 on each count mitigated to €320 for each
Market Gardener	2 charges of incorrect Income Tax returns	Fined €3,000 on each count
Director	2 charges of incorrect Income Tax returns	Fined €1,750
Farmer	7 charges of incorrect Income Tax returns	2 year suspended sentence on each charge (concurrent). Bond of €5,000 to remain tax compliant for 5 years
Car Dealer	1 charge of an incorrect VAT return	Fined €1,900 mitigated to €475
Warehousing Company and Director	6 charges of false returns	Company fined €6,250 Director fined €6,250

3.5 Special Investigations

Table 11 sets out the payments made to July 2004 in relation to cases being examined as part of the Revenue Special Investigations. A short summary of progress to date in the investigations follows.

Table 11 Payments arising from Special Investigations

Investigation	Cases Involved	Payments to Date
DIRT — Look Back Audits (financial institutions)	37	€225m
DIRT — Underlying Tax		
Voluntary Disclosure Scheme	3,754	€232m
Court Order Cases	c. 8,000	€305m
NIB	452	€51m
Ansbacher	289	€43m
Pick Me Up Schemes	71	€0.7m
Mahon Tribunal	27	€19m
Moriarty Tribunal	18	€6.3m
Offshore Assets	c. 14,000	€677m
Total		**€1,559m**

Re-audit of DIRT in Financial Institution

In September 2001 I expressed my concern to Revenue 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 difficulties. 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.

In Section 2.5 of my 2002 Report I recorded that following an analysis by Revenue auditors of the information submitted during the 15 November 2001 disclosure scheme, it was noted that a number of those who made voluntary disclosures held non-resident deposit accounts with the financial institution in question. As a result of this new information, Revenue decided that it was necessary to further investigate the operation of DIRT in the financial institution in the periods of assessment 1986/87 to 2003.

The Accounting Officer stated that, in considering the approach to be adopted for the original DIRT look back audit of the financial institution in 1999/2000, the judgment made was that on the basis of the available information it did not represent a significant risk from the point of view of DIRT. As a result the full DIRT audit programme, which was successfully used in high-risk retail financial institutions, was not applied to the financial institution.

The Accounting Officer also stated that the new DIRT audit of the financial institution commenced on 10 November 2003. The audit programme that was used in this new audit was similar to the full DIRT audit programme that was used in the other look back audits in 1999/2000. This full audit programme included a complete review of the DIRT systems and procedures of the financial institution and a detailed examination of samples of accounts for three sample dates (31 March in 1990, 1995 and 1999). Only one date was used in the original audit. This new DIRT audit detected that the financial institution did have DIRT liabilities for the years of assessment 1986/87 to 2003.

He said that the new DIRT audit of the financial institution was finalised on 22 July 2004. The amount of the settlement was €3,162,136, which includes DIRT (€1,091,524), statutory interest (€1,881,557) and penalties (€189,055).

Underlying Tax on Bogus Non-Resident Accounts

I referred in my 2002 Report to the Voluntary Disclose and Pay Scheme under which taxpayers were encouraged to declare and pay, by 15 November 2001, tax liabilities, i.e. the underlying tax, relating to funds which had been deposited in bogus non-resident accounts, and which had come to notice as a result of the DIRT investigations. I completed my examination of the operation and control of the scheme with generally satisfactory results. An overall report of the eligibility and liability assessment programme has not yet been prepared by Revenue as 46 of the 268 planned liability reviews have still to be completed.

I have been assured by Revenue that the remaining 46 liability reviews still under investigation will be completed and that a report will be compiled when all the necessary information is available. However, Revenue was satisfied on the basis of the work completed to date that the overall receipts of €232m from the 3,754 taxpayers that had availed of the scheme represented the full amount of liabilities due in respect of all taxes, together with the 'capped' interest and penalties. Revenue considered that, because of the significantly targeted nature of the checking process (nearly 50% of liability reviews were targeted by Districts), all cases which were likely to have had material additional liabilities had been identified. A total of 40 cases had now been settled with an additional €2m paid. The eligibility review had found only 30 cases (less than 1%) to be ineligible under the terms of the scheme. The 30 cases, which had paid €6.8m, had been advised that they were ineligible. They have been requested to pay the full amount of interest and penalties due. The matter is ongoing.

Investigations into those account holders who did not avail of the voluntary scheme commenced in November 2001. The main source used to identify holders of bogus non-resident accounts is information supplied by financial institutions on foot of High Court orders obtained under Section 908 of the Taxes Consolidation Act, 1997. 18 applications for such orders were made and granted and the information sought has been delivered by the financial institutions. Enquiry letters were issued to account holders identified in batches between October 2002 and January 2004 with a total of 177,000 enquiry letters issued. At July 2004, €305m has been received in respect of this stage of the investigation.

Offshore Investments via National Irish Bank

The investigation into individuals who invested in an offshore investment scheme operated by National Irish Bank is continuing. 292 cases settled with total liabilities of €46m and 113 cases had no liability. 405 of the 452 cases have now been settled and payments on account of €5m have been received in 20 of the outstanding cases.

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 in the Authorised Officer's Report.

Revenue's application to the High Court to obtain unpublished documents gathered by the Inspectors was heard in November 2002. In May 2004, the High Court decided that Revenue could obtain access to certain documents and information gathered by the Inspectors. The documents must relate only to Ansbacher clients or to persons who failed to co-operate with the Inspectors. The judgment stated that Revenue could make an application at a later date to obtain information and documents relating to any

other company or individual. In June 2004, the High Court granted orders to give Revenue access to documents relating to Ansbacher clients and those who failed to co-operate with the inquiry.

84 cases have been settled, 46 of which had total liabilities of €27m. The other 38 cases settled had no liability and include

- 25 non-resident cases covered by the provisions of Double Taxation Agreements
- 2 cases covered by the 1993 Amnesty provisions.

Payments on account of €16m have been received in 41 of the 205 on-going cases.

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 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 1980s or early 1990s 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 these cases.

Tribunals

Matters disclosed at the Moriarty and Mahon Tribunals that suggest that tax evasion may have occurred are being investigated as they come to notice. Currently, 16 cases are being investigated as a result of the Moriarty Tribunal while 2 have been settled for a total of €6.3m. 27 cases are being investigated as a result of the Mahon Tribunal. None of these cases have been settled but payments on account of €19m have been received in 14 cases.

Offshore Assets

In 2001 Revenue established an Offshore Assets Group to examine the tax status of assets held offshore by Irish residents. Following inquiries into taxpayers who invested funds in offshore subsidiaries of two Irish financial institutions, Revenue announced in February 2004 the commencement of an investigation into unpaid tax on funds in offshore accounts and investments. Account holders were encouraged to give Revenue notice of their intention to make a qualifying disclosure by 29 March 2004. They were then required to submit a statement of disclosure and any payment due by 28 May 2004 (subsequently extended to 10 June). The benefits to account holders of meeting these deadlines were:

- Mitigation of penalties
- Settlement details would not be published
- No investigation with a view to prosecution.

In advance of this announcement, the Revenue Chairman met with the Chief Executives of ten financial institutions. As a result of these meetings, the offshore subsidiaries of these institutions issued letters to their Irish resident customers informing them of the Revenue investigation. Revenue also publicised the

investigation and associated deadlines in the media. Some 15,000 notices of intention to make disclosures were received by the March deadline.

To date, payments relating to the voluntary disclosure phase of the offshore investigation total €677m. This investigation has included two earlier phases where just over 1,500 individuals came forward and made voluntary disclosures. In the latest phase 12,500 individuals have now made payments and a number of factors account for the shortfall from the 15,000 notices of intention received. These include

- Cases where a liability has been recognised but borrowings must be secured or assets disposed of in order to meet the liability
- Cases where an extension has been sought in order to compute the liability where records have only recently been made available
- Cases where it has been determined there was no liability notwithstanding that a notice of intention had been submitted.

Revenue intends to seek High Court orders to identify those who have not made a voluntary disclosure.

3.6 Outstanding Tax and its Collectability

Each year, I include in my Report a table of outstanding taxes and PRSI based on information furnished by the Revenue Commissioners. In previous years, the information has reflected the activities and transactions in the twelve-month period to the end of May of the current year - the latest date for which data was available at the time of finalising my Report. However, in order to facilitate an earlier publication date for the Revenue Annual Report and to maintain consistency between the reports, the data reported will in future reflect the situation at 31 March. In this transitional year, the data set out in Table 12 below covers a ten-month period. An aged analysis of the balance outstanding at 31 March 2004 is set out in Table 13.

Table 12 Outstanding Taxes and Levies[1]

Balance at 31 May 2003	Tax or Levy	Charges/ Estimates Raised	Paid	Balance at 31 March 2004	Estimate of amount likely to be collected
€m		€m	€m	€m	€m
126	VAT (Declared Liabilities Net of Repayments)	8,773	8,798	101	81
206	VAT (Estimates)	80	41	245	196
146	PAYE (Declared Liabilities)	7,371	7,343	174	140
15	PAYE (Estimates)	456	459	12	10
165	PRSI (Declared Liabilities)	5,235	5,210	190	152
11	PRSI (Estimates)	354	357	8	7
327	Income Tax (Excluding PAYE)	2,020	2,041	306	245
—	DIRT	158	158	—	—
147	Corporation Tax	4,366	4,356	157	125
152	Capital Gains Tax	1,727	1,729	150	120
19	Capital Acquisitions Tax	150	157	12	10
8	Abolished Taxes	1	1	8	-
1,322	**Total**	**30,691**	**30,650**	**1,363**	**1,086**

[1] Tax is recognised as outstanding from the date the liability is put on the taxpayer's record as a result of the receipt of a return, when an estimate is raised or following the outcome of an audit.

The balance outstanding at 31 March 2004 of €1,363m is €41m greater than at 31 May 2003. Revenue has indicated that the increase is due to the change to a 31 March reporting date. It is estimated by Revenue that €1,086m or 80% of the total outstanding is likely to be eventually collected. The estimated collection ratio at May 2003 was also 80%.

Table 13 Aged Analysis of Debt at 31 March 2004

Tax	Total tax outstanding at 31 March 2004	Amounts outstanding for 2003	Amounts outstanding for 2002	Due for periods 1990/91 to 2001	Due for earlier periods
	€m	€m	€m	€m	€m
VAT	346	98	79	169	—
PAYE	186	97	25	62	2
PRSI	198	102	32	62	2
Income Tax	306	2	78	216	10
Corporation Tax	157	52	12	89	4
Capital Gains Tax	150	4	26	119	1
Capital Acquisitions Tax	12	1	1	10	—
Abolished Taxes	8	—	—	8	—
Total	**1,363**	**356**	**253**	**735**	**19**

As the information given in Table 12 is a key indicator of the performance of Revenue in maximising the timely collection of taxes and duties, and of the effectiveness of actions taken against late or non-payment of tax, I have examined:

- the basis on which the figures supplied by Revenue were prepared
- the basis of the estimated collection rate calculation
- the extent of collection activity in cases where the tax outstanding has not been collected.

The results of the examination are presented below.

Compilation and Presentation of Debt Figures

In recent years, Revenue has introduced a fully integrated computerised tax system —Integrated Taxation Services. The central component of the system is Integrated Taxation Processing (ITP) which issues returns, processes returns and payments, and carries out the main collection activities for all the major taxes. The other main system components are the Common Registration System (CRS) which brings together registration details for each tax type into a single customer and tax agent register, and Active Intervention Management (AIM) which provides composite payment and compliance details for all taxpayers. AIM is used extensively by the Collector General for ongoing case-working to secure payment of outstanding tax, returns compliance and the management of tax debt. The details on AIM in relation to each taxpayer represent a snapshot of each customer's transactions on ITP at a point in time. Generally, ITP details are transferred to AIM on a weekly basis.

While details of the status of each taxpayers "account" with Revenue are readily accessible on ITP and AIM, neither system records total details of tax outstanding by the normal commercial business method of maintaining a debtors control account. Such a control account is not required by Revenue for financial reporting purposes, as the annual account prepared by Revenue and audited by me is a cash account

which records cash actually received and either repaid or paid over to the Exchequer. The outstanding taxes details prepared by Revenue and published in my Annual Report are obtained through an enquiry and extraction process. Detailed tables of amounts outstanding are prepared for each tax, and these are summarised to produce the published figures.

Reports for each taxhead are obtained from the ITP system giving summary information for each tax year at the month end. The data produced varies from taxhead to taxhead but would typically include total amounts in respect of the charge to date, payments to date, overpayments to date and balance outstanding. In addition, information held on ITP in relation to the status of the balance outstanding is aggregated annually to show, for each tax year, the amount of the balance written off, under appeal, demanded, with enforcement etc. These detailed reports allow for the preparation of the outstanding taxes tables for each taxhead by means of a series of interlinked spreadsheets. This examination reviewed the process by which the data produced from ITP was used for the preparation of the outstanding taxes tables. The computer programs which are run to produce that data were not reviewed.

The examination found that there is a reduction of control as the outstanding taxes details are produced by the aggregation of summaries which are extracted by enquiry from the ITP system. That extraction process differs as between the various taxes. The system does not maintain an ongoing control total of the amount outstanding for each taxhead, or of payments received or written off etc., for reconciliation with other Revenue records. It is not possible to 'drill down' to the individual case balances that make up the overall totals for each taxhead.

The compilation process used is also quite complicated, and uses a series of interlinked spreadsheets and formulae. However, a procedures manual was not available. Revenue has indicated that work had commenced in preparing a manual to replace the current guidelines.

Certain figures used in the process are allowed stand as "balancing figures", i.e. not reconciled with other sources of the figure, even though source data for these figures is available from ITP. Specifically:

- In the case of VAT, PAYE and PRSI, the 'paid' figure for each tax year is the net charge less the balance outstanding. The payments figures extracted from ITP for each year are not used to verify the 'paid' figure. Reconciliations between the 'paid' figures used for each of these taxheads and the underlying ITP data revealed differences (PAYE €74m, PRSI €34m, VAT €3m). Revenue is continuing to examine these differences.
- The 'charge' figure for each tax is reduced by a "discharge"[2] figure. For VAT this discharged figure is taken directly from the data produced from ITP showing assessments discharged. However, for Income Tax and Corporation Tax the figure is essentially a balancing figure representing the amount by which the balance decreased by other than payment. Reconciliations prepared by my staff showed that the discharge figure for Income Tax and Corporation Tax did agree with the underlying ITP data. While the use of balancing figures in the calculation ensures that the figures produced are consistent with each other i.e. that the charge less the discharge less the amount paid equals the balance outstanding, the assurance value of the process is devalued.

Revenue should reconcile all figures with the underlying ITP data.

Calculation of the Estimated Collection Rate

In addition to providing details annually of the amount of outstanding taxes, Revenue also gives an annual estimate of how much of the outstanding tax it expects to ultimately collect. In respect of the total of

[2] Discharge is the amount of the write off plus the reduction in charges less any increase in charges

€1,322m outstanding at 31 May 2003, Revenue estimated that €1,054m or 80% of the total tax outstanding would be collected.

The estimation process is a simple one. The estimate quoted in respect of May 2003 was obtained by comparing the total outstanding for all taxes (excluding CAT) at 31 May 1998 with the amount still outstanding in respect of that total at 31 May 2003, five years later. The exercise indicated a reduction of 80% in that portion of the debt. That rate was adopted as the expected collection rate for the May 2003 debt and, when applied to the amounts outstanding for each taxhead, gave the estimate of €1,054m.

Issues which arise in relation to this estimate are:

- The estimate is based on the total reduction in debt rather than purely the amount of that debt which was collected. As well as being reduced by payment, the debt can be reduced by discharge which includes write off. It may be more informative to estimate the rate of reduction while identifying the contribution of each of the different components – payment, discharge and write off;
- The estimate is based on the reduction in total debt and doesn't take account of different reduction ratios between different tax types;
- The value of the estimation process is diminished by the fact that actual performance is not subsequently compared with what was estimated. Such an exercise would also provide useful information to feed into future estimates.

Outstanding Debt as a Measure of Performance

Actual performance in the collection of outstanding debt is considered an important measure of the overall performance of Revenue. The Steering Group on the Review of Revenue recommended that a set of benchmarking measures, indicators and collection and debt performance targets be formally developed and introduced, using existing internal information in Revenue. The Final Report of the Committee of Public Accounts Sub Committee inquiry into certain Revenue matters expanded on this issue and recommended that Revenue should develop and publish annually:

- For each taxhead
  - measures of the tax base
  - the amount of tax charged
  - the budget forecast, the tax collected, and variances and explanations
  - underlying tax debt
  - changes achieved in the level and age structure of tax debt
- In respect of tax debt, measures of risk, and policy on the containment of risk within acceptable limits
- Measures of performance against independently derived and externally approved and audited performance benchmarks, which reflect the medium term strategic management objectives of Revenue.

Information on tax collected, budget forecasts and variances and explanations as well as total tax debt have been provided in Revenue Annual Reports for a number of years. Work on implementing the

remaining recommendations is being carried out in conjunction with the ongoing development of a Revenue performance scorecard.

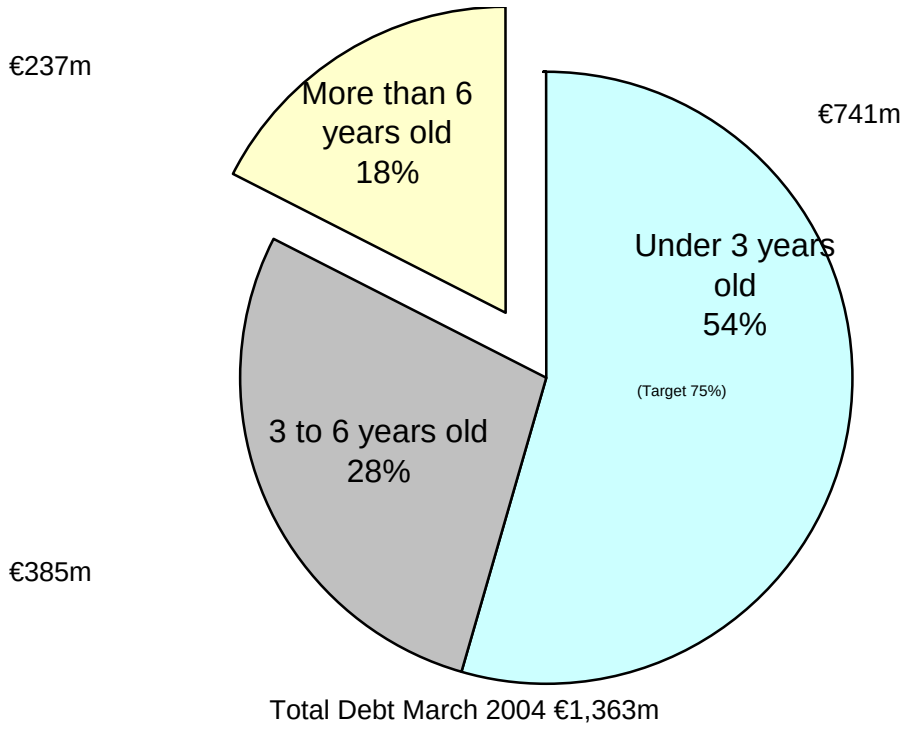
Revenue's Strategy Statement for the period 2003 to 2005 set specific targets in relation to the level of debt:

- Achieve an overall reduction in the level of debt;
- All debt on record to be less than six years old or be the subject of active enforcement or Court proceedings;
- No more than 25% of debt to be greater than three years old.

An analysis of debt levels at 31 March 2004 shows that €622m or 46% of the overall debt of €1,363m related to 2000/01 and earlier, i.e. greater than three years old, including €237m (18%) in excess of six years old - 1997/98 and earlier years (see Figure 1). This underlines the extent of the challenge facing Revenue in achieving the Strategy Statement targets.

In a previous initiative in 1997, Revenue moved to address the amount of old uncollectable debt on record by revising its write off procedures. The changes included the automatic write off of small amounts, enhanced efforts to review doubtful debt and the write off of cases involving company liquidations at the beginning rather than the end of the liquidation process. This resulted in a near 300% increase in write offs for 1997 and 1998 before returning to earlier levels of write off in subsequent years. That action was intended to bring about a significant reduction in the level of old book arrears and a greater focus on the collection of current taxes and current arrears. There is no provision for an increased level of write offs in the current strategy, where the stated focus is on timely and robust action against late payment or non-payment of tax.

Figure 1 Analysis of March 2004 Debt Levels in terms of Statement of Strategy 2005 Targets



Extent of Collection Activity

During this segment of the examination, files of cases with Income Tax outstanding at July 2003 and at March 2004 were compared, and cases were extracted where the amount outstanding for any tax year had not changed between the two dates. The database of over 310,000[3] records representing 201,000 taxpayer cases with Income Tax outstanding for one or more years is summarised in Table 14 on a taxpayer case basis. For more than 90% of the cases the balance outstanding was less than €1,000, and the sum of those balances represented only 5% of the total balance outstanding of €163m. Over 200,000 or 99.5% of cases fell into the sub €20,000 category amounting to €64m or 39% of the total. 20 cases, each with tax outstanding of more than €1m, accounted for over 24% of the total value.

Table 14 Analysis of Database by Taxpayer Case

Value Range	Number of Cases	% of Cases	Income Tax Value	% Tax Value
€0 to 1,000	185,952	92.28%	€8m	5%
€1,000 to €20,000	14,624	7.26%	€56m	34%
€20,000 to €100,000	773	0.38%	€29m	18%
€100,000 to €1m	141	0.07%	€31m	19%
Cases greater than €1m	20	0.01%	€39m	24%
Total	**201,510**	**100%**	**€163m**	**100%**

A sample of 74 records with annual balances outstanding in excess of €999 was selected from the full database of 310,000 records as follows

- A random selection of 5 records for each of the six tax years from 1996/97 to 2001 where the balance outstanding was between €1,000 and €100,000
- A random selection of 5 records for each of the six tax years from 1996/97 to 2001 where the balance outstanding was between €100,000 and €1,000,000
- 14 records where the balance outstanding for the period was greater than €1m.

The 74 records selected referred to 68 different taxpayer cases as some of those selected had tax outstanding for more than one period. The cases were selected on the basis of Income Tax outstanding for a single tax period. Many of the cases had Income Tax outstanding for other periods and some also had other taxes outstanding. Revenue caseworkers seek to collect all tax outstanding when working a case. A profile of the cases selected for examination is set out in Table 15.

Table 16 shows the number of tax years for which amounts were outstanding for the cases examined.

Table 15 Tax Arrears Profile of Cases Selected

	Number of Cases	Income Tax Outstanding for Year Selected €m	Total Income Tax Outstanding €m	Total Tax Outstanding €m
Cases €1,000 to €100,000	30	0.09	0.19	0.26
Cases €100,000 to €1m	24	5.73	9.35	9.60
Cases greater than €1m	14	31.20	31.44	92.83
Total	**68**	**37.02**	**40.98**	**102.69**

[3] A separate record is maintained for each taxpayer for each period in arrears

Table 16 Number of Years Outstanding for Cases Selected

Number of Tax Years Outstanding	Number of Cases	Income Tax Outstanding for Year Selected €m	Total Tax Outstanding €m
One Year	28	19.38	20.65
Two Years	22	14.50	75.49
Three to Four Years	10	1.06	1.63
Five Years and More	8	2.08	4.92
Total	**68**	**37.02**	**102.69**

The computer records on ITP and AIM were examined for each case to establish the level of collection activity in relation to the case. The criteria set for the examination of the sample was that a case would be considered to be the subject of collection activity if:

- There was evidence on the AIM system notes of active collection interventions since the sample date of July 2003, or
- There was a record of a factor which prevented the case being worked (e.g. under appeal, address not known), or
- The case had been referred to enforcement (solicitor or sheriff).

Findings

The collection status of the cases examined is set out in Table 17. 12 cases were at enforcement stage (sent for enforcement between June 2001 and March 2004), and of these cases, payment has been received in one case and, in another, settlement has been accepted and payment is due.

23 of the 38 cases at demand or warning stage were open to AIM collection action. There was no indication of collection action in 9 of these cases. In relation to one of these 9 cases with tax outstanding of €51,000, Revenue has stated that the case is on the arrears list for AIM caseworking and that caseworking has now commenced. In another, the tax outstanding has since been written off. Revenue has stated in relation to the remaining 7 cases with tax outstanding of less than €8,000, that business plans for 2004 set a target of caseworking all cases with arrears greater than €20,000. For cases with arrears below this threshold, the Enforcement Referrals Unit will carry out enforcement where appropriate, prioritising cases based on the amount of the arrears. These 7 cases have not been selected for enforcement yet due to the amount of the arrears involved.

Table 17 Collection Stage of Cases Selected

Collection Stage	*Number of Cases*	*Income Tax Outstanding for Year Selected €m*	*Total Tax Outstanding €m*
Awaiting Demand	3	5.80	5.80
Demand*	2	—	0.02
Repeat Demand	17	8.46	9.76
Warning	16	2.37	2.52
Sheriff	4	0.43	0.44
External Solicitor	8	1.30	1.45
Under Appeal	17	18.66	82.70
No Stage on Record**	1	—	—
Total	**68**	**37.02**	**102.69**

** The two cases in this category had Income Tax outstanding for the period selected of less than €4,000.*

*** In this case, the taxpayer had paid the outstanding amount of €2,500 at the time of review.*

Table 18 shows how the liabilities arose in the cases examined. In almost half of the cases, the liability resulted from the normal process of receipt of return and issue of assessments. In 17 of the cases examined, a Revenue audit had been carried out for at least one period where tax was outstanding but the outstanding amount had not been paid. 9 of these cases that had been audited are under appeal and three have been sent for enforcement.

Table 18 Source of Liability for Cases Sampled

Source of Liability	*Number of Cases*	*Income Tax Outstanding for Year Selected €m*	*Total Tax Outstanding €m*
Notice of Assessment	33	2.60	3.12
Audit	17	6.74	11.09
Share Options	18	27.68	88.48
Total	**68**	**37.02**	**102.69**

In two cases, Income Tax liabilities of over €300,000 arising from audit in each case had been sent for enforcement by the caseworker in the Collector General 's Office. Subsequently, the taxpayers (who are related) both submitted returns which only showed PAYE income with no reference to the audit issues or amounts outstanding. The returns were processed by the tax district without reference to the auditor or the case notes, and assessments were raised for the lower amounts. The enforcement proceedings were withdrawn. Revenue has confirmed that the original assessments from audit have been re-instated and that enforcement would be initiated again at the earliest opportunity.

18 of the cases examined had liabilities arising from the exercise of share options, and the total outstanding tax in these cases was €88.5m (which includes a very large single case). A particular difficulty arises in many of these cases due to the individuals concerned having left the country. 7 of the 18 cannot be located and are understood to be abroad. In the remaining 11 cases examined where the individual had been located, whether in Ireland or abroad, none of the outstanding liabilities have been collected to date. However, 5 cases are under appeal.

An updated statement of the current position of the cases examined has been provided by Revenue, and is shown in Table 19.

Table 19 Revenue Update on Cases Examined

Stage	*Amount of Tax*	*Number of Cases*	*Revenue Comment*
Under Appeal	€82.52m	17	Not open for collection
Share Option	€17.26m	12	At various stages of collection. Some gone abroad
Other Large Liabilities	€3.29m	6	All being pursued
Smaller Liabilities	€0.13m	33	At various stages of collection/enforcement
Total	**€103.20m**	**68**	

Inconsistencies were noted in the quality and maintenance of the AIM notes. Revenue has stated in this regard that additional information on cases is often available in paper records in the relevant Debt Management Unit of the Collector General's Office, and that there may also be activity occurring in the relevant tax district. However, Revenue recognises that the quality and consistency of AIM notes is a problem and has indicated that it is continually addressed at AIM training courses.

Conclusions

The Table of Outstanding Taxes is prepared from data extracted from the computer taxpayer database in summary form, and aggregated through a number of spreadsheets to allow the overall position to be presented. From a review of detailed listings of taxpayer balances, which are prepared at a date close to the summary extraction date, I have no reason to doubt that the Table gives a good indication of the debt owing to Revenue. The summaries of outstanding taxes are prepared for management information, and the detailed listings for collection activity. Measures to improve the assurance in respect of the outstanding taxes figures to financial statement standard would require that the summary extractions and detailed annual listings be prepared at the same time and reconciled, that no 'balancing figures' are allowed stand without subsequent reconciliation, and that the process is governed by a procedures manual and is subject to supervisory checking.

The calculation of the Estimated Collection Rate is somewhat rudimentary in that the percentage reduction over the past five years in the total of all debt outstanding is established for the latest year available, and that percentage is applied to the overall total amount currently outstanding for each taxhead. That simple approach relates to a general reduction in debt as against a collection rate. It would be more appropriate to separate the contribution of the different components of the overall reduction i.e. payments received, discharges, and write off. The current approach also does not take account of the likelihood of different reduction rates as between the various taxheads. It would also be worthwhile to subsequently compare actual performance for each component and each taxhead with the annual estimated figures.

Revenue has set challenging targets in regard to debt levels in its Statement of Strategy 2003-2005 and, in particular, that all debt on record be less than six years old (or subject to active enforcement or Court proceedings). This is to be achieved by timely and robust action against late payment or non-payment of tax. However the focus on caseworking all cases over €20,000, coupled with the lack of collection activity noted in eight sampled cases with arrears under €8,000, raises the question as to how the large number of cases under €20,000 will be cleared within the six year deadline. Of the database of 201,000 Income Tax arrears cases totalling €163m created for this examination, over 200,000 or 99.5% fell into the sub €20,000 category amounting to €64m or 39% of the total.

The extent of share options arrears cases indicates that a particular problem arose in this area. Following a programme of verification audits in this area during 2001 and 2002, changes were introduced in the Finance Act 2003 which require payment of Income Tax due within 30 days of exercising the option to purchase the shares.

Other points of concern were:

- there had been no collection activity during the targeted period on one of the sampled cases with arrears of €51,000; caseworking has now commenced;
- enforcement proceedings in two cases, each of €300,000, in relation to Income Tax arrears as a result of audit were withdrawn following the issue of assessments for much smaller amounts by the local district on receipt of returns of PAYE income; the local district had not referred to the auditor or to the case notes on the computer system; audit assessments are now re-instated
- inconsistencies were noted in the quality and maintenance of the notes on the AIM computer system.

Accounting Officer's Response

The Accounting Officer confirmed the importance of the outstanding taxes figure as a performance indicator, which was reported on both in my Annual Report and in Revenue's Annual Report. As the figure measured the absolute size of the outstanding tax debt and was used to compare year-to-year performance in tackling it, it was important that there was confidence that it gave a reasonably accurate measure of the debt and that there was consistency in how it was calculated from year to year. He was satisfied, in that regard, on both counts, and noted that the audit conclusion was supportive of that view.

Revenue accepted that the reconciliation of certain figures used in the compilation process with other sources of those figures would give additional assurance value to the process, but noted that every additional layer of assurance came at a cost. Nevertheless, it was intended to carry out a study to examine the feasibility and the opportunity cost of aligning the ITP State of File Report with the AIM extract which would allow drill down to case level and cross checking of figures.

The Accounting Officer noted that there were factors in the present system which gave rise to both overestimation and underestimation of the collectability of arrears. On the one hand there was overestimation because the five-year look back on which the calculation was based included all debt reduction (collection, discharge and write off). On the other hand there was underestimation because some of the outstanding tax against which the five-year performance was measured may also be collected in the future. An underestimation bias was also built into the methodology because future collection rates were based on past performance and did not therefore fully reflect improvements in the collection process. The fact was that the collection rate was an estimate and had always been represented as such.

Revenue was currently looking at ways to improve the forecasting methodology in this area. One approach being considered was to focus on total debt reduction instead of just the collection rate. In that regard Revenue would also be looking at the possibility, though that may be difficult to achieve in the short to medium term, of splitting debt reduction estimates into collection, discharge and write off. A particular difficulty arose because pre-1991 Income Tax and Corporation Tax cases were not carried forward into ITP when that segment went live in 2001. There should be no difficulty in identifying the components of debt reduction for the years 2001 on. It was also intended to refine that analysis in the future by, inter alia, taking a look-back at the performance of individual taxes rather than the present method of collectively examining the macro performance of all taxes.

The Accounting Officer considered that it was a fair reflection of the success of the caseworking approach to tax collection that the bulk of arrears cases were for relatively small amounts. Revenue business plans included the target that collection caseworking would pursue any case that had accumulated arrears of over €20,000. Arrangements were in place for the debt management units to identify and act on all such cases identified. That approach would limit the risk to the Exchequer and had been a very effective tool in managing the overall debt in recent years. At the same time it was the intention to continually reduce the caseworking threshold, as resources permitted.

However the Accounting Officer stated that it must be recognised that it was not possible to casework each and every case that had a tax debt. The smaller debts called for somewhat different strategies. The numbers involved meant that individual caseworking was not a realistic option at this point in time. Cases with debts under the €20,000 threshold were instead subject to collection compliance and enforcement through the Enforcement Referrals Unit. This Unit reviewed cases with amounts outstanding below the caseworking threshold. Referral for enforcement was again prioritised based on accumulated tax at risk. Alternative computer enhancements, which would allow the unit to process greater numbers, were being considered.

He also stated that Revenue was working towards a position where all collection and compliance activity would be recorded in AIM, but that full migration to an electronic system of recording all caseworking notes takes time.

3.7 Direct Debit Payments

In 1992 Revenue introduced a method of payment of current taxes by means of Direct Debit. Under the arrangement, the taxpayer estimates the annual tax liability for PAYE/PRSI, VAT or Income Tax and makes payment to Revenue through bank account debits for agreed monthly amounts. The taxpayer is required to make only a single return, annually, for each taxhead, and to pay any balance between the total annual amount due under the return and the total of the monthly payments already made.

Eligibility for the Scheme

Taxpayers with a history of non-payment are specifically excluded from the direct debit facility. These are typically cases where Revenue has instigated enforcement procedures for recovery of taxes due. Direct debit is a concession by Revenue, and the facility is not granted where the proposed amount is too low or the taxpayer has a poor payment history.

The basic requirement for taxpayers paying VAT or PAYE/PRSI is that they must be up to date with their returns and payments. Taxpayers who have a pattern of late payments (as opposed to non-payment) are encouraged to avail of the facility. Taxpayers with a high VAT liability are not normally placed on direct debit.

For Income Tax, there is no restriction on who can avail of the Direct Debit facility. The taxpayer is also free to decide the amount of the direct debit payments. However a payment schedule requires the taxpayer to commence payment not later than October in the first year or by May in subsequent years.

Numbers Availing of Direct Debit Arrangements

The amount collected through direct debit, and the number of taxpayers availing of the facility under each tax head for the three years 2001 to 2003 is shown below for each of PAYE, VAT and Income Tax. The total amount collected in 2003 exceeded €2.9bn.

31,500 cases availed of the arrangement for PAYE/PRSI, and almost 24,000 for VAT or 17% and 10% respectively of total PAYE and VAT registrations. The take up for Income Tax is still relatively small at less than 4,500. However this figure includes almost 1,700 new cases in 2003, which may be in response to changes introduced in 2001 that allow greater flexibility in payment frequency.

Table 20 PAYE/PRSI Direct Debit Cases 2001 - 2003

	2001	***2002***	***2003***
No. of cases	27,615	29,520	31,548
Total Amount	€1,306,280,861	€1,362,447,290	€1,432,909,628

Table 21 VAT Direct Debit Cases 2001 - 2003

	2001	***2002***	***2003***
No. of cases	21,983	23,168	23,946
Total Amount	€1,172,378,225	€1,287,864,693	€1,420,604,259

Table 22 Income Tax Direct Debit Cases 2001 - 2003

	2001	*2002*	*2003*
No. of cases	N/a	N/a	4,485
Total Amount	€36,953,490	€44,413,381	€57,193,855

Benefits and Risks

Under the standard return and payment procedure an employer is required to make standard monthly returns and payments for PAYE/PRSI, and a VAT-registered taxpayer is obliged to lodge returns and make payment of tax due bi-monthly. Under the monthly Direct Debit arrangement, the taxpayer is only required to make a single return at business year-end along with any balancing payment due.

In addition, taxpayers can vary the amount of each direct debit payment to match their business cycle e.g. to reflect seasonal changes. A monthly payment may even be cancelled if advance notice is given. Once payments are being made the taxpayer is considered by Revenue to be compliant.

Direct debit is also of considerable benefit to Revenue. Payments are received regularly on a monthly basis. Interaction with the taxpayer is minimised. The processing of returns and payments is greatly reduced as payments are electronically received, and paper returns are not submitted during the year.

However there are risks from the Revenue viewpoint. As the taxpayer is only obliged to make one annual return, it will be in excess of 14 months before Revenue can determine if correct payments have been made under direct debit. An insufficient level of monthly payment may cause a large underpayment to develop and possibly lead to the inability of taxpayers to pay the balancing amount.

Direct Debit will continue even if a return is not made. Contact only takes place with the taxpayer if the return is not made in time, the final or balancing payment is late, or any payment fails.

Taxpayers can take advantage of understated monthly payments to increase cash flow. On the taxpayer record, monthly liabilities are automatically estimated at the same amount as the direct debit payment. The true liability is not known until the annual return is made.

Controls

Taxpayers may set different amounts for various months when setting up the direct debit mandate, or may change the amount of individual payments during the course of the year. Revenue also allows taxpayers to cancel individual monthly direct debit payments in advance. All changes are made through Revenue. However, taxpayers on direct debit are obliged to ensure within the tolerances allowed that the total of the monthly payments is sufficient to cover the annual tax liability, and to make the annual return and balancing payment within the time allowed. Failure to lodge a return may attract the standard penalties or surcharges on late returns. Where the return and final payment are late, or the deficit is outside prescribed limits, interest charges are also applicable.

Where the taxpayer fails to lodge the annual return and balancing payment by the due date, interest is chargeable at a rate of 0.0322% per day (approximately 1% per month) on the balance outstanding from the due date to the date of receipt. Additional interest is also chargeable where the total of the monthly payments is less than 80% (VAT) or 90% (PAYE) of the yearly liability on the annual return. In such cases, interest is chargeable at a rate of 0.0322% per day on the total amount of the shortfall from a date six months before the due date of the annual return up to the due date.

In the case of Income Tax, taxpayers may set their own level of monthly direct debit payment. However, to meet their preliminary tax obligations, the total amount of direct debit payments in the tax year must be not less than the lesser of (i) 90% of the Income Tax liability for the year in question, (ii) 100% of the Income Tax liability for the previous tax year, and (iii) 105% of the Income Tax liability for the tax year preceding that previous year.

Audit Approach and Findings

The audit review objective was to establish the extent of any abuse of the direct debit tax payment facility together with any related Revenue response. Samples of PAYE/PRSI cases and VAT cases were selected and examined. A sample was also selected of cases under both tax heads which still operate under an outdated fixed mandate scheme. The primary focus was on the degree to which payments were maintained at the required levels, and whether significant shortfalls attracted the interest sanction.

PAYE/PRSI

The sample selection for PAYE/PRSI was made in two stages. Initially, a database of cases where the balancing amount was in excess of 10% of the annual total return was created from a listing of all PAYE/PRSI direct debit cases. The results are summarised in Table 23 below.

Table 23 PAYE/PRSI Direct Debit Cases with Balancing Payments Exceeding 10%

	Y/End Balancing Payments Total	*No. of Cases*	*Total of P35 Returns*
2003	€198,905,249	12,149	€675,317,798
2002	€216,099,295	13,551	€651,899,260

Two samples were then randomly selected from that database as follows:

- Balancing amounts recorded at end of December 2002 (20 cases)
- Balancing amounts recorded at end of December 2003 (20 cases).

PAYE/PRSI Sample No. 1

The results of the examination of the 20 cases where a balancing payment due at year-end 2002 was greater than 10%, and greater in amount than €10,000, are summarised below:

- In all cases the balancing payment was paid;
- Interest was charged in one case only;
- Only 7 of the cases had increased direct debit payments to cover their liability in 2003, the remaining 13 cases continued paying the same amount;
- Of the combined annual return (€2,556,234) in the 20 cases, 39% (€1,004,869) was in the form of balancing payments;
- Balancing payments ranged from €11,566 (23% of total annual liability) to €369,425 (65% of total annual liability).

PAYE/PRSI Sample No. 2

The results of the examination of the 20 cases where a balancing payment due at year-end 2003 was greater than 10%, and greater in amount than €10,000, are summarised below:

- In all cases, the balancing payment was paid;
- Interest was charged in one case only;
- 15 cases also had balancing payments in excess of 10% in 2002;
- Of these 15 cases only 4 had increased the monthly payments in 2003;
- Of the combined annual return (€1,552,490) in the 20 cases, 33% (€512,479) was in the form of balancing payments;
- Balancing payments ranged from €10,946 (67% of total annual liability) to €92,105 (78% of total annual liability).

VAT

A full annual detailed listing could not readily be provided by Revenue for VAT due to the existence of multiple year-endings for that tax. Figures supplied were only in respect of cases with year ending in December. Table 24 shows cases from that database where the balancing amount was in excess of the 20% of total annual liability as permitted by the scheme.

Table 24 VAT December Direct Debit Cases with Balancing Payments Exceeding 20%

	Y/End Balancing Payments Total	*No. of Cases*	*Total of Annual Returns*
2003	€5,978,253	209	€14,498,774
2002	€2,669,042	194	€6,354,146

Two sample selections were then made as follows:

- Balancing amounts recorded at end December 2003 (20 cases)
- Balancing amounts recorded at end December 2002 (10 cases)

VAT Sample No.1

One case in the random sample selection did not start direct debit until April 2004 and was excluded, together with two further cases which, though selected, were within the limits. Of the remaining 17 cases:

- Three cases had, in fact, set direct debit amounts by December at a level which would have been sufficient to cover their annual liability. However, arrears arose in one case because two payments were cancelled during the year; in both other cases the amounts were varied upwards later in the year;
- No interest was charged in any case;
- 8 cases had also incurred arrears in 2002;
- One case had the direct debit amount reduced during the year, and subsequently underpaid by 36%;
- Of the combined returns of the 17 cases (€2,060,537) the underpayment amounted to €910,275 or 44%; €459,951 of this amount remains outstanding in 13 cases;
- Balancing payments ranged from €10,241 (77% of total annual liability) to €292,412 (53% of total annual liability).

VAT Sample No.2

Of the 10 cases from 2002 in the second VAT sample

- No interest was charged in any case;
- One case had the direct debit amount reduced during 2002, and subsequently underpaid by 46%;
- Of the combined returns of the 10 cases (€690,837), the underpayment amounted to €384,096 or 56%; €114,764 is still due in respect of 6 cases;
- Balancing payments ranged from €12,189 (46% of total annual liability) to €134,477 (69% of total annual liability).

Fixed Mandate Cases

These are cases, for both PAYE/PRSI and VAT, where the amount of each direct debit mandate remains at the level set at the time when it was put in place. This type of mandate did not allow any flexibility. In order to vary the payment amount, the original mandate had to be cancelled and a new mandate set up. While there are 4,311 active fixed mandates dating back to 1992 for payment of VAT or PAYE/PRSI as indicated below, Revenue have not accepted new fixed mandate arrangements since 2001.

Table 25 Fixed Mandate Cases for PAYE/PRSI and VAT

Commenced	1992	1993	1994	1995	1996	1997	1998	1999	2000
No. of Cases	63	106	175	453	964	1,038	1,361	114	37

The results of an examination of a random sample of 20 fixed mandate cases, to include 2 from each year, are summarised below:

- While the sample ranged from 1992 to 2000, only in 2 cases had the direct debit mandate been amended at any stage.
- No annual return for 2003 had been received in 8 cases. Therefore the estimated liability recorded remains equal to the payments made. In the absence of a return it cannot be determined if overpayments or underpayments arose in these cases. Enforcement in relation to non-filing of returns has commenced in one case.
- There were 10 cases where the total payments made were less than the annual liability returned. 6 of these were in excess of the relevant 10% or 20% limit, but interest was not charged.
- 2 cases have arrears outstanding, and enforcement procedures have started in one case.
- There is one case where the company has ceased trading (March 1999) but has remained on Direct Debit. There is a substantial overpayment on file (€62,026).

Audit Concerns

The direct debit payment schemes provide advantages to Revenue through the promotion of compliance and the reduction of administration costs. The scheme also offers advantages to the taxpayer. However there is a risk to Revenue of underpayment of tax through the year where direct debit amounts are set below the level required under the schemes. Any abuse of the scheme is reflected in the extent to which the final balancing payments exceed the limits allowed.

The findings of the review indicate that over 31,500 customers availed of the direct debit scheme in respect of PAYE/PRSI in 2003 and declared an overall liability of €1.4 billion. However in over 12,000 cases with a P35 liability of €675m, the year-end balancing payment was in excess of the 10% allowed by the scheme. Balancing payments in such cases totalled €198m as against an expected maximum of €68m. Monthly underpayments at that level could indicate an annual cost to Revenue of the order of €3m-€4m. On the basis of the samples examined, the imposition of an interest charge was very much the exception rather than the rule. Balancing payments for 2003 in the restricted VAT sample totalled approximately €6m as against the €2.9m indicated by the 20% limit.

I sought the observations of the Accounting Officer as to

- whether payment patterns and the size of year-end balancing payments were monitored in order to ensure compliance with the terms of each direct debit scheme,
- whether consideration was given to withdrawal of the schemes from those who did not abide by its terms, and
- why interest was not automatically demanded in all cases where balancing payments exceeded the limits allowed.

Accounting Officer's Response

The Accounting Officer stated that payment by direct debit was an important part of the collection process. In the absence of a significant number of taxpayers using the direct debit payment option, there would be an additional burden placed on normal payment processing systems and a likely increase in the workload of Debt Management Units in terms of the number of cases requiring referral to the enforcement agencies for collection of unpaid tax. In the context of VAT, direct debit had the advantage of securing payment on a monthly basis, as compared to bi-monthly payments under the normal payments method. Direct debit, of course, also had important benefits for the taxpayer by reducing the number of returns to a single annual return, and allowing better cashflow management throughout the year.

He also stated that, by definition, the amounts paid by direct debit throughout the year could not equate to the actual tax liability for the year. The real liability became apparent only on receipt of the annual return. However, the advantages of direct debit outweighed the downside of some potential underpayment of the tax liability throughout the year, provided any balance due was paid with the annual return and, where necessary, future direct debit amounts were increased. Where a business was growing, taxpayers could sometimes neglect to keep direct debit payments in line with tax liabilities. Unfortunately, there were also some taxpayers with cash flow and other problems who deliberately exploited the direct debit process by paying insufficient amounts throughout the year, leaving a significant balance due on the annual return. The return itself was often deliberately submitted late and, in some instances, by the time the return was received (as a result of Revenue pressure) recovery of the debt from the taxpayer could be extremely difficult.

The Accounting Officer indicated that the Collector-General's Division of Revenue had been aware of the direct debit problem for some time and that the monitoring process in relation to direct debit had been systematically increased over recent years. There were now more vigorous procedures in place to ensure compliance with the direct debit schemes. Examples of measures taken included the exclusion of taxpayers with arrears in 2000, the setting in the Finance Act 2001 of a minimum amount to be paid throughout the year as a percentage of annual liability, and programmes agreed by each Revenue Region in 2003/04 to systematically target outstanding returns in VAT direct debit cases. In February 2004 a revised Caseworking Guideline on direct debit was issued which emphasised that customers with tax payment problems should not be put on the direct debit system for current taxes. The guidelines also provided for withdrawal of the schemes from those who did not abide by their terms. However, it had to be borne in

mind that a person on direct debit was at least making payment towards his/her tax liabilities and that withdrawal of the facility could be something of an "own goal" if it resulted in the taxpayer ceasing to pay altogether. For that reason, the preferred approach, if possible, was to try and bring the taxpayer into full compliance while remaining within the direct debit system. He considered that the measures already taken would help to reduce the debt management problem in relation to direct debit, but that it was undoubtedly an issue that needed to be kept under careful review. Further initiatives (such as automation of the estimate process where an annual return was not received and the development of AIM queries to identify annual non-filers) were currently under consideration to see if further safeguards could be put in place.

With regard to the charging of interest in direct debit cases, the Accounting Officer informed me that in the initial period after the 2001 Finance Act legislation the question arose as to whether taxpayers on direct debit should be formally warned in advance of the possibility of interest being charged particularly in the light of published caseworking guidelines that stated that for VAT and PAYE/PRSI cases the taxpayer should be warned in advance of that possibility. In November 2002 all VAT direct debit cases were issued with a letter outlining the details of the Finance Act 2001 legislation. On the PAYE/PRSI side, the 2002 P35 bulk issue in September 2002 included a reference to that legislation too. Thus, the raising of interest charges in direct debit cases on any systematic basis could only begin in earnest after those "warnings" had issued. Revenue's approach was to raise interest charges where it was considered productive to commit the resources necessary to ensure effective pursuit and collection of the charge. The effectiveness of that approach was supported by indications that the amount due on annual returns was now declining. For example, the number of direct debit cases with an annual PAYE / PRSI balancing payment exceeding the allowable balance declined by 8% between 2002 and 2003.

He pointed out that the Finance Act 2001 also gave taxpayers the right to a recalculation of the interest charge on balancing payments to ensure that the charge did not exceed that chargeable according to the rules applicable to non direct debit taxpayers, if such a recalculation is in the taxpayer's favour. That feature of the legislation meant that the interest charges were not as cut and dried as the raise, demand and enforce approach of other interest charges. In addition, in PAYE/PRSI cases directors' fees were often paid after year-end and could compound the interest-charging situation, resulting in further investigation and often re-negotiation of interest charges. The fact that directors' fees may give rise to a balancing payment did not necessarily mean that direct debit was abused.

The Accounting Officer noted that the final consideration in deciding on the level of resources to commit to the pursuit of interest was a decision as to the higher risk – the taxpayer who had actually paid the tax liability (albeit late) or the taxpayer who had not paid the tax liability at all. He indicated that the Collector-General's Division was currently engaged in a comprehensive Synergy Review of its entire operations. The purpose of the review was to ensure that the Division was making the best use of resources, both human and technical with the intention that resource savings identified would be devoted to debt management and compliance work. In that context, the Division was conscious of the necessity of monitoring compliance with the terms of the direct debit schemes and of taking the appropriate action in cases of abuse of the schemes.

3.8 Disclosure of Incentive Amnesty Cases

Section 2 of the Waiver of Certain Tax, Interest and Penalties Act, 1993, provided for an incentive amnesty to be availed of by all individuals who owed tax on declared or undeclared income or gains, and levies. Under the terms of the Incentive Amnesty, it was mandatory for taxpayers to make a self-assessed, full and true declaration of all income/chargeable gains in respect of which tax was unpaid, and to pay tax on the total amount at a concessionary rate of 15%. In addition to providing that incentive, the Act also made it mandatory for each individual who had been in receipt of untaxed income or gains to avail of the

opportunity to settle their tax affairs. A total of some 38,400 individuals availed of the Incentive Amnesty and paid €235m.

The purpose of the 1993 amnesty was to provide a final opportunity to individuals to put their tax affairs in order having regard to the penalties that were introduced by the Act, and to secure payment in respect of pre-April 1991 liabilities. The Act provides a scale of penalties for failure to make the full and complete returns required by the Act. The penalties on conviction range from a fine of between 25% and 200% of the tax underpaid and up to eight years imprisonment. The Act also directs that where the declaration by the taxpayer did not contain a full and true statement of income, or where a person did not subsequently deliver a full and complete return of income in respect of the year of assessment 1992-93, the benefits of the amnesty are to be set aside. In that situation payments made at the 15% amnesty rate are then treated only as payments on account of the full tax assessed at normal marginal rates, with interest and penalties to be added.

A key feature of the Incentive Amnesty was the statutory guarantee of confidentiality to those who availed of it. This was achieved through setting up a statutorily independent Office of the Chief Special Collector to receive payment and administer the amnesty. Those who availed of the Incentive Amnesty received a two-part certificate. The first part (the Certificate) recorded name and address, the income or gains declared and the amount paid. The second part (the Form of Evidence) only showed name and address. Revenue could not become aware that the Incentive Amnesty had been availed of unless that was revealed by a taxpayer's decision to invoke the form of evidence against a demand from the Collector General for pre April 1991 arrears, or the certificate in dealing with an Inspector of Taxes enquiry. Under the Act such enquiries could only continue in cases where the Revenue official satisfied the Appeal Commissioners that there were reasonable grounds which indicated that the declaration made to the Chief Special Collector did not contain a full and true statement of total income from all sources. The application to the Appeal Commissioners for a ruling must be made within 30 days of the receipt of the certificate.

The stringent penalty provisions applying to non-compliance with the terms of the Incentive Amnesty would appear to indicate a firm resolve that the benefits granted under the Incentive Amnesty were on particular terms, and that contravention of those terms either by understatement of liabilities in the original declaration or in the 1992/93 return was a serious matter attracting strong sanctions including reversal and penalties. Nevertheless, due to the effectiveness of the confidentiality guarantee, and as the provisions of the amnesty legislation related to periods in the early 1990s, it is unlikely that the scheme would in the normal course have much relevance ten years later beyond the very occasional exceptional instance where it was decided to sanction the major extension of a Revenue audit.

However events in more recent years have resulted in the extensive disclosure of significant undeclared income that reached back to the amnesty periods. These events have come to be categorised under the collective titles of Special Investigations and Tribunals, Bogus Non-resident Accounts and, most recently, Offshore Assets. Much of the tax liabilities arising in relation to these undeclared funds have or are being resolved through various settlement schemes. But under the 1993 legislation there may be a further retrospective impact arising from the discovery of undeclared funds that predated 1993 in cases where the taxpayer had previously availed of the Incentive Amnesty.

During a review of Bogus Non-Resident Account holders (BNR) voluntary returns it was noted that, of the 3,754 cases that submitted a voluntary BNR1 return, approximately 208 had availed of the 1993 Incentive Amnesty. However, only 4 of such 'amnesty cases' had been included in the total of 268 cases selected by Revenue for liability review.

I enquired of the Accounting Officer as to the extent to which Revenue had systematically examined the declared 208 amnesty cases in order to establish whether the terms of the Incentive Amnesty provisions had been met. I asked whether Revenue considered that the provisions of the 1993 Act required that such an assessment be applied to all instances availing of the BNR1 scheme and which declared themselves to have previously availed of the amnesty. I also asked for details of the number of cases in which the amnesty settlement was set aside, and subsequently treated as a 'payment on account' against total liabilities due.

In order to establish the overall position, information was also sought as to:

- the number of cases which had declared themselves to have availed of the 1993 Incentive Amnesty during the course of Revenue activity in the areas of:
  - Revenue Audits
  - The various Special Investigations and Tribunals
  - Non-voluntary BNRs
  - Offshore Assets
- The extent to which Revenue examined, in each case, the issue of whether the 1993 Incentive Amnesty provisions had been breached,
- The number of cases in each area in which the benefits of the 1993 Incentive Amnesty had been set aside, and amnesty payments treated only as a payment on account of total liabilities due.

Information was further requested as to the number of cases which had been (i) considered for prosecution and (ii) prosecuted under the terms of the 1993 Waiver of Certain Tax, Interest and Penalties Act, the number of convictions, and the penalties imposed.

Accounting Officer's Response

The Accounting Officer emphasised that the whole Revenue approach to examining the BNR1 cases (including the "amnesty" cases) was very much risk-driven – in the interests of completing the checking of these cases as quickly as possible. The primary target group was those bogus non-resident account holders who had chosen not to come forward by the November 2001 deadline. A further 8,000 bogus non-resident account holders were subsequently identified from that group and an additional €305 million collected. He considered that the pursuit of those cases had a major knock-on effect in attaining high levels of voluntary disclosure from subsequent offshore campaigns.

In the context of the approach adopted to examining and checking the 3,754 BNR1 voluntary disclosures Revenue saw no reason to single out the 208 amnesty cases as a high risk category per se that warranted special treatment – either in carrying out the basic eligibility checks or in the selection processes for the more detailed liability reviews. If a person had properly availed of the 1993 amnesty there was no real incentive for them to send in a BNR1; they were entitled to wait until audited or challenged by Revenue. Such "volunteers" presented less of a risk than the "wait and see" amnesty cases.

He indicated that all of the BNR1 disclosures were examined as part of the eligibility review. One factor considered was whether the amnesty was an issue and, if it was, what action was required to be taken. Consequently each of the 208 individuals who indicated that the amnesty had been availed of were the subject of basic review. Statistics were not readily available on the number of cases where amnesty certificates were forwarded to, or sought by, Revenue. The probability was that most claims were

accepted at face value, unless the basic review indicated a particular risk, having regard to the available information or materiality considerations. He pointed out that face value acceptance of amnesty claims at the BNR1 stage did not rule out further scrutiny at a later stage.

It was the understanding of Revenue that the 1993 Amnesty Act did not require, or even suggest, that it should carry out an assessment of, and check the underlying validity of, each amnesty claim it became aware of. If anything, given the confidentiality safeguards (Section 7) and the "burden of proof" obstacles (Section 5) in the Act, it was fairly clear that Revenue should not challenge an amnesty declaration unless there were reasonable grounds (from post-April 1991 enquiries or otherwise) to convince an Appeal Commissioner that an amnesty declaration was likely to be untrue or incomplete. None of the BNR1 amnesty claimant cases were submitted to the Appeal Commissioners under the section 5 procedure.

With regard to instances where an amnesty settlement was set aside, the Accounting Officer stated that taxpayers had been advised in the lead up to the 15 November 2001 deadline for BNR1 disclosures that if they had not properly availed of the 1993 amnesty, they would lose the benefits of the amnesty. They were of course entitled to a 'payment on account' credit for their amnesty payments. 62 individuals made disclosures under the BNR1 disclosure scheme where amnesty settlements were set aside and which resulted in total payments of over €3 million. The remaining 146 amnesty cases who came forward under the BNR1 scheme did not have to make any additional payments in excess of those arising from their BNR1 disclosures, as the amnesty declaration had disclosed their full liability.

Statistical information relating to the number of amnesty cases that declared themselves arising from Revenue activity in other areas was provided as follows:

Table 26

Area of Activity	*Amnesty Cases**	*Revenue Comment*
Revenue Audits	320	Probably on the low side
Special Investigations/Tribunals	14	Nos. may change as inquiries ongoing
Non-Voluntary BNRs	550	Best estimate
Offshore Assets	7	Very early stage

*With the exception of Investigations/Tribunals, the numbers are estimated.

In relation to the extent to which Revenue examined in each case whether the amnesty provisions had been breached, the Accounting Officer said that in every case where the 1993 amnesty arose, a judgment call had to be made by the official handling the case. Where it was considered that investigations were warranted, and taxpayers were seeking to prevent this from happening, applications were made to the Appeal Commissioners. In the majority of cases identified to date, Revenue had accepted that no further action was warranted. He added that while there were no detailed statistics on instances where the amnesty had been set aside, the reality was that the numbers involved would be small. Because of the confidentiality and "burden of proof" constraints, Revenue officials would generally only seek to withdraw the benefits of the amnesty where they had reasonable and solid grounds, based on fact rather than mere suspicion, to indicate that the amnesty had not been properly availed of.

The Accounting Officer informed me that no case had, as yet, been the subject of a prosecution under the terms of the 1993 amnesty legislation. However, in the case of a number of investigations carried out by Revenue Prosecution Units, consideration had been given to the inclusion of offences under section 9 of the Amnesty Act[4]. To date, Revenue had not been able to assemble sufficient admissible evidence to sustain a conviction in this area. He pointed out that Revenue had taken independent legal advice, and

[4] Section 9 of the Waiver of Certain Tax, Interest and Penalties Act, 1993 provides for penalties in relation to the failure to comply with the return and declaration requirements of the Act, and in particular S. 2 (3) (a) and S. 3 (6) (b) i.e. failure to provide the declaration required, or giving a false declaration.

had also consulted with the DPP, on the elements of the section 9 offences and the standard of proof required to sustain a conviction. The prosecution must prove all of the matters set out in section 9(1), including 9(1)(b). Part of the difficulty in that regard related to the fact that the confidentiality provisions in section 7 were very tightly drawn. But, notwithstanding the significant evidential and burden of proof difficulties, he stated that prosecutions for section 9 offences were at present being actively considered in a number of cases.

Chapter 4 Office of Public Works

4.1 River Nore (Kilkenny City) Drainage Scheme

Background

Very severe flooding occurred in many parts of the country in 1994 and 1995 with considerable damage to homes, businesses, and infrastructure. The Office of Public Works (OPW) was required by Government Decision of 7 March 1995 to take the lead role in responding to this. The Arterial Drainage (Amendment) Act was passed in 1995. The OPW drew up a list of over 200 locations around the country where there was a known flood risk. A Government Decision of 14 March 1995 approved a list of nine areas which should receive priority in terms of flood relief works. Kilkenny City was one of these.

Kilkenny City has a history of flooding associated with the high water levels in the River Nore and its tributary the Bregagh that joins the Nore at Kilkenny City. Flooding occurs most years and significant floods were experienced in 1990, 1995 and 2000. Following representations from Kilkenny Corporation and Kilkenny County Council, OPW commissioned a firm to undertake a study in 1995 on the urban flooding in the Kilkenny City area. The study included the re-examination of a preliminary report that the same firm had carried out for the county council in 1986. The consultants were also asked to draw up preliminary design options to alleviate the problems identified.

A separate company was also appointed in 1995 to carry out site investigations. It was evident early on in the scheme that numeric (computer) modelling was an inadequate method of dealing with the complexities of the river in Kilkenny, due to the interaction of the bridges and weirs in the City. In order to increase the accuracy of the design, it was decided to commission a physical model of the river stretch through the City. This was carried out in 1996 by a UK company.

Initial Scheme (€13.08 million)

A number of potential solutions were identified and were presented to the local authorities and the preferred option was chosen in July 1998. This consisted of a combination of river widening and deepening, flood walls, embankments, and associated drainage works. The proposed scheme met the relevant economic and environmental criteria. The scheme was designed to provide protection against the 1 in 100 year flood – in other words a flood of such extent that it has a 1% probability of occurrence in any year. This is the OPW standard for schemes in urban areas and is the standard applied in many other countries also.

With the approval of the Department of Finance the scheme was placed on Public Exhibition in July 1999 and unanimously approved by Kilkenny County Council and Kilkenny Corporation. Sanction was obtained from the Department of Finance in December 1999 to proceed with the scheme following the Exhibition at an estimated cost of €13.08 million.

Given the estimated cost of the scheme at this stage it was clear that the engineering consultants' fees would exceed the relevant EU threshold. As well as that, the first consultants appointed had been given a limited commission in the first place. A tender competition was held in accordance with the EU Directives and as a result of this a new firm of consultants was appointed in December 1999 to review the existing Outline Design, prepare Detailed Design tender documents for appointment of a contractor, and supervise the contract on site.

Detailed Design Estimate (€41.9 million)

The consultants completed a detailed appraisal based on the original specifications. The revised estimate put the cost of the project at €41.9 million in August 2000.

OPW was not prepared to accept the revised cost as it was a significant increase on the approved project budget. The consultants were instructed to prepare a report on alternative forms of construction with the objective of bringing the estimated project cost closer to the original project budget (€13.08 million). In particular, alternative types of retaining structures were to be considered for all areas of the works.

Revised Design Estimate (€24.38 million)

In November 2000 a revised project specification was submitted and sanction was received from the Department of Finance to proceed with the revised scheme for a maximum project budget expenditure of €24.38 million.

New Estimate (€34.8 million)

Tenders were invited from five companies in March 2001 to carry out the construction contract works. The five firms had previously been short listed from a list of eleven firms who had replied to an EU wide advertisement for the project. The accepted tender was approximately 25% above the revised specification costs approved in November 2000. The project was submitted to the Department of Finance at a cost of €34.8 million and approved in June 2001. The main contractor was appointed on 17 July 2001 and work commenced in August 2001.

Table 27 analyses the changes in the cost constituents as the project progressed.

Table 27

	€m	***€m***	***€m***	***€m***
Construction	10.3	37.0	18.07	22.5
Design team fees	1.2	4.1	2.07	3.1
Archaeology	0.63	-	0.65	5.1
Compensation	-	-	0.77	1.3
Other items	0.95	0.8	2.82	2.8
Total	**13.08**	**41.9**	**24.38**	**34.8**

Current Estimate of Completion (€47.8 million)

In August 2003 following a review of the project, a revised estimate was submitted for approval which put the cost of completion at almost €48 million. The increase in the final estimated cost was attributed to

- Payments to the main contractor for delays and down-time
- Price Variation Clause buyout
- Provision for compensation claims
- Costs associated with the removal of contaminated soil
- Additional professional fees
- Costs of ancillary remedial and stabilisation works.

As I was concerned at the significant cost and time overruns of the scheme I posed a series of questions to the Accounting Officer.

Accounting Officer's Response

- *Why did the initial estimate turn out to be so unrealistic?*

OPW recognises that it is not acceptable that the cost of a scheme can increase at the rate that it has in this case. It should be pointed out that Kilkenny is the first large urban flood relief scheme carried out in this country and, as such, there was no precedent to have regard to when assessing risks. The contract was complex in that it had to be framed around very stringent environmental considerations – archaeology and fisheries in particular. The practical effects of this on the ground are difficult to predict until work is in progress. Environmental considerations meant that work could only take place in the riverbed between the months of July and October. Weather conditions occasionally shortened this period even more.

As well as the difficulties posed by these factors the following specific issues have contributed to the cost increase

- Inadequacies in the initial design of structures and consequent post-contract changes and modifications to these designs resulting in delays and additional costs
- Unfavourable ground conditions that could not have been anticipated; the presence of rock in the riverbed at levels that had not been anticipated
- Delays and down-time due to noise interference and damage to properties and infrastructure, the extent of which could not have been anticipated
- Delays and additional costs arising from the contamination of the riverbed with PCBs (chlorinated compounds)
- The higher than expected costs arising from archaeology and the delays and additional costs incurred by the contractor as a result
- Costs arising from the diversion of services that had not been mapped and consequently not provided for in the scheme.

- *What was the basis of the downward revision of the estimated cost of the scheme in November 2000?*

The initial meeting of the Cost Control committee for the project took place in July 2000. It was emphasised at this meeting that any adverse developments leading to unforeseen cost increases should be reported to the Committee as early as possible. OPW's consultant engineers were represented at this meeting and they pointed out that the findings of the detailed site investigations proceeding at this time were indicating findings different and more complex to those indicated by the information that was available at outline design stage. The consultants were asked to prepare a report on these findings, outlining the impact on costs. This report was received by OPW in August 2000 and its main findings related to the type of structures proposed at outline design stage for the construction of flood walls.

In October 2000, on OPW instructions, the consultants presented a report on the alternative types of structures. Each area of the works had been considered and an alternative design comprising a combination of structures was proposed. This is the design now under construction in Kilkenny.

The downward revision of the estimated cost of the scheme was initiated by OPW in response to its concerns over the estimated costs of the scheme following revisions to the design brought about by technical concerns.

- *Why did the €24.38 million estimate increase to €34.8 million?*

The increase was due mainly to the need to extend the works to three years to facilitate a substantially increased archaeological work requirement, thus incurring continuing overhead costs over an extended period and a general rise in the annual movement of construction costs and tender costs (estimated at 10% and 12% per annum respectively).

- *What factors gave rise to the increase in construction costs?*

In engaging a contractor to carry out the construction stage of the River Nore (Kilkenny City) Drainage Scheme, OPW used the Institution of Engineers of Ireland (IEI) Standard Form of Construction Contract.

The standard IEI contract is conducted on a measure and value basis. Unknowns or risks such as ground conditions, bad weather, project design revisions, quantity change/increases and delays are measured and valued during the contract and added to the final contract cost.

The use of this contract for civil engineering works by State bodies was Government policy at the time, as agreed with the construction industry. Variations on this contract are also on a measure and value basis.

It is highly unlikely, at the time of going to tender, that any contractor would have negotiated a fixed price on a contract of three years duration. The Construction Industry Federation (CIF) strenuously objects to fixing prices at tender stage for contracts in excess of 12 months. Nor are there any procedures in place at present for quantifying the many risks associated with a civil engineering contract of this nature.

OPW paid €2.9 million to the contractor for a Price Variation Clause (PVC) buy out. The contract itself provides for a lump sum buy-out post tender of price increases in labour and materials arising during construction. If this option is not exercised then increases are paid for as they arise during the course of the contract. Where OPW considers that the price negotiated with the contractor for the buy-out of the PVC is reasonable, it is the practice to proceed in this way. The benefit to the contracting authority of a PVC buy-out is the removal of a risk from the contract, with the potential for a saving on the overall contract amount depending on subsequent rates of inflation.

In this case, the initial approach in relation to PVC buy-out was made by the contractor. The OPW's consultants carried out an estimation of the total final payment that might be due to the contractor under the Conditions of Contract. Their estimate indicated that the contractor's offer of €2.9 million plus VAT for PVC buy-out was reasonable given the prevailing and predicted economic conditions in the construction industry.

It is relevant to note that Government policy in this area has now changed. In May 2004, the Government approved in principle, the introduction of lump sum fixed price contracts tendered on a competitive basis as the norm, along with appropriate arrangements to eliminate undefined design details covered by provisional sums and provisional quantities in tender documents on all types of contracts. It is, however, not yet certain when these new arrangements will come into force as they are subject to discussion between the Department of Finance and the construction industry.

- *How were the additional professional fees incurred?*

In procuring the required consultancy services OPW was fully in accordance with public procurement guidelines and regulations. The agreements in place between the State and the professional bodies at that time included the use of a percentage fee.

It should be noted that increases in cost in this form of contract are substantially due to the measure and value provisions rather than a failure to control costs i.e. the volume of work comprehended by the contract turns out to be greater than estimated for reasons that could not have been anticipated or in circumstances that could not have been measured in advance. As the works comprehended in the contract increase in this way, so the legal obligation on the consultant to supervise the works increases. In this way the consultant undertakes additional work for which payment is due.

In May 2004, the Government approved in principle, the introduction of competitive tendering on a fixed price lump sum basis as the norm for procuring construction consultancy services. Also approved was the introduction of Standard Conditions of Engagement for construction consultants with specific provisions to carry more risk and to discourage design mistakes through the introduction of penalties.

It is not clear, however, when these changes will be implemented as they are subject to discussion between the Department of Finance and the relevant professional bodies.

- *Why were compensation and archaeological costs so badly underestimated?*

Compensation

A sum of €1,269,738 was included in the budget at Tender Stage for compensation. This figure was a best estimate, based on experience garnered on previous schemes. Once work commenced on site, however, it became apparent that this figure was likely to be inadequate. The number of third parties affected by the scheme, with associated property issues; the difficulties and disruption caused by the works to individuals and businesses alike are significantly higher than anything experienced on previous schemes and are a reflection of the fact that this is the first scheme to be carried out in a large urban/city centre area.

The information available subsequent to the commencement of site work indicated that it would be prudent to increase the provision for compensation. It must be emphasised, however, that the increased provision merely reflects the best estimate that can be made at this point in time. Matters may arise in the final stages of the contract that give cause to review this estimate. OPW typically does not begin to accept claims until a scheme has been completed and in the normal course, claims can often take several years to resolve. It is likely, therefore, that the final cost of compensation will not be known for several years and it could be up to 12 months after work has been completed before any extrapolation can be made based on actual claims received.

The estimation of compensation in this case is intuitive rather than scientific. However, agreement and settlement of compensation payments is based on standard practice in valuation and assessment of compensation. There is provision for Arbitration as is the norm in this area. Legislation also provides that the benefit to be accrued from the scheme can be offset against any claim for damages. In a number of instances in Kilkenny where it is known that substantial claims will be submitted (one has been received to date) OPW has already begun the process of assembling information on disturbance and interference in order to be in a position to address the claims.

Archaeology

A sum of €630,000 was included in the original project budget for archaeology. This represented 6% of the construction cost element of the budget as estimated at that time. The budget for archaeology on previous flood relief and Arterial Drainage projects was between 5% to 10% of the construction costs. In estimating for archaeology, OPW also considered the number of sites identified in the Environmental Impact Statement and felt that it would be prudent to provide 6%.

There was no information available that pointed to the level of finds and significant archaeological structures that subsequently emerged as the scheme progressed. Water levels were artificially lowered, and the riverbed, bridges, and weirs were revealed for detailed examination by archaeologists for the first time.

As the project progressed, it became obvious that the number of archaeological finds was much greater than had been estimated as was the extent of the monitoring required. The long history of settlement in Kilkenny and the central position of the River Nore in the city has resulted in a very high number of finds of artefacts and significant structures in the river.

Underwater archaeology has also been more extensive than was anticipated at the outset of the scheme due to the number of structures of interest which had to be examined in-situ, before their removal. All of this had a consequential effect on the contract in that the contract period was extended to allow for increased monitoring and investigation and claims for delays and disruption have arisen from unanticipated finds of artefacts and structures.

The updated project budget contains an estimated figure of €4.82 million for Archaeology. The majority of high risk areas have already been excavated, although one area of potential sensitivity is scheduled for works in the summer of 2004. OPW's archaeological consultants state that the risk of a major discovery in the remaining areas of the scheme is low.

- *In light of the experience in Kilkenny have changes been made to OPW's approach to flood relief work?*

The scheme has remained extremely cost beneficial and OPW has obtained approval from the Department of Finance at all relevant stages. However, OPW recognised some time ago that this situation is not sustainable. There are 14 other schemes in urban areas throughout the country at various stages of planning that have a combined estimated cost of approximately €300 million. It would be completely unacceptable that the cost of these schemes could increase at a rate similar to Kilkenny. In April 2003, OPW carried out a review of the approach to these schemes. This resulted in the approval of a revised approach in September 2003.

In future, OPW will adopt a risk management approach to flood relief schemes. This approach includes consideration of the feasibility of a phased implementation of schemes i.e. schemes will be broken down into smaller, more manageable phases and each phase carried out separately. In some cases this may facilitate work being done directly by OPW and/or the relevant local authority and the local authority will be expected to take a much greater role in managing schemes. This methodology has worked extremely well in carrying out work on the Tolka River in Dublin and Meath in the last two years. In addition, use will be made of innovative new technologies and steps will be taken to reduce or eliminate cost risks in relation to dredging, archaeological, and environmental mitigation measures. Issues such as the potential of flood warning systems, flood hazard mapping, and enhanced maintenance programmes, all of which can reduce the need for structural works, will be considered.

This new approach is entirely consistent with methodologies now being developed and applied in the UK and mainland Europe. Since October 2003, OPW began to apply this methodology in the case of the three schemes in the Flood Relief Work Programme that are most advanced in planning – Carlow Town, Clonmel, and Waterford City, and these are now being progressed on this basis. This changed approach has been adopted in recognition of the need to take action swiftly while continuing to make progress in planning the schemes.

A Flood Policy Review Group was established by the Minister of State with responsibility for OPW in November 2002. The experience with the Kilkenny scheme as well as a recognition of the need to review the OPW flood relief work programme in the context of an overall State policy were factors in this decision. The Review Group completed its work in December 2003 and its Report is now with the Department of Finance awaiting submission to Government. The Report recommends an overall policy on flood management and sets a context for OPW's work. While not wishing to anticipate Government approval for the Report, the Accounting Officer is satisfied that OPW's revised approach to flood relief schemes is consistent with the Report's recommendations.

4.2 Flood Relief - Grants to the Irish Red Cross

Flood damage

An extremely high spring tide and accompanying adverse weather conditions on 1 and 2 February 2002 caused extensive coastal flooding. Among the worst affected areas were the East Wall/Ringsend / Irishtown areas of Dublin City, the centre of Cork City, Baltray in County Louth and Mornington in County Meath. In November 2002 prolonged and heavy rainfall during the month affected Athlone, Drumcondra and Glasnevin in Dublin, Meath, Cork City and parts of Kilkenny and Wexford.

Government Action

In response to the February 2002 flooding the Government decided to initiate an ex-gratia scheme of humanitarian assistance. The Office of Public Works (OPW) were to formally request the Irish Red Cross (IRC) to implement the scheme. It was to be emphasised to the IRC that the Government was providing humanitarian assistance to relieve hardship and not compensation. The scheme would include agricultural hardship and business losses if no other allocation was made for them but in that context only exceptional cases would qualify.

The Government approved an ex-gratia scheme of humanitarian assistance to relieve hardship arising from the November floods on 19 November 2002. Further extensive flooding resulted in the Government extending the scheme on 12 December 2002 to give humanitarian assistance to other parts of the country, particularly to areas of Cork. The Government decision for this scheme also specified that it be emphasised to the IRC that the Government was providing humanitarian assistance to relieve hardship and not to compensate for losses.

Administration of the Schemes

Role of the Irish Red Cross

The procedure for the operation of the Humanitarian Aid schemes is that OPW formally requests the IRC to implement such a scheme. The statutory basis for the OPW role is Sections 2 and 3 of the Commissioners of Public Works (Functions and Powers) Act 1996. OPW was given power under this Act to make arrangements to assist persons who suffer undue hardship or personal injury, or loss of or damage to land or other property, by reason of flooding subject to the consent of the Minister for

Finance. The IRC was given the sole responsibility of administering the schemes and in determining the levels of humanitarian aid allocated to those affected.

The IRC had previously administered humanitarian assistance to victims of flooding in the Mid –West in 1996, in Limerick City in 1999 and parts of Cork, Tipperary, Carlow and Wexford in 2000.

Administration by the Irish Red Cross

A team of three independent assessors was commissioned on behalf of the IRC to assess each application and recommend allocation of humanitarian aid. These assessors had previously worked on the 1999/2000 flood relief schemes. An administration section was created within the IRC to help in the organisation and processing of applicants and the paying of claims. Those affected could claim eligibility for humanitarian aid under the following criteria in the February scheme

- Death
- Serious injury
- Damage to home
- Homelessness
- Loss of income
- Extreme hardship

The 'loss of income' criterion, which could include businesses, was subsequently dropped from the eligibility criteria for the November 2002 scheme. This was in order to target the aid specifically towards people whose homes had been affected.

The IRC decided, following guidelines from previous schemes, that no inflexible rules would apply. Each applicant would be assessed on an individual basis. However, humanitarian aid was generally assessed on the person's need, their personal losses, stress, the value of their belongings destroyed, and their capacity to recover from their losses. The schemes were not restricted to householders but were open to all who had been affected.

Cost of the Schemes

Payments totalling €13.5 million were paid by the OPW to the IRC for the two schemes. The initial provision for the February 2002 scheme was €5 million which was increased to €8.5 million when the extent of the damage was realised. The full amount of €8.5 million was paid to the IRC in 2002. The Government approved €5 million for the November 2002 flood relief and this amount was lodged to the IRC special bank account on 12 December 2002 with the majority of payments being made by the IRC in 2003.

Payments totalling €7,952,807 were made for the February scheme to 725 claimants giving an average award of €10,969. Payments to 27 businesses amounted to €1.3 million. The average award excluding payments to businesses was €9,531.

Payments totalling €4,784,810 were made for the November scheme to 666 claimants giving an average award of €7,184. The November scheme did not accept claims from businesses.

The IRC received €478,078 for the administration costs of the schemes: this is 3.75% of grant expenditure. An additional amount of €221,732 was spent on advertising the two schemes.

Statistics

Table 28 summarises the main statistics in relation to the schemes

Table 28

Description	*February 2002*	*November 2002*
Number Of Applicants	725	666
Total Expenditure	€7,952,807	€4,784,810
Average Payments	€10,969	€7,184
% Insured	58%	54%*
% Uninsured	42%	46%*
Average Insured Payment	€8,746	€6,787*
Average Uninsured Payments	€13,922	€6,244*
Average Age	53	40*
% Tenants	23%	33%*
% Owners	65%	57%*
% Other	12%	10%*

* The November 2002 statistics are based on a sample of 100 applicants

Audit Findings

- No written agreement was made by the OPW with the IRC for the administration of the scheme.
- The February scheme did not make it a condition for applicants with insurance cover that they give the IRC permission to make enquiries of insurance companies so as to ensure that applicants would not be paid on the double for a loss claimed under the scheme. Payments for the February scheme were €7,952,807 of which 58% (€4,612,628) was paid to insured claimants.
- The November scheme allowed the IRC make enquiries of insurance companies but only limited follow up action was taken. Payments for the November scheme were €4,784,810 of which a sample surveyed found that 54% (€2,583,797) was paid to insured claimants.
- No formal procedures were established to check the accuracy of applicants' claims that they had no insurance cover.
- OPW did not complete, or have completed on its behalf, an assessment or audit of the administration of the scheme by the IRC.
- OPW did not supply to the IRC, or request from the IRC for approval, guidelines for the administration, monitoring and control of the schemes.
- No agreement was reached with the IRC before the start of the schemes for the administration charge or fee to be paid to the IRC.
- OPW did not provide guidance to the IRC on means testing and the relevant support documentation required to assess means.

As the amount allocated in 2002 for humanitarian aid to victims of severe flooding in Ireland totalled €13.5 million – far in excess of anything that had gone before – I asked the Accounting Officer if he was satisfied with the appropriateness of the control and governance arrangements put in place to administer the scheme.

Accounting Officer's Response

Role of the IRC

The practice of delegating the operation of the schemes to the IRC had its origins in the earlier disbursement of European Union (EU) humanitarian aid in 1995 to victims of the severe flooding which occurred in late 1994/early 1995 throughout Ireland. EU aid is channelled to victims through the local organisation of the International Red Cross, in this case the IRC. The International Red Cross is recognised as one of the world's largest humanitarian organisations and is a voluntary relief movement. The IRC has an established record of administering emergency aid to victims of disasters in Ireland. All applications for humanitarian aid are dealt with on a strictly confidential basis in accordance with the International Red Cross fundamental principles of impartiality, humanity, independence, neutrality and voluntary service and its wide experience in disaster relief both nationally and internationally.

When Government approval is received for OPW to set up a humanitarian relief scheme in response to serious flooding, the OPW immediately calls in the IRC to brief them. The criteria for eligibility of applicants for aid and the size of the overall aid fund available (which is normally determined on the basis of experience of previous such schemes) are also communicated to the IRC at the briefing. The IRC is then given sole responsibility for administering the scheme and determining the levels of humanitarian aid allocated to the individuals affected. A special bank account is set up by the IRC to receive and distribute the aid. The IRC publicises the aid scheme in the media and also attends local public meetings in the affected communities. Independent expert assessors are commissioned by the IRC to assess each application and recommend allocation of aid to each individual depending on their differing levels of need. The IRC regards the precise details of individual claims as confidential between them and the applicants. An administration section is also created by the IRC to help in the organisation and processing of applications. The IRC reports to OPW on a regular basis regarding progress of the scheme e.g. number of applications received to date, number assessed, geographical breakdown of applications etc.

The aid was intended to help victims overcome the immediate hardship caused by flooding by providing some relief that would assist the victims in restoring their lives to some semblance of normality. The schemes were not compensatory but were governed by a humanitarian ethos. The aid was not designed to put victims in the position they were in before the flooding but to alleviate extreme hardship. The schemes were essentially dealing with disaster and crisis situations that could in their immediate aftermath result in serious hardship for people, irrespective of their means. The schemes could be more correctly described as disaster relief.

OPW Management of the Scheme

The drafting of a formal written agreement between OPW and the IRC before the commencement of schemes was not considered necessary largely because of the reputation, professional expertise and proven track record of the IRC as the recognised independent intermediary body responsible for distribution of EU and State disaster funds for flood victims.

Subject to the main criteria for eligibility the IRC was instructed to administer the schemes based on its own expertise and experience. OPW would, in fact, be concerned that a detailed written agreement may have restricted the IRC in its response to individual applicants and may also have added to administration costs.

One of the fundamental principles under which the IRC operates is that it is a voluntary relief movement not prompted in any manner by desire for gain. The IRC is driven by a humanitarian ethos and it has an established record in dealing compassionately, impartially, effectively and in a timely fashion with the

disbursement of humanitarian funds. OPW has absolute confidence in the IRC's role in administering the schemes and in the IRC's determination to keep administration costs as low as possible so that the maximum amount of aid is distributed to applicants.

The OPW did not consider it necessary to complete, or have completed, an independent audit of the administration of the schemes by the IRC. At the conclusion of a scheme, the IRC submits a comprehensive report on the scheme to the Minister for Finance and copies of such reports are placed in the Oireachtas Library. During a scheme the OPW and IRC maintain regular contact, often on a daily basis. The IRC produces regular updates regarding the progress of the scheme, keeps records of all its activities, and also has its own independent auditors.

The relationship between OPW and IRC is one based on trust, founded on the undoubted integrity and ethos of the Red Cross organisation. In the circumstances, and given the close contact and open communication maintained between both organisations at all times during a scheme, OPW does not consider that an independent audit of the administration of the schemes is warranted.

Payment to insured claimants

Provision for information in relation to insurance cover was first introduced to the application forms in 2002. This was done on the basis of the experience learned from previous schemes since 1996. It does not follow that the question of insurance was not taken into account in assessing applications under the February scheme. This would have been considered by the IRC assessors and explored in their meetings with applicants. When the OPW and IRC met to commence work on the November scheme it was agreed that it would assist the assessors and save time in examining applications if the issue of insurance was explicitly dealt with in the application form. The IRC is satisfied that it had appropriate procedures in place to check people's insurance details and also that the appropriate level of follow-up action was taken.

The IRC has also confirmed that it is satisfied that no "double" payments were made to people with insurance. While family income and insurance provision were taken into consideration by the IRC in assessing a person's ability to cope with and recover from the flooding and in determining the level of aid in individual cases, they did not per se exclude humanitarian aid. It has to be stressed that insurance was only one aspect in the overall consideration of a claim for relief. Some applicants were only insured for structures and not contents and in a flooding situation a considerable amount of contents would be destroyed or damaged beyond repair.

Means Test

The schemes were not in the same category as social assistance / social insurance schemes, grants, nor schemes to compensate for losses, where a means test would not be untypical. The schemes were essentially dealing with disaster and crisis situations that could in their immediate aftermath result in serious hardship for people, irrespective of their means. While family income and means may not have been explicitly provided for in the applications process they were certainly taken into account by the IRC assessors in making a judgment on a person's ability to cope with and recover from the flooding and in determining the level of aid in individual cases. Income and means did not per se exclude an applicant – the individual circumstances, losses, trauma suffered, and ability to recover were all crucial factors.

There is no evidence to suggest that applicants with significant means and who were undeserving of payments from the schemes, actually received payments.

Policy Review

On 27 November 2002 the Minister of State at the Department of Finance with special responsibility for OPW announced a review of national flood policy and established a Group to carry it out. Among the terms of Reference for the Review were "Establish criteria for the initiation of any future Humanitarian Aid Schemes". The Report of the Review Group is currently with the Department of Finance awaiting presentation to Cabinet. The Report contains important recommendations as to the administration of any Humanitarian Aid schemes in the future.

4.3 Procurement Procedures in Dublin Castle

The Dublin Castle Business Unit

The Dublin Castle Business Unit of the OPW is a Unit within the Property Management Division of OPW and would typically organize over 500 events annually. The Unit incorporates the Facilities Management Unit that manages the facilities provided for events in the North Wing of the Royal Hospital, Kilmainham and provides facilities management services at the Department of Education and Science campus in Marlborough Street. The Unit is recognised as the State's event manager and is called upon to organise the facilities for meetings and events across the country.

The EU Presidency

From January to June 2004 the Unit managed events associated with Ireland's Presidency of the EU. The Unit was required to provide a range of services to Government Departments in connection with the Irish Presidency of the EU. The Unit was informed in 2002 that not more than 7 informal ministerial council meetings would be held during the Presidency and a number would be held outside Dublin Castle.

The EU Presidency necessitated the provision of additional and enhanced audiovisual equipment, simultaneous interpretation equipment, conference desking and booths. The Unit developed a roadshow to ensure consistency of standards across all venues. This involved the acquisition of new equipment and various other supplies that were stored centrally and transported to each location as required.

The number of ministerial level meetings held during the Presidency was 36.

Audit Concerns

Questions were raised, in the Dáil and in the media, about the procedures applied by Dublin Castle management in relation to its requirements for audio visual equipment and other wider services arising from meetings and events associated with the Ireland EU Presidency. The specific concerns related to

- Formal tendering procedures had not been applied to the provision of audio visual services which had been acquired from a sole supplier since 1997
- No tender process was applied for the appointment of Mechanical & Electrical consultants (€395,065)
- Only a restricted tender process was applied for the acquisition of temporary structures for the Punchestown and Tullamore meetings (€302,994 and €503,034 respectively)
- Only a restricted tender process was applied for the acquisition of electrical goods and services including €350,000 for one meeting in Galway

- Only a restricted tender process was applied for the acquisition of labour services for loading and unloading trucks, movement of equipment (€1,487,249)
- A possible conflict of interest in the procurement function.

External Consultants

The OPW appointed external consultants to review these matters in January 2004.

In their report in April 2004 the consultants recommended that OPW

- Apply open competitive tendering procedures according with EU procurement requirements in the Dublin Castle conference centre
- Tailor these procedures to the particular needs of the centre including advice on the standard of documentation to be retained
- Train Dublin Castle personnel in the application of these procedures
- Provide specialist support in relation to procurement matters for all OPW business units and divisions particularly for those not regularly involved in procurement
- Regularly review procurement procedures and incorporate checks to ensure compliance particularly where procurement activity is outsourced
- Establish a mechanism to give assurance to the Board of the OPW that procurement procedures are being followed
- Strengthen procedures in relation to the declaration of outside interests.

I sought information on the circumstances in which the deficiencies in procurement occurred and on the extent to which the consultants' recommendations had been implemented.

Accounting Officer's Response

The deficiencies in procurement outlined in the consultants' report arose primarily because of the special nature of Dublin Castle's operations and the particular demands of the EU Presidency. The consultants recognized the pressures brought about by having to respond at short notice to changing circumstances and client requirements and in having to ensure the highest possible standards of service and facilities in relation to significant and important State events such as those surrounding the EU Presidency. In these situations it was essential that quality or standards were not compromised by using unknown or untried suppliers.

In recognition of its absolute commitment to ensuring that the consultants' recommendations are fully implemented in a timely way, the OPW Board has allocated dedicated staff resources to carry out this task. A senior official with procurement experience has been assigned responsibility, under the direction of senior management, for the work required to give effect to the report's recommendations in relation to procurement arrangements and procedures in Dublin Castle. The Management Advisory Committee in OPW will receive regular reports on progress on the implementation project and will ensure that steps are taken to address any issues or problems that may arise.

Work has commenced on organizing an open-tender competition for the supply of audio-visual and simultaneous interpretation services in the Dublin Castle Conference Centre. It is envisaged that a full open EU procurement procedure will be followed in line with the recommendation in the consultants' report. It is planned that the open tender competition for the procurement of audio visual and simultaneous interpretation services will also cover the selection of suppliers of such services, including equipment hire, for inclusion on a supplier list for both Dublin Castle's own needs and for any supplementary requirements for such services of clients of the Dublin Castle Conference Centre.

Work has commenced and good progress is being made on the organisation of an open tender competition to select suppliers of catering services for inclusion on a list of caterers for use by Dublin Castle Conference Centre. It is envisaged that this list of caterers will also be used in relation to events in Farmleigh and in the Royal Hospital in Kilmainham. An independent expert with considerable experience in the catering business in both the private and public sector has been engaged to assist in the tender process.

In line with the guidelines in the current revised edition (May 2004) of the Public Procurement Guidelines, a formal open tender process will be conducted where expenditure on any service exceeds €50,000 per annum. An examination of the expenditure and purchasing profile of Dublin Castle for 2003 is being carried out to identify the services to which open tendering will be applied. As part of the profiling exercise, the question of aggregating expenditure on services in Dublin Castle, Farmleigh and other areas of the Facilities Management Unit is being considered with a view to running tenders where appropriate for the award of a single supply contract or the maintenance of a single list of suppliers for all these areas. This would allow for more efficient and cost effective management of the procurement needs and process for the unit as a whole.

The tailored procurement procedures for Dublin Castle will specifically address the need for proper documentation and record management forming a critical and essential part of the procurement process.

Procedures for informing and training staff in all new developments in the public procurement area have been implemented and the ongoing need for training in procurement will be continuously monitored by senior management and the Training Unit.

A new Office Notice was issued reminding staff of the importance of avoiding conflicts of interest by way of a requirement to make a written declaration of any interest, real or perceived.

A risk assessment of OPW's operations across all its business units has been completed. The management of risks associated with procurement activity in each area is being addressed as part of this process.

Internal Audit

As I noted that the internal audit unit had carried out examinations of procurement in Dublin Castle in 1999 and 2002 and had recommended, inter alia, that

- Line management in Dublin Castle should prepare proposals to increase the use of competitive tendering and
- The Dublin Castle facility should institute a system of control and compliance self-assessment to determine that proper procedures are being operated within the facility

I asked the Accounting Officer why these recommendations weren't acted upon.

The Accounting Officer pointed out that follow-up action was taken in relation to the findings of the two Internal Audit Reports in question. The two Reports contained a total of 13 recommendations. Most of these concerned details on the methods and practices employed in placing orders and processing invoices, such as, for example, that orders placed orally should be confirmed in writing shortly thereafter. However, two of the recommendations in the Internal Audit reports of direct relevance to the matters reviewed in the consultants' report had not been properly addressed.

In relation to the first recommendation, the Accounting Officer informed me that all main services supplied to Dublin Castle will in future be subject to a formal competitive open tendering process in line with the recommendations in the Internal Audit reports and the consultants' report.

In relation to the second recommendation, the assessment of compliance with proper procurement procedures has been included as a specific element for action in the risk management programme for the procurement advisory unit. This programme includes a detailed plan assigning responsibility and a timeframe for the implementation of each specific action recommended in the programme. The integration of procurement compliance assessment into the overall risk management programme will ensure that a formal system exists to monitor and report on the operation of proper procedures in Dublin Castle and all other areas within the Facilities Management Unit.

A system to monitor the implementation of recommendations of reports of the Internal Audit Unit has been put in place as an integral part of the risk management programme.

Chapter 5 Civil Service Commission

5.1 Accounting Shortcomings

The Appropriation Act provides the legal basis for the maximum expenditure on a Vote and for the maximum Appropriations-in-Aid which may be applied to a Vote. The Appropriation Act, 2003 states, that for the salaries and expenses of the Civil Service Commission and of the Local Appointments Commission, a Supply Grant of a sum not exceeding €11,408,000 is granted and Appropriations-in-Aid €200,000 may be applied. An Excess Vote can arise in a number of circumstances including where the total of the expenditure subheads exceeds the amount granted or where a shortfall of Appropriations-in-Aid is not matched by savings in expenditure.

During the audit of the Appropriation Account for 2003 submitted to me on 31 March 2004, a number of material errors were brought to light including

- The net salary payments for October 2003 viz. €428,186 had been posted to the wrong account
- €278,000 was recorded as being due from the Exchequer instead of to the Exchequer
- An error of €118,000 in the amount shown as uncashed payable orders in the Statement of Assets and Liabilities.

One effect of the salary misposting and other audit adjustments was to turn a surplus for surrender of €312,002 (as shown in the original signed account presented) into a net excess of expenditure over grant of €46,177. In terms of gross expenditure, the gross grant had been exceeded by €81,560.

I asked the Accounting Officer to explain the circumstances in which an incorrect Appropriation Account was presented and why the Commission's internal control checking systems did not detect the errors which led to an Excess Vote.

Accounting Officer's Response

The Accounting Officer informed me that the Commission was a small organisation and had a short history in handling its own accounts with limited experience and resources. This coupled with the development and installation of a new financial system in the final quarter of 2003 resulted in some slippage in normal checking and control functions.

He said that human error was the cause of the misposting of the salaries figure for October as these figures are transferred manually from a printout received from Salaries Section in the Department of Finance which processes payroll on behalf of the Commission. This and staff pressures coincided with a lapse in the balancing of the Vote Ledger with the Paymaster General's records.

The posting error was not detected in the course of the Commission's preparation of monthly returns of expenditure to the Department of Finance as the system in existence at that time did not allow the Vote Ledger to be used as a source document for the preparation of these returns. The salaries figure was taken from the printout received from Salaries Section Department of Finance instead of the Vote Ledger as the updating of the Vote Ledger could not be completed in sufficient time. This meant that the monthly return for November was materially correct. In preparing documentation to support a Supplementary Estimate passed by Dáil Éireann on 10 December 2003, reference was made solely to the Monthly Profile Return.

He pointed out that a number of significant changes have been implemented by his Office to prevent a recurrence. A Professional Accountant was assigned responsibility for running the Finance Unit which, given the relatively small size of the Office, he said was a considerable investment. He was also strongly of the view that the adoption of the new accounting system under the Management Information Framework (MIF) model would eliminate manual transactions and ensure that the Vote Ledger and supporting schedules are maintained and proved as correct on a continuous basis. He also pointed out that an Audit Committee had been appointed comprising primarily ex-officio members to ensure that all normal checks and balances are being correctly implemented. This Committee, he explained, had been given full access to a Professional Internal Auditor who had been retained on contract by the Office. The return of staff who had been committed to the MIF project and review of systems should prevent recurrence of this problem.

He assured me that weaknesses in staff competence would be addressed with appropriate training and that the enhanced reporting system would be implemented as part of the MIF.

Chapter 6 Office of the Ombudsman

6.1 Accounting Shortcomings

The Appropriation Act provides the legal basis for the maximum expenditure on a Vote. The Appropriation Act 2003 states, that for the salaries and expenses of the Office of the Ombudsman, the Standards in Public Office Commission and the Office of the Information Commissioner, a Supply Grant of a sum not exceeding €5,038,000 is granted. An Excess Vote can arise in a number of circumstances including where the total of the expenditure subheads exceeds the amount granted.

During the course of audit examination of the Appropriation Account for the Office of the Ombudsman for 2003 it was noted that the way in which the deduction and subsequent timing of payover of Professional Services Withholding Tax (PSWT)[5] was being handled by the Office's accounting system could have an adverse effect on establishing the proper charge to the Vote.

For Government accounting purposes the gross amount of payments for professional services should be charged to the Vote account with the deductions recorded in a suspense account pending payover to the Revenue Commissioners.

However, the system did not charge the amount deducted for PSWT directly to the Vote. The charge to the Vote only took place when the corresponding payover of PSWT was made to the Revenue Commissioners. The fact that the payover of PSWT deductions for the second half of 2003 was made in July 2004 meant that the corresponding charge would, inappropriately, be to the 2004 Vote rather than the 2003 Vote. As a consequence, the amount charged to the Appropriation Account as presented was understated by an amount of €61,814. After adjusting for the understatement and taking account of other audit adjustments, the result was an Excess Vote of €25,103. The excess represents 0.5% of the Office's allocation of €5,038,000. A revised Appropriation Account reflecting the adjustments was presented on 26 July 2004.

I sought the views of the Accounting Officer on the circumstances that gave rise to the Excess Vote.

Accounting Officer's Response

In July 2003 the Office of the Ombudsman, together with the Department of Finance (the Department) and the President's Establishment, rolled out the first phase of a new shared financial management system. The new system is part of the Management Information Framework (MIF) - a civil service-wide initiative to modernise financial management practices across all departments and offices.

Since its establishment in 1984, the Office's accounts had been processed by the Department and, partly for this reason, the Department and the Office, together with the President's Establishment, agreed to adopt a joint cross-organisational approach to the development of MIF. To meet the requirements of the MIF, the new financial management system operates dual accrual and cash accounting. The accruals ledger is the first source of all entries onto the system. The cash element of the system is charged with the expenditure only when a payment has been processed.

[5] Chapter III of Part I of the Finance Act, 1987 provides for the deduction of income tax from payments for professional services by Government Departments, local authorities, health boards and certain statutory bodies. These provisions are generally known as professional services withholding tax.

The accruals ledger treated the transactions involving PSWT correctly. However, the way the cash ledger system was structured meant that the timing of the full charge to the relevant subhead depended on the date of the payover of PSWT to the Revenue Commissioners.

When the new system was introduced, the Office assumed responsibility for many of the accounting processes and procedures formerly carried out by the Department but responsibility for others, including payovers to the Revenue Commissioners remained with the Department and the Office continued to forward PSWT returns to the Department for processing.

He now understands from the Department that following the introduction of the new system in July 2003, the payovers to the Revenue Commissioners were not processed in a timely fashion and that this resulted in expenditure under certain subheads being understated in the initial 2003 Appropriation Account presented. He also understands that following the queries raised by the Comptroller and Auditor General's audit team, the Department has put in place a monthly procedure to ensure that payovers to the Revenue Commissioners occur at the appropriate times.

The accounts staff of the Office and of the Accounts Branch in the Department were involved in the preparation of the Appropriation Accounts for their respective offices and it was at this time that it came to light that the Department had not, in fact, made the payovers of PSWT to the Revenue Commissioners. The Office brought this fact to the attention of the Department and the PSWT was treated in the manner presented in the 2003 Appropriation Account submitted for audit on the advice of the Department.

The errors and delays in payments were not detected by the Office by normal internal checks and controls, by monthly returns to the Department or during the preparation of the Office's financial position prior to the presentation of a Supplementary Estimate because the Office's accounts staff were, at that time, in the course of familiarising themselves with the capabilities of the new system (and, at the same time, were involved in the development of other modules of the system), and in any event, they had no reason to suspect that PSWT would not be paid over by the Department and were unaware, at that time, of whatever capability the system might have had to confirm this fact.

In order to avoid a recurrence of the problem the Office had agreed in principle a new service level agreement with the Department covering issues such as payovers to the Revenue Commissioners – the Office had presented the Department with a draft service level agreement as early as March 2003. He had also established a working group within the Office, comprising members of the management advisory committee, accounts staff and the internal auditor, to devise and implement procedures to enhance further the monitoring of the accounting function and identify any skills deficits that may exist and, where appropriate, source training for the relevant staff.

Chapter 7 Garda Síochána

7.1 Fixed Charge Notices and Penalty Points

Description of the system

Under the provisions of the Road Traffic Act 2002, An Garda Síochána operates and maintains a system for the issuing of Fixed Charge Notices and the acceptance of payments for two penalty point offences, namely speeding (from 31 October 2002) and the non-wearing of seatbelts (from 25 August 2003). The offences of driving with no insurance (from 1 June 2003) and careless driving (from 4 June 2004) are also penalty point offences but do not come within the scope of the Fixed Charge system as they can only be prosecuted by summonsing the driver to Court.

The penalty points system is operated jointly by the Department of Transport and the Department of the Environment, Heritage and Local Government (D/EHLG). Since the introduction of the penalty points system, information relating to the payment of fixed charges in respect of the two offences has been transferred manually from An Garda Síochána to an outsourced data processor for the recording of penalty points as appropriate on the National Driver File (NDF) operated by the D/EHLG on behalf of the Department of Transport. Information on offences which proceed to a court conviction is transmitted to the data processor in manual format or to the D/EHLG directly by the Courts Service where its Criminal Case Tracking System has been rolled out to the relevant Court.

Detection of speeding offences takes place by means of fixed camera installations, mobile GATSO[6] devices installed in unmarked vans and mobile LASTEC[7] devices (non intercept detections) or alternatively by means of laser devices operated by members of An Garda Síochána (intercept detections). Offences other than speeding, such as no insurance, seatbelt offences and careless driving currently may be detected only by means of direct Garda intervention (intercept detections).

Offences carry a monetary penalty and the Gardaí are responsible for issuing notices of offence detections to drivers and the collection of the relevant charge.

The penalty for speeding offences is a fixed charge of €80 (€60 in the case of seatbelt offences), payable within 28 days from the issue of a fixed charge notice by the Gardaí, together with two penalty points on the driver's licence record in the NDF.

The fixed charge is increased to €120 if the driver fails to pay within this 28-day period (€90 in the case of seatbelt offences). The driver is allowed a further 28 days to pay the increased amount. If, after the total time (56 days) has elapsed, the fixed charge remains unpaid, the Gardaí notify the Courts Service so that the driver concerned may be summonsed to Court. On conviction in Court, drivers are subject to a mandatory four penalty points and a maximum fine of €800 in the case of a first offence.

Operation of the System

The penalty points system provided for in the Road Traffic Act 2002 was designed around a set of complex processes involving An Garda Síochána, the Courts Service and the D/EHLG. Development of the Garda Fixed Charges Processing System IT project, which provides for this inter-operability, commenced prior to the enactment of the 2002 Act. The consultancy contract was put in place in

[6] Mobile speed detection equipment comprising on-board radar, computer and camera systems
[7] Mobile laser speed detection equipment

September 2002. Intensive work, involving a team headed by the Assistant Garda Commissioner for National Support Services, and comprising the consultants, Gardaí from Garda IT, National Traffic Bureau, Change Management, Garda College together with civil servants from the relevant Departments, has been ongoing since then. A live pilot commenced on 30 June 2004.

A decision was made to introduce the penalty points system on an interim basis in October 2002. The old Fines on the Spot computer processing systems in the Dublin Metropolitan Region and Cork City were antiquated and could not be upgraded to cater for the fixed charge system. Consequently, they were terminated in respect of speeding offences. While the penalty points system was never intended to be operated manually, the absence of a suitable computer system in October 2002 meant that a manual system was the only way of implementing the decision to go ahead. With only limited additional resources (three temporary clerical officers) to support the manual system, processing delays arose at both locations. An Garda Síochána developed a new interim computer system to cope with fixed charge speeding offences during the first quarter of 2003.

Audit Review

In the course of a review of the Fixed Charge Notice/Penalty Points system by my staff it was noted that of 87,004 Fixed Charge Notices issued from 31 October 2002 to 31 December 2003, payments were received in respect of 48,553 notices (€6,147,450).

A total of 7,059 summonses (for non-payment of fixed charges) were applied for in the period 31 October 2002 to 31 December 2003, of which 1,523 were not proceeded with on the instructions of the Director of Public Prosecutions (DPP).

The following sections set out the circumstances in which a detected speeding offence may not be pursued by the authorities.

Static and Video Camera Detections

The Garda Fixed Penalty Office Status Report for the week ending 12 December 2003 shows that it had received 107,636 films or videos from static cameras or video recordings since the system commenced. Of these, 50,567 (some 47%) were described in the report as 'spoiled'.

I asked what factors give rise to these spoiled recordings, whether and to what extent these would represent genuine infringements of the Road Traffic Acts (Penalty Point provisions) and what measures can be, or have been, taken to reduce the level of such spoiled images.

The Accounting Officer informed me that spoils occur for the following reasons, mainly relating to difficulties with number plates

- Dirty, obscure or damaged number plates
- Tampered number plates
- Non-conforming number plates
- Foreign registered vehicles
- Motor cycles

In addition, the following technical problems were encountered with cameras and films

- Dirty lens
- Poor weather conditions
- Obstruction of lens
- Problems with chemical developing solution
- Computer related problems.

Other reasons for spoils include

- Emergency vehicles (which are exempt)
- Temporary lack of access to National Vehicle File.

He added that the spoilt rate is a matter of concern to the Garda authorities and to his Department but pointed out that making an accusation of the commission of an offence under the Road Traffic Acts is a serious matter with potentially serious consequences for an offender. Therefore, the Gardaí can only issue a Fixed Charge Notice where they are in a position to stand over the accusation.

The issues relating to camera and film deficiencies have since been addressed with the company supplying the cameras and the Garda Technical Bureau has addressed the chemical solution problems. This has led to a reduction in the number of spoils recorded in the first five months of 2004

- 31 October to 31 December 2002 3,903
- Full year 2003 51,944
- 1 January to 31 May 2004 13,535

Issues relating to number plates are fed back through the Garda National Traffic Bureau to operational Gardaí attached to Traffic Units with a view to enhancing the enforcement of the law in relation to number plates. It is understood that the issue of foreign registered vehicles is being addressed by the Department of Transport at EU level and in discussions with their Northern Ireland colleagues.

Detections involving company cars

The Gardaí reported that there had been 235 cases where vehicles intercepted were in company ownership and where the penalty points accruing to the drivers of these vehicles could not be allocated to specific driver files as nomination forms had not been received from companies in respect of the detected offences.

I enquired as to how this situation has arisen with regard to drivers of company cars.

The Accounting Officer stated that under the penalty point system as set out in the Road Traffic Act 2002, payments can only be accepted where the payment is accompanied by the original Fixed Charge Notice (the format of which is prescribed in Regulations) duly completed, including the driver's licence number. This is to ensure that penalty points are recorded on the driver licence record. The issue of company vehicles was referred to the Office of the DPP by the Gardaí and his Office directed that companies could not be prosecuted for a speeding offence, as it was a driver offence. Therefore, in circumstances where a company, as the registered owner of a vehicle, ignores a nomination notice, a summons is not issued by the Garda Fixed Penalty Office.

He went on to inform me that the question of dealing with vehicles registered to companies has been discussed on many occasions and has long been identified as a deficiency in the law. One possible solution is that a suitable amendment would be brought forward in a Finance Bill, in the context of treatment of company vehicles and benefit in kind. It has been brought to the attention of the Department of Transport, which is the sponsoring Department for road traffic legislation, by Garda management.

Foreign registered vehicles

In the course of audit, the audit team was informed that film footage viewed by the Gardaí included recording of foreign registered vehicles travelling in excess of the speed limit. The team was informed that the Gardaí do not process offences by the drivers of such vehicles and no attempt is made to establish the identity of the drivers concerned. There is no record maintained of the number of such offences.

In response to my enquiries the Accounting Officer confirmed that the Gardaí have no means of identifying the registered owners of foreign registered vehicles which are detected speeding by means of a non intercept device, i.e. cameras or GATSO devices. In order to identify registered owners, An Garda Síochána has access only to the D/EHLG's National Vehicle File (NVF). This does not include a facility to identify registered owners of vehicles registered outside the jurisdiction. Section 11(2) (b) of the Road Traffic Act 2002 provides that a notice shall be issued to a registered owner of a vehicle. In the event of non-payment, part of the proofs required for court is a certificate of ownership issued by an Authorised Officer of the relevant local authority. Therefore, the Gardaí have no means of identifying foreign vehicles committing speeding offences detected by means of tape or films and they are recorded under the category of spoils. However, the Gardaí do have the facility to detect foreign registered vehicles by means of direct interception devices, i.e. laser guns. In these cases, the drivers are required to identify themselves to the detecting Garda and are issued with Fixed Charge Notices on the spot.

Drivers holding Foreign Driving Licences

I asked the Accounting Officer for details of the number of offences noted by the Gardaí as committed by drivers holding foreign driving licences or where holders of foreign driving licences have been nominated by the person to whom the notice was first sent.

The Accounting Officer stated that the IT system at the Garda Fixed Penalty Office does not currently distinguish between foreign drivers, Irish drivers, foreign addresses or Irish addresses. Consequently no data is available on the number of drivers holding foreign drivers licences who have paid their fixed charge.

However, after the payment of a fixed charge when the driver information is passed on to the data processor for recording of penalty points on the National Driver File (NDF), records with an invalid (including non-Irish) driver number are noted. In addition, drivers with foreign addresses who choose not to pay the fixed charge are identified during the process of summons application. Again, the matter of issuing summonses to these drivers was referred to the DPP by the Garda Fixed Penalty Office. The DPP advised that the prosecution of such offenders should not proceed as service of summons was unlikely.

The Accounting Officer informed me that it was difficult to estimate the potential loss of revenue to the State as the prosecution for penalty points offences would be dealt with in the District Courts where the potential fine is at the discretion of the Judge but may be up to a maximum of €800. There were 1,093 summonses for such drivers which had not been activated since the inception of the penalty point system to 31 December 2003.

Other Driver Nominations

The Garda computer file indicates that some 22,881 registered owners initially contacted in relation to a driving offence have indicated to the Gardaí that he/she was not the driver of the vehicle at the time of the alleged offence. The nominal fixed charges in respect of these cases was €1,830,480.

I asked the Accounting Officer what steps the Garda Síochána take generally to ensure that the appropriate drivers are located and served with the fixed charge notices where nominations have occurred. I also asked what steps have been taken to deal with the large number of such cases.

In his reply, the Accounting Officer informed me that the procedure in operation was that when a registered owner receives a nomination notice for speeding and the registered owner indicates that they were not driving at the time, the registered owner must then complete the notice nominating a driver. A fixed charge notice is then issued to the nominated driver and the life cycle runs its course (28/56 days) resulting in either payment or prosecution.

The payments system in the Garda Fixed Penalty Office cannot differentiate between payments received from nominated drivers and normal payments. The Gardaí are not in a position to state what the monetary value of these nominations might be as the nominated drivers have the option of paying a Fixed Charge of €80 within 28 days, or €120 within 56 days or allowing the allegation proceed to summons to court where the maximum fine is up to €800.

Cancelled Notices

Drivers sometimes write to the Garda Fixed Penalty Office in response to receipt of a Fixed Charge Notice, for example to offer reasons why he/she was speeding on the occasion, or to explain the reason for the delay in paying the monetary penalty. The decision as to whether to proceed with the process of applying penalty points to the driver's record is apparently a matter for the Garda management at the Fixed Penalty Office.

The examination of the computer records show over 2,600 cancellations in the period examined. Of these, 1,500 are classified as "Error on ticket". A further 780 were classified "Details Unavailable".

I asked the Accounting Officer for information regarding the cancellation policy employed by the Gardaí in respect of fixed charge notices and, in respect of the cancellations on the Garda file, why there appears to be a relatively high rate of error on tickets. I also sought his observations in relation to the cancellations for which no apparent details were available.

The Accounting Officer informed me that notices could only be cancelled at the discretion of the District Officer and generally cancellations only result from errors by the issuing Garda such as

- Incorrect particulars on notice
- Incomplete notices
- Defectively issued notices, e.g. where the National Vehicle File has not been updated
- Legal exemptions both with regard to speeding and the non-wearing of seat belts
- Poor picture on screen resulting in wrong owner getting notice

- Incorrect information on National Vehicle File
- Incorrect reading by Garda members viewing film/video and incorrect data entry.

The reference to "errors on ticket" refers to mismatch on National Vehicle File or human error on intercept Fixed Charge Notices and is an IT recognition code to flag that the notice should be cancelled on the interim IT system. The references to 'details unavailable' relate to older manually processed cases where the details of the cancellations are recorded in summary form only; and, other instances where the request for cancellation is made and acceded to before the details are processed by the Garda Fixed Penalty Office. An examination of the number of cancellations shows that the number has reduced substantially to a total of 771 in the first six months of 2004.

Statute barred offences

If the Fixed Charge payable on foot of a penalty point offence is not paid and an application for summons to Court is not made within six months of the date of the offence, the prosecution of the driver in question is statute barred.

My examination of the computer file recording penalty point information noted that there were over 5,500 such cases flagged as being statute barred. Table 29 sets out an analysis of these cases and shows the potential revenue loss which results from the inability to recover the amounts involved.

Table 29 Statute Barred Offences

	Cases	***€***
Foreign Vehicle	12	1,000
Exempt Vehicle*	130	-
Notified Owner	231	15,960
Owner Untraced	641	40,760
No reason stated in computer file	4,561	304,400
Total	**5,575**	**362,120**

* 130 Exempt Vehicle cases are recorded as being statute barred, even though no penalty or prosecution is contemplated

I asked why these cases could not be processed in time to allow the application of the Fixed Charges and Penalty Points.

The Accounting Officer stated that the introduction, in October 2002, of the interim penalty points system meant that the Gardaí were required to move from a fully automated computerised Fines-on-the-Spot system to a paper-based system based around manual receipts, registers, issuing of notices, issuing of nomination forms, postal enquiries and preparation of court cases. These manual processes were quite cumbersome and resulted in the accumulation of a four-month backlog of films and tapes relating to non-intercept offences. As a result substantial delays arose in the issuing of fixed charge notices which resulted in a large number of cases, referred to in Table 29 as 'No reason stated' becoming statute barred. However, since the introduction of the interim IT system in May 2003, the backlog has been cleared and this situation should not arise again.

No driver number

The Garda Fixed Penalty Office produced statistics showing the distribution of penalty points issued by County to 31 December 2003. However, the statistics show a considerable number (12,900) of the total issued (99,000) to be classified without reference to a specific County, being titled 'No Driver Number'.

Information was requested as to how this category of driver arises, what efforts have been made to ascertain driver numbers in the cases concerned, and what procedures are envisaged to ensure that the drivers concerned will eventually be allotted the appropriate number of penalty points.

The Accounting Officer informed me that the data referred to is compiled and released by the Department of Transport periodically on the basis of material on the National Driver File (NDF). Neither his Department nor An Garda Síochána is in a position to supply statistical information on penalty points.

He noted that in relation to the heading of 'no driver number', the current position is that an Garda Síochána does not have access to the NDF in order to authenticate driver licence numbers at the time of payment. If an incorrect number is included on the notice for payment, under the current system it will not be detected until the data is being entered on the NDF. This problem was anticipated in the design of the interim system and is addressed in the Fixed Charges Penalty Office computer system where the Gardaí's outsourced payment provider (currently under negotiation) will have a link to the NDF in order to authenticate the number at the time of payment. An additional problem is that where the Gardaí are made aware that the number stated is incorrect, they do not have power to retrospectively demand production of the driver's licence for verification purposes. This has been brought to the attention of the Department of Transport in the context of the Road Traffic Bill 2004.

Conclusions

While the fixed charge and penalty points measures have been in place for a relatively short period, my examination reveals operational, administrative and legal impediments to its smooth and effective use.

These impediments include

- Low payment rate of fixed charges – 56% of notices issued in the first 14 months of operation
- Low summons rate for unpaid notices – 18%
- High rate of spoiled images/recordings – 47%
- Enforcement difficulties for foreign registered vehicles
- Inability to take appropriate action against drivers of company cars
- Inability to take appropriate action against certain drivers with foreign issued driving licences or foreign addresses
- Difficulties in assigning penalty points when inaccurate details are provided on returned fixed charge notices
- Level of inaccuracy in completing fixed charge notices giving rise to cancellations.

Some progress is being made in tackling the impediments by

- Remedying camera and film defects
- Addressing the problems relating to the drivers of company cars, number plate issues and foreign registered vehicles with the appropriate authorities
- Clearing the backlog of films and tapes to be viewed
- Moving to verification of driver licence numbers when fixed charges are paid.

Chapter 8 Department of the Environment, Heritage and Local Government

8.1 Electronic Voting and Vote Counting

Background

The Department of the Environment, Heritage and Local Government is responsible for the various legislative codes dealing with the registration of electors and the conduct of elections and referendums. This involves an ongoing review of electoral law, the provision of information and advice to registration authorities, returning officers and the general public together with the publication of election results.

In the exercise of its responsibilities in this regard, the Department took the lead role in the planning, procurement, testing and deployment phases of implementing Government policy on electronic voting.

The scope of the electronic voting and vote counting project as postulated by the Department was to replace the existing manual voting and counting processes with a solution which met the following objectives at an acceptable cost

- Simple for public to use
- Easy for electoral staff to use
- Maintains integrity in the electoral process
- Count software which applies the count rules more accurately
- Improves efficiency of electoral administration
- Reliable and robust technology suitable for Irish electoral conditions
- Minimum maintenance pre-election, at election and post-election
- Provides early results after polling has concluded
- Supports a positive image of the country in the use of information technology.

The electoral system in Ireland, Proportional Representation by means of the single transferable vote (PR/STV), is in use in three other jurisdictions worldwide – Malta for national elections and limited use in Northern Ireland and Tasmania. None of these used electronic voting when it was first considered here in 1998.

Research undertaken by the Department indicates that electronic voting is in use in a number of countries – some to a limited extent – viz. Belgium, Brazil, Canada, Germany, India, the Netherlands, the USA and Venezuela.

Audit Objective

The audit objective was to examine

- The administrative planning for the introduction of electronic voting and vote counting, including adherence to capital appraisal guidelines and the robustness of the cost benefit analysis
- The scope and nature of the testing/piloting undertaken
- Management of the procurement of the hardware and software
- Costs associated with the introduction of electronic voting.

Schedule of Key Events

November 1998 – the Department of the Environment, Heritage and Local Government invited companies with products which would facilitate electronic voting and vote counting in PR/STV electoral systems to furnish details of these products

May 1999 – the Local Elections (Disclosure of Donations and Expenditure) Act 1999, included a provision that ballot papers from the 1999 local election could be used for research into the use of electronic methods of vote recording and counting

February 2000 – the Government approved, in principle the introduction of direct vote recording and the drafting of enabling legislation, with a view to introducing electronic voting and vote counting at the 2004 European and Local Elections

June 2000 – tender notice issued for procurement of suitable hardware and software system

December 2000 – the Government noted the proposal to begin testing the chosen system proposed by Nedap/Powervote

August 2001 – Six voting machines were purchased for testing purposes

November 2001 – The Electoral (Amendment) Act 2001 provided the statutory authority for the introduction of electronic voting and vote counting at a Dáil Election

November 2001 – 600 voting machines were ordered for use in three constituencies at the 2002 General Election

April 2002 – Statutory instruments approving the use of electronic voting at a Dáil Election in three constituencies – Dublin North, Dublin West and Meath were signed

June 2002 – a further 400 voting machines were ordered for use in four more constituencies at the Second Nice Treaty Referendum in October 2002

March 2003 – 6,000 more voting machines were ordered for use countrywide at Local and European Elections in 2004

1 March 2004 – Commission on Electronic Voting established to report on the secrecy and accuracy of the chosen system for use in the June 2004 Elections

29 April 2004 – Interim report of Commission could not recommend proceeding with the introduction of electronic voting for the June 2004 elections

Administrative Planning

Research

The Department of the Environment, Heritage and Local Government in November 1998 invited companies who had suitable products which would facilitate electronic voting and vote counting at elections, using the PR/STV electoral system, to furnish details of their products to the Department on or before 31 December 1998.

Five companies responded with products which were capable of facilitating direct vote recording and vote counting. One such product was viewed in operation at elections in Cologne (Germany) and in the Netherlands.

Departmental officials visited the UK, the Netherlands, Germany and the USA during their consideration of the project.

The Department indicated that it had taken steps to test historical data on a number of machines supplied for preliminary testing, demonstrate them in operation to the key players in the process including the main political parties and pilot use by 165 electors at a bye-election in 1999.

The Local Government Computer Services Board (LGCSB) and returning officers were involved with the Department at the testing and the tender preparation and evaluation stages of the project.

Business Planning

Department of Finance Guidelines

The Department of Finance produced in 1994 Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector to assist public sector managers dealing with capital projects. While it is not a detailed planning and cost control handbook, it sets out the main steps which should be followed in evaluating and managing capital expenditure projects, considers the major issues of principle involved, and describes the principal methods of appraisal. It reiterates the principle that the systematic appraisal and professional management of all capital projects helps to ensure that the best choices are made and that the best value for money is obtained.

It contends that it is not enough to be satisfied that investment is justified but that it is also necessary to ensure that it produces its planned benefits at minimum costs. Cost includes the ongoing current costs generated by the use of a capital asset, as well as the initial capital cost.

The Business Case

The business case for the project, which was set out in a Departmental report in December 1999, pointed to the desirability of providing a higher level of service for voters and the public in the conduct of polls and counts. Other positive considerations were the possibility of long-term savings and flexibility if alternatives to voting at polling stations were introduced in the future. In relation to costs and savings, the report gave broad indications only at that stage, as no actual tenders were available at that time.

The report indicated that the cost of holding an election was increasing – about €2.9 million (excluding free postage and returning officer postage) based on costs incurred at the 1997 general election. It was

estimated that the cost of counting was approximately €1.4 million. More specifically the cost of the count in the Dublin area was €500,000 approximately and the cost of purchasing equipment for this area would be about €2.5 million. Payback on the expenditure would require 8 polls and perhaps 10 polls in areas outside Dublin, as there would still be expenditure on the count process.

It suggested that the cost of election counts would increase faster than inflation due to the tendency to hold elections on Fridays (and maybe on Saturdays and Sundays) and a demand for higher fees – some returning officers had indicated a resistance of some staff to do election work due to level of fees.

The report pointed to other savings expected to arise on equipment used at polling day e.g. polling booths, ballot boxes, stamping instruments, ballot papers and other stationery as well as the hidden cost of storage of equipment between elections, preparation, dispatch and return of equipment to the Government Supplies Agency before and after elections. In the context of costs, it concluded that, essentially, the main reason for introducing direct vote recording and electronic vote counting was not only long-term savings but the accuracy and speed of the vote counting process and perhaps flexibility if alternatives to voting at polling stations were introduced in the future.

In January 2000, the Department of Finance stated that the proposals did not adequately address a number of issues. It requested that more details should be supplied regarding the security and reliability of the system and the contingency arrangements necessary in the case of system or equipment failure. It also asked that more details should be provided on the costing of the system. The total cost of the system as a whole must be stated and maintenance costs included. The cost of contingency arrangements must be built into the overall costings.

Regarding costs, the Department undertook to provide detailed costings after tenders had been received and evaluated. In December 2001, following the tender competition, it advised the sanctioning authority that the system recommended for testing would cost approximately €31.7 million, excluding VAT.

Later costings were provided at stages when large scale purchasing of voting machines were being undertaken.

Savings

In February 2000, Departmental papers put the estimated cost in six Dublin Constituencies at approximately €1.3 million, while it estimated savings of about €160,000 per poll. Unquantified publicity and training costs would also be needed. Overall, it was anticipated that there would be staff and equipment savings of about €1.4 million per poll nationally at traditional count centres.

A Departmental submission prepared in November 2000 estimated that savings of €13.8 million would accrue over a twenty-year period (i.e. the projected life span of the voting machines) based on an assumption of the minimum of possible elections occurring in that period. More elections would result in greater savings. The figures assume that staff savings would be approximately 40% of costs arising on vote preparation and counting which in turn were estimated at one third of total election costs and were informed by data provided by returning officers. The submission proceeded to estimate a more realistic scenario for the incidence of elections and referendums over the period, and concluded that cost recovery would be achieved in twenty years on the basis that there would be about 25 polls over that period. The Department is of the view that this cost recovery projection was conservative on the basis of staffing costs increasing at 4% a year and points out that actual costs have in fact been rising at a significantly faster rate.

In its submissions of November 2001, June 2002 and October 2002, the Department simply indicated that savings on the conduct of each poll would arise due to reduced vote counting costs and other administrative efficiencies. No financial data on savings was offered.

The Department has, however, pointed out that the overall objectives of the project did not as a pre-requisite require it to be self-financing.

While it is acknowledged that the decision to move to electronic voting and counting was primarily influenced by factors other than cost, the project should have been subject to more rigorous cost/benefit analysis in view of the scale of the financial commitments involved.

Scope and Nature of testing/piloting

Equipment testing

The Department informed me that the system had been tested by returning officers, the Department and the LGCSB during the two years prior to its use in the May 2002 General Election. In addition, the voting machine had been tested by three international testing institutes, while the election management and count software had been tested by two independent bodies.

Details provided by the Department indicate that testing was carried out on its behalf between 2001 and 2004 in the following areas

- consultancy for general examination and assessment
- functionality testing (including the embedded software)
- testing and certification of Nedap voting machine for compliance with international safety standards
- architectural evaluation of election management software
- report on security of the voting machines in polling stations
- testing of Integrated Election Software (IES) count-rule software
- validation and source code review, including reviews of code amendments

All the testing and reports concerning the voting machine and software were positive. The Department considered that the system, albeit with different vote counting rules, had a proven track record of use in the Netherlands for over ten years and for a number of years in some German cities.

Prior to the pilots, the voting machine had been used – with sample ballot papers only – by voters at two Dáil bye-elections in order to gauge the ease of use of the machine by the public. The voting machine had also been demonstrated to political parties, returning officers and featured in radio and television programmes.

Pilot Implementation

The Department has informed me that given the Government's decision of 8 February 2000 to commence the use of electronic voting at the 2004 European and Local Elections, it was considered appropriate to pilot the system in three constituencies with different electorate profiles and sizes (a three-, four- and five-seat constituency). It was not an option to select part of a constituency as a pilot and retain the manual voting system in the rest, because of the statutory requirement to mix the ballot papers on a constituency-wide basis.

Against this background it was decided that there should be "live" use of the system at the May 2002 general election.

Evaluation of General Election Pilot May 2002

The Department provided me with a copy of its "Review of the Pilot Project - General Election 2002" prepared on 2 July 2002.

The review's summary indicates that the pilot project to test electronic voting and counting in 3 constituencies at the general election was successful. The voting and counting were completed correctly, results were available, at the latest, within 4 hours of the close of poll and the public reaction was very favourable. Approximately 470 voting machines, including spare machines, were used in the 3 constituencies. Few technical difficulties were reported on polling day.

It also made the following suggestions for improvement

- Modifications to the screen of the voting machine to facilitate voters
- Some modifications to the IES software to facilitate use by election staff
- A more co-ordinated approach to procedures at the count centres, particularly in relation to presentation of the count information and results to candidates and media
- Improved technical specifications for printing ballot papers including candidate photographs and political party logos.

Market researchers interviewed 1,207 people as they exited polling stations and 96% of those surveyed found the voting machine very easy to use or quite easy to use. Only 1% of the 1,207 voters surveyed mentioned a delay or queue. This percentage rose slightly among those voting during the evening time, but never higher than 5%.

Questions Posed in the Review

The Department's review of the General Election Pilot noted that the following matters needed consideration

(a) Is the Powervote system the most suitable having regard to cost, life span of the equipment, and changes in technology?

(b) If the answers at (a) are positive, is such a system preferable to paper ballots and manual counting of votes?

(c) Should the system be extended countrywide in 2 or more phases having regard to the time and staff resources available in Franchise Section?

(d) Study of changes in STV count rules to omit the arbitrary and random features of the present count rules.

The Department concluded that it had satisfactorily answered these questions.

The review went on to state that it would appear from reaction to the recounts at the election, that candidates, subject to changes in presentation of results, would also favour the use of electronic counting. Election staff in the 3 constituencies at the general election all expressed a preference for the use of the system in place of manual systems.

Extended Pilot - Nice Referendum October 2002

The decision to extend the pilot to four more constituencies (with a further purchase of 400 voting machines) was taken on 5 June 2002 some three weeks after the 3 constituency pilot. I asked the Accounting Officer the extent to which the Department's assessment of the pilot was used to inform the business case for full implementation.

The Accounting Officer informed me that while the formal review document of the pilot became available in July, its substance was known within the Department when the submission to Government to extend the pilot was made. In light of this, it was decided that, given the objective to promote the use of the electronic system at the European and Local Elections in June 2004, it was appropriate to extend the use of the system to a further four constituencies at the October 2002 referendum.

He stated that the use of the system at a referendum is a less complicated process (voter preference choice is limited and counting is much simpler) and the extended use of the system in this context was intended to provide more information on the public use of the system for a different type of poll before confirming its use for the country as a whole. The use of the system in the extra four constituencies also provided for more efficient and cost-effective conduct of the referendum for the Returning Officer for County Dublin as he did not have to cope with both the manual system in four constituencies and the new electronic system in two constituencies for which he is the Returning Officer, as occurred at the 2002 general election.

The dominant consideration was that a further pilot for a different type of poll over a larger population base would better inform any decision on the countrywide use of the system.

Following the October pilot, the Government's objective to promote use of the electronic voting system on a nationwide basis for the June 2004 European and local elections was confirmed.

Commission on Electronic Voting

The Commission on Electronic Voting (CEV) was established in March 2004 and mandated to report by 1 May 2004 in relation to the application or non-application of the Nedap Powervote system to the June 2004 elections. The Commission's Interim Report was not able to endorse the use of the Nedap-Powervote system at the June polls. However, the Report made it clear that this conclusion was based not on any findings that the chosen electronic and counting system would not work but rather on the desirability of allowing more time for further testing and quality assurance by, or under the supervision of, the Commission.

The main reservations of the CEV Interim Report related not to the system hardware (i.e. the voting machines), which accounts for the great bulk of the public expenditure involved in the project, but to the late stage (relative to June 2004) at which software modifications were being carried out. In a set of recommendations for action, the Commission set out a programme of action which it required to be in position to satisfy itself as to the secrecy and accuracy of the system. The Department will cooperate fully with the Commission in relation to this work programme.

While the CEV's report concluded that it could not recommend the use of Electronic Voting and Counting for the June 2004 elections it was not unreasonable for the Department to proceed as it did on the basis of the results of its testing and pilot projects.

Management of the Hardware and Software Procurement

The Tender Process

The Department published a Pre-Information Notice (PIN) (a requirement for public contracts in excess of €6.34million) for the purchase of an electronic voting and counting system for use at statutory elections and referendums in the EU Journal on 1 April 2000. Request for tender documentation was prepared and the full notice for tenders was dispatched to the EU Journal on 23 June 2000.

The Tender document proposed the phased introduction of an electronic voting and counting system

Phase 1 - 6 voting machines, including all necessary hardware and software for counting of votes on the machines and ongoing support for hardware and software during testing which was expected to take 6 to 9 months (October 2000 to June 2001)

Phase 2 - subject to satisfactory testing of the voting machines and count software and Government approval to the use of the equipment at an actual election, assume the purchase of 300 machines including software for vote counting, for pilot use at a Dáil Election in 2002 or at a referendum (if any in 2002 onwards). In the event that a general election is held prior to 2002, the pilot of the scheme will be held with the European and Local Elections in 2004 – in which case assume the purchase of 1,200 voting units in addition to the 300 units.

Phase 3 - if there is a poll at the presidential election in October 2004, assume the purchase of a further 300 voting units.

Phase 4 - the position was to be reviewed at the end of 2004 for the post 2004 period. If it was decided to extend the system to the whole country, the total requirements for the State would be approximately 8,000 voting units (including phases 1 to 3), including necessary count software. This also provided that the counting rules might be simplified as part of the extension of electronic voting and counting to the whole country.

In phase 1, the six test units would be purchased by the Department. The contract to be entered into with the successful tenderer would stipulate, provided it was decided to proceed with the project, that the units required in phases 2 to 4 would be purchased by returning officers.

Tender documentation was sought by 30 companies and 7 tenders were received by the 14 August 2000 deadline.

A project board consisting of Departmental staff, staff from the Local Government Computer Services Board and representatives from the Returning Officers carried out evaluations on the various tenders received.

Two tenders were excluded from the process at this stage, as they did not meet all the requirements. Product presentations were made by the 5 remaining firms in October 2000. Tendered prices ranged from €25.4 million to €60.9 million.

The Department recommended acceptance of the second lowest tender from Nedap/ Powervote at a cost of €33.4 million (after inclusion of €1.9 million for battery backup). The results from the tender process were submitted to the Government Contracts Committee who gave approval in December 2000. Tender prices were to remain unaltered until the end of 2004.

Description of the recommended system

The Nedap/Powervote voting system consists of the following:

Voting Machine - this replaces the ballot box, ballot paper and polling booth.

Ballot Module – this is a bespoke cartridge which is programmed with the election and candidate details. The set-up of the election, including candidate details, is programmed on to the ballot module and it is loaded into the voting machine prior to the election. It stores the votes and when the polling station closes the ballot module is sent to the count centre and its votes are collated with the other votes in that constituency for counting purposes using the election PC**.**

Programming Reading Unit (PRU) links the ballot module with the election PC and enables the ballot module to be programmed before the election, and then reads back in the data from the Ballot module once the polls have been closed.

Election PCs specifically provided for use in the elections and have been security hardened and programmed with the election software and supporting applications to ensure secure use and access.

Integrated Election Software (IES) is the election management software which enables the returning officers to set up the poll, take in candidate nominations and prepare the ballots for the election. The election data is then formatted onto the ballot modules using the PRU and the software counts the votes for each electoral area once all the votes have been read in and reconciled.

Purchase for testing system

Delivery of the six test machines was not made until August 2001, some twelve months later than was originally intended in the initial project timetable.

Purchase for Pilot for General Election May 2002

In November 2001 the Department, proposed the purchase of 600 voting machines for use in the General Election pilot in 2002 – no date had been set but the supplier had indicated a need for a 23-week delivery period. The proposal was made notwithstanding the fact that testing on the original six test machines had

yet to be completed. The Department had expressed itself confident that the testing would be satisfactory.

The order was placed with Nedap/Powervote on 16 November 2001. The Department indicated that protracted negotiations were required before the contract for the purchase of the equipment could be signed on 19 December 2003.

Departmental documents indicated that, in February 2002, functional and reliability tests on the machines had been concluded satisfactorily, but that functional testing of the software was ongoing and was expected to be satisfactorily completed by mid-February and fully completed by March 2002.

The Department of Finance again raised the issues of the security and reliability of the system and the details of the contingency arrangements in case of system / equipment failure and voter confidentiality.

The pilot at the General Election indicated that a number of physical modifications were desirable to make the voting machines more user-friendly.

Purchase for Second Pilot - Nice Referendum

On 5 June 2002, approval was given to purchase an additional 400 voting machines and ancillary equipment for use in 4 further constituencies for the then anticipated second Nice Referendum. The recommendation to order this equipment was made notwithstanding the fact that the review of the General Election Pilot, then known to the Department suggested the need to make modifications to the voting machine. Departmental papers indicate that the cost of these modifications, if carried out to machines before their delivery would be in the order of €615 each, while returning already delivered machines to the factory for modification would cost about €2,300 each.

I asked the Accounting Officer why the modifications were not sought before the order for these machines was confirmed to avoid the extra charge of returning them for modification at a total cost of approximately €680,000 (400 machines at about €1,685 each).

He stated that the proposed modifications to the voting machine panel involved the reduction in the number of rows per column to allow for better legibility of candidate details, and the use of brighter displays to make preference numbers clearer. The Referendum was scheduled for October 2002 and it was necessary to order the machines so that they would be available in sufficient time for the poll. While there was not sufficient time available to retro-fit the voting machines already purchased (and to re-test the equipment following the referendum), the nature of a referendum (where a simple "Yes/No" choice is required) did not necessitate that these improvements be made at that time.

Purchase for the 2004 European and Local Elections

After the Nice Referendum in October 2002, the Department recommended the extension of electronic voting and vote counting countrywide for the forthcoming 2004 Local and European Elections. This would involve the purchase of about 6,000 more voting machines and ancillary equipment. The recommendation also outlined the need for three modifications identified after the pilot use at the General Election in May 2002

- Reduce the maximum number of candidates per column on the voting machine from 28 to 20 or 18
- The size and lighting of the preference number were to be reviewed
- An investigation would be made on the provision of a facility for visually impaired voters to vote independently.

These modifications would also have to be made to the existing 1,006 machines. The replacement of the voting screen with the improved preference number was described as a highly technical procedure which must be carried out under production conditions and the modified machines have to be thoroughly tested by the manufacturer and retested by the independent test institutes. This would require that the machines be returned to Holland. The modifications to the existing 1,006 machines would cost approximately €2.3 million.

Contract for purchase of 6,315 machines

The Department issued a letter of intent to purchase 6,000 machines to Powervote on 28 January 2003 subject to 18 conditions. On 4 March 2003, the Department wrote to the Department of Finance informing them that it was placing this order and pointed out that a condition of the order was a deposit of 20% of the cost on placing of the order. Two returning officers had been requested to apply for an advance of the funding for their constituencies for voting machines (rather than 28 small requests) to meet the advance payment requirements. The Department endorsed the requests for funding from the Returning Officers for Dublin (€5 million) and Mayo (€3 million). 6,315 machines were actually purchased.

While the procurement of hardware and software was carried out in line with proper procedures the decision to purchase the additional 400 voting machines for the Nice Referendum without the identified modifications ultimately resulted in avoidable costs of €680,000 being incurred.

Costs Associated with the Introduction of Electronic Voting

In response to my enquiries, the Accounting Officer provided the following details of the costs incurred. In a number of instances detailed costs could not be provided because the information relating to the items concerned were held by Returning Officers and would be accounted for by them in their statutory returns to the Department of Finance.

Table 30 Hardware and Software Costs

		Comment	*€*
2001 Test Purchases	6 voting machines and ancillary equipment		39,708
	Election management software and equipment		488,490
2002 General Election Pilot	600 voting machines	Precise costing not available (payments by returning officers)	Estimated €3.4m.
	Election management software and equipment		
2002 Referendum	Purchase of 400 voting machines for 2002 Referendum on Treaty of Nice	Precise costing not available (payments by returning officers)	Estimated €2.3m.
	Election management software and equipment		
	Modifications carried out to 1,006 voting machines	Cost for each machine €2,393 excl. VAT+ carriage. Precise costing not available (payments by returning officers)	Estimated €2.9m.
2004 Local/European Elections	Purchase of 6,315 voting machines	6,315 voting machines purchased @ €4,508 plus VAT. Precise costing not available (payments by returning officers)	Estimated €34.5m.
	Electoral management software and equipment	Dependent on size of electorate, subject to negotiation with developer	
General	PCs for Departmental use		28,623
	Returning Officers' PCs	Costs not available	
Total			**€43,657,000 (est.)**

Consultancy and Testing Costs

The Department engaged consultants and experts to assist in implementing the project as well as test the chosen systems and software. Costs incurred included tests for compliance with international safety standards, architectural evaluation of election management software, security of voting machines, IES count rule software, source code modification, compliance with EU emission and immunity standards, ergonomics and international certification. These costs are itemised under each of the purchase phases as follows

Table 31

	€
2001 System Testing Phase	129,877
2002 General Election Pilot	46,827
2002 Treaty of Nice Referendum	37,746
2004 Local/European Elections (2003 Expenditure)	135,941
2004 Local/European Elections (2004 Expenditure)	187,788
Total	€538,179

Advertising and Promotional Costs

The Department carried out extensive promotional campaigns to inform and educate the electorate in advance of the use of electronic voting and vote counting in the 2002 General Election and 2002 Referendum in selected constituencies and in anticipation of its use nationwide for the 2004 Local and European Elections. The costs incurred were

Table 32

		€ (incl. VAT)	*€(incl. VAT)*
2002 General Election Pilot	Advertising/promotional		263,047
2002 Referendum	Advertising/promotional		270,485
2004 Local and European Elections*	Advertising (Media)	1,307,874	
	Advertising (Production)	636,628	
	Print	245,046	
	Video	10,523	
	Website	40,257	
	Roadshow/Events	270,342	
	Call Centre	15,093	
	Research	55,055	
	PR costs	733,669	**3,314,487**
Total			**€3,848,019**

* With the decision not to proceed with the use of the systems in June 2004 savings under this heading of approximately €1,130,000 arose on the original tender costs.

Training Costs

The Accounting Officer has informed me that the cost of training personnel for polling and count duties for the 2004 Elections is not available as these costs are the responsibility of Returning Officers and will be included in their returns to the Department of Finance.

Other Costs and Liabilities

I asked the Accounting Officer for details of any contingent liabilities arising out of the decision not to proceed with the deployment of electronic voting and vote counting for the elections in 2004. He provided the following information

- Batteries for voting machines – probable liability €75,000
- Voting machines ordered but not delivered (185) – maximum liability of €1 million if it is not possible to cancel the order
- 6,000 extra ballot modules were ordered for use at the Presidential Election as the existing modules had they been used in the Local / European Elections would not be available for legal reasons – Maximum liability of the order of €690,000

The Accounting Officer also informed me that there are no annual maintenance costs required for the equipment involved. Annual storage and insurance costs are not yet available. He has sought details from the individual Returning Officers.

He also pointed out that although the Department is not directly responsible for the acquisition, maintenance or storage of ballot boxes, he understood that Returning Officers had purchased between 1,500 and 2,000 at an estimated unit cost of €50.

The cost to date of Electronic Voting and Counting is in the range €47.5m - €50m. The degree of value obtained for the vast bulk of this expenditure depends on future decisions on the use of Electronic Voting and Counting.

Chapter 9 Department of Education and Science

9.1 Residential Institutions Redress Board

Background

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

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

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

In conjunction with the introduction of the redress scheme, the Government also reached an agreement with eighteen religious congregations, who had been represented in negotiations by CORI, that they would make a contribution of €128m, inclusive of some past contributions, towards the cost of the compensation scheme. In return, the State agreed to indemnify the congregations in respect of all cases where a person would have been eligible to make a claim under the Act, with the indemnity to apply to those cases where litigation was commenced within the following six years. On 5 June 2002, an Indemnity Agreement (the Agreement) to give effect to this was signed between the Minister for Education and Science, the Minister for Finance and eighteen religious congregations.

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

Redress Costs

The redress scheme has now been operating for 18 months and between the introduction of the scheme in December 2002 and 21 June 2004 the Board has received 3,763 valid applications[8]. Applications have been made at a rate of approximately 48.5 per week.

By 21 June 2004 the Board had made 1,277 offers of awards since it commenced hearings in April 2003. The total amount of awards offered was €98.8m[9]. To date, 77% of the total amount paid in awards has been agreed in a settlement process. The balance involved hearings. Table 33 sets out the pattern to date.

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

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

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

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

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

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

* The awards following review are included in Table 33.

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

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

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

Estimated Redress Scheme Cost

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

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

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

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

[9] Approximately 150 of these offers had yet to be accepted at 21 June 2004.
[10] Exclusive of VAT

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

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

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

Estimate based on Survey of Solicitors

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

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

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

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

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

Table 35 Survey of solicitors' firms at 31 May 2004

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

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

The solicitors who replied to the survey accounted for 36% of all claims made to the Board in the period to 31 May 2004. If the cases on hand become claims to the Board and claims from these firms continue to represent around 36% of all claims, additional claims arising from cases on hand at 31 May 2004 could be in the region of 4,930. 3,681 claims had already been lodged to the Board at that date. This would indicate that the total number of claims to the Board could amount to something of the order of 8,900[11].

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

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

Estimation based on FOI Trends

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

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

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

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

This information was adjusted in order to eliminate litigants whose claims related to non-qualifying institutions and also to eliminate duplicate records[12]. An amended file containing 7,017 cases was compiled. The details are set out in Table 36.

Table 36 FOI and Litigation cases - May 2004

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

The amended information was then returned to the DOES.

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

The following trends emerged from a detailed examination of the file

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

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

- When FOI requests are tracked on a monthly basis it was noted that they are translating into claims at a steady rate with requests from solicitors converting into claims at a higher rate than cases where a solicitor has not made the request. To date around 46% of all requests from late 1998, when the FOI process commenced, up to 30 September 2003 have resulted in claims[13].

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

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

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

6,212 FOI requests had been made up to 25 May 2004. Requests are running at the rate of 150 per month for the first five months of 2004, down from 2003 which had a rate of around 180 per month for the first half and 160 per month for the latter half. It is difficult to predict what impact the closing date, the processing of foreign cases[14] and the fact that claims to the Board may be made in advance of a FOI request, will have on the volume of requests. It appears prudent to project an average of around 90 per month for the next eighteen to nineteen months. On this basis, the total number of FOI requests would be of the order of 7,900.

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

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

Estimate based on Claim Outturn

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

Estimate of the Redress Board

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

[13] Thereafter, a sufficient amount of time has not yet elapsed to allow for interpretation of the conversion rate.
[14] A recent increased level of FOIs from non-resident solicitors has not yet begun to convert into claims.

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

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

Overall Summary – Likely Cost of Redress

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

Table 37 Estimations of Liability

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

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

Sensitivity of the Estimates

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

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

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

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

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

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

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

Costs arising from the Indemnity

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

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

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

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

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

Implementation of the Agreement

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

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

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

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

The total awards and medical and legal expenses paid to claimants by the end of June 2004 amounted to €86.95m. This has been funded from the proceeds of contributions from the congregations (€30.44m), interest earned on that contribution (€0.54m) and Exchequer funds (€55.97m). At 30 June 2004, €2.99m by way of the general cash contribution is held by the Minister for Finance and is available to fund future awards[16].

Education Fund

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

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

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

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

Property Contributions

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

- Up to €40.32m could be provided by way of property which had been transferred to the State, State agencies, local authorities or voluntary organisations between 11 May 1999[17] and the date of the Agreement. There was, however, provision for the substitution of other property or cash in the event that this element of the contribution could not be fully satisfied from transfers in that period (previously transferred or substituted property).
- Further transfers of property which were to be made to the State, or its nominees, as soon as practicable after the signing of the Agreement, to the aggregate value of €36.54m (post-agreement property transfers).

[16] This is part of the cash contribution substituted for property in 2004.
[17] This was the date of the Taoiseach's apology to victims on behalf of the State.

Previously Transferred or Substituted Property

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

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

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

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

The current position in regard to validation is

- The congregations have submitted professional valuations for 26 of the 27 properties accepted in principle.
- Independent valuation by the Valuation Office of a sample of six properties resulted in five properties being accepted at the initial valuation submitted. A further property has been accepted, in principle, at a lower valuation put on it by the Valuation Office[18]. The aggregate value of the accepted properties which were independently valued is €17.02m.
- The value of past grants made by the State in respect of these properties has not yet been determined as it must await completion of the acceptance in principle process.
- The responsibility to establish that a transferor holds a good title to a property rests with each transferee.
- 13 of the properties which the Department has accepted in principle are properties which had been transferred to voluntary organisations. The Agreement provides that any such properties are required to have restrictions on alienation, whereby the transferee cannot dispose of them within a 25-year period without the consent of the Minister for Finance. The Department has sought the advice of the CSSO on the options available to restrict alienation and the CSSO has entered discussions with the congregations regarding the drafting of a Deed of Covenant between the congregations and the transferees.

Overall Summary – Previously Transferred or Substituted Property

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

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

Post-Agreement Property Transfers

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

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

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

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

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

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

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

The congregations submitted professional valuations for properties. The transferees have been requested to obtain independent valuations of properties and submit these to the DOES. Up to the end of July 2004 the DOES had received these valuations in respect of 27 of the properties which have been accepted in principle[19].

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

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

Counselling and Support

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

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

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

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

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

The congregations have reported that in addition to contributions to Faoiseamh of €4.53m to date, there was also a further €7.1m of qualifying expenditure for counselling and other support services. Also, in regard to the service generally, the congregations have maintained that they are committed to the continuation of counselling services for as long as they are required.

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

9.2 Centres for Young Offenders

Legislative Framework

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

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

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

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

The Centres

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

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

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

Scope of Audit

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

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

Occupancy and Staffing Levels

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

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

Table 40

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

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

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

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

Table 41 Staff to Children Ratio in Centres

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

Capital Costs

The Department is embarking on a capital redevelopment programme for the Lusk campus[21] that will have regard to the split of beds between remand and committal beds, and within committal beds, the number of secure beds required; the provision for boys and girls; the educational and recreational needs of the young people; as well as the implications of shorter sentences envisaged under the Children Act. The dual function (the only Centre that caters for both Health Board and committal cases) of St. Joseph's School Clonmel and its certification under the Children Act, 2001 is also being addressed. On finalisation of this process, the Department proposes to agree a strategic plan for the sector.

[20] Oberstown Boys and Oberstown Girls Centres share teaching staff.
[21] Oberstown Boys Centre, Oberstown Girls Centre and Trinity House

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

Table 42

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

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

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

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

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

Running Costs

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

Table 43

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

		Pay €	*Non-pay* €	*Total* €
	2003	4,875,173	829,964	5,705,137
Trinity House	2001	4,205,775	803,578	5,009,353
	2002	4,923,052	1,181,901	6,104,953
	2003	5,582,799	1,079,516	6,662,315
Total cost 2001 – 2003				**75,843,176**[22]

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

Table 44 Cost for each detained young person

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

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

Management of Centres

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

The main functions of the Boards are

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

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

Review of Centres

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

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

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

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

Measuring Performance

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

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

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

Inspection of Centres

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

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

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

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

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

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

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

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

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

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

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

Management Information

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

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

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

Post-Release Monitoring

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

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

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

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

9.3 Qualified Audit Certification of Appropriation Account

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

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

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

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

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

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

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

Accounting Officer's Response

Background

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

Scope of the Problem

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

What Caused the Problem

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

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

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

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

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

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

Remedial Action

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

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

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

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

Chapter 10 Department of Communications, Marine and Natural Resources

10.1 Development of Marinas

Funding Announcement

Funding of €5.72m for the provision of marinas, at Kenmare (€0.75m), Caherciveen (€2.54m), Roundstone (€1.16m) and Rosses Point (€1.27m), was announced as a Budget Day adjustment in December 2000. This funding was to be in addition to the €25m provided for marine tourism under the National Development Plan (NDP) 2000-2006. The Minister for Communications, Marine and Natural Resources (the Minister) directed that the projects

- be progressed outside the project selection and decision making procedures provided for in the NDP Programme Complement for Marine Tourism and Leisure, because the latter had not commenced
- be assessed by the Department of Communications, Marine and Natural Resources (the Department) in accordance with objective criteria laid down in the above-mentioned Programme Complement, and
- be treated as priorities.

The National Development Plan (NDP)

At the time of the funding announcement, the relevant grant scheme under the NDP Programme Complement for Marine Tourism and Leisure had not yet been introduced. The scheme did not come into operation until February 2002. It was suspended in December 2002, without any payments having been made.

The objective criteria governing projects of this nature outlined by the Department in the draft scheme were as follows

- Long-term viability or value of project
- Value for money of project
- Tourism value (numbers, seasonality, spread of product)
- Compatibility with protection of environment/heritage
- Impact on quality of resources (including water quality)
- Contribution to rural development
- Contribution to community development
- Impact on those in, or at risk of falling into, poverty
- Impact on equality of opportunity
- Long-term management capability

- Links with other tourism or development projects and activities
- Marketing arrangements
- Strategic value for regional development

Department of Finance

Sanctions

On 18 January 2001, the Department of Finance noted the proposal that these four projects be subject to assessment for suitability for aid in accordance with a scheme based on the objective criteria as set out in the NDP Programme Complement for Marine Tourism and Leisure. The Department of Finance stipulated that the views of the Department of Arts, Sport and Tourism, and Bord Fáilte, should be fully taken into account in assessing the suitability of each of the projects for assistance.

On 28 August 2001, it further directed that assistance for the projects should be by way of repayable grant.

Further individual sanctions issued in respect of Kenmare and Caherciveen as follows:

Kenmare

The Department was to finalise appropriate detailed operational procedures and the promoters were to comply with all necessary statutory requirements

Caherciveen

The Department was to be satisfied that the proposal met the Department's own objective criteria. The application of grant assistance to the project was to be on the same basis as that applying to all applicants under the NDP Programme Complement for Marine Tourism and Leisure.

Guidelines for the Appraisal and Management of Capital Expenditure Proposals

The Department of Finance stipulates that the project appraisal and sanctioning requirements of the above guidelines, issued in 1994, should be applied to all forms of capital expenditure, including capital grants. The guidelines identify and advise on the four stages of project evaluation and management as follows

- Appraisal
- Planning
- Implementation
- Post-Project Review

The guidelines stress that all involved in the appraisal and management of expenditure proposals should guard against the danger of giving a project, when first mooted, a degree of premature commitment.

Expenditure

Expenditure incurred to 31 December 2003 comprised the full grant of €2.54m in respect of Caherciveen marina and €332,312 in respect of the development at Kenmare. Provision for payment of the balance for Kenmare, together with the grants approved for Roundstone and Rosses Point, has been made in the 2004 estimate for the Vote.

Audit Findings

Kenmare

Background

On 7 November 2000, the Department received an application for funding of €666,613 in respect of the development of a marina and maritime leisure and training facilities at Derreenacallaha, Kenmare. The estimated cost of the development was €1,514,162. The application was made in the name of an individual and specified that the project would be developed and operated by a named company.

On 6 December 2000, the Minister issued a letter to the promoter's financial advisers noting his agreement to grant-aid the project. Concern was expressed within the Department that the letter constituted a letter of comfort that could be interpreted as creating unwarranted expectations and a possible basis for a future claim against the Department. There was concern that the letter could constitute an irreversible commitment to funding in advance of consideration.

A revised application for €752,550, towards total costs of €1,665,540, was received on 30 December 2000. The project comprised a sail/canoe training school and ancillary services, including the provision of a pier and slipway. The amount applied for represented 45.2% of the total cost, as against the maximum grant level of 40% allowed in respect of private projects under the draft scheme. It also included €73,010 in respect of marketing, which is an ineligible category of expenditure under the scheme. No formal business plan accompanied the application.

Project Assessment in the Department

On 18 January 2001, in carrying out its assessment of the project, the Marine Leisure and Research Division noted

- That its assessment took place in the light of the Minister's letter of 6 December, signalling his agreement to grant-aid the project, and his direction that this, and the other three projects, be afforded priority treatment
- That the decision making process employed differed from the proposed Marine Tourism Grant Scheme, in that there was no Project Assessment Committee and no Selection Board
- That the lack of a rating system with which to compare the relative merits of competing schemes was unsatisfactory, given the procedures that other applicants would have to follow whenever the Marine Tourism Grant Scheme was introduced
- That the amount applied for was at a rate (45.2%) of aid that exceeded the maximum rate (40%) that would apply for private projects under the forthcoming NDP Programme Complement for Marine Tourism and Leisure.
- That difficulties existed in relation to the foreshore lease.

The Division did not undertake any assessment of the overall viability of the project and made no recommendation regarding approval.

Grant assistance up to a maximum of €752,550 was approved by the Minister on 24 January 2001, subject to a number of conditions, including evidence of planning and foreshore permissions having been obtained, production of a tax-clearance certificate and demonstration that the project would be viable for a reasonable time period after construction. No time limit was set for the completion of the project. The letter of approval was signed by a Department official, on the direction of the Minister. The promoter confirmed acceptance of the conditions on 28 February 2001.

Post grant-approval developments

A draw down request for €332,312 was approved and payment made in December 2001. Copies of relevant planning approvals were enclosed with the request.

The Department became aware, in 2002, that work on the site had seemingly stopped, and, on two occasions, requested an update from the promoter. Both requests went unanswered and a site visit by one of the Department's engineers was arranged in December 2002. The engineer found that, while the building appeared structurally complete, it was in contravention of planning approval.

The Department put a stop on any further grant payment, pending resolution of the planning issues. In November 2003, the grantee withdrew a revised planning application and Kerry Co. Council issued an enforcement notice to remove any unauthorised buildings.

In February 2004, the grantee informed the Department that the buildings had been demolished and that it was intended to rebuild to the originally approved design. Notice was also given that it was intended to apply for further draw down of the originally approved grant. The Department sought legal advice in respect of the courses of action available to it.

Caherciveen

Background

An application for funding and associated business plan in respect of a 93-berth marina at Caherciveen was submitted by the promoters in June 2000. The estimated cost of the project was €3.5m, excluding VAT, to be funded by the Department (€2.58m), by Kerry Co. Council (€275,000), by South Kerry Development Partnership Ltd (€64,000) and income of €588,000 from the advance sale of berths. The Minister, in a letter to the Minister for Justice, Equality and Law Reform on 14 December 2000, signalled agreement in principle to the approval of grant-aid.

The application was considered by the Department at the direction of the Minister. Officials pointed out

- The high level of Departmental funding requested (75% as against a maximum of 50% allowed in respect of community or public projects under the draft scheme)
- The fact that some elements of the project would not qualify for assistance under the scheme
- That some expenditure had already been incurred, thus rendering it ineligible for grant assistance.

Bord Fáilte had serious concerns that an adequate payback in terms of tourism benefits could not be realised at that level of public cost – 75% grant contribution. That agency also advised that a mechanism needed to be found to generate more of the investment from the most immediate likely beneficiaries. Department papers also indicate that a previous Tourism Grant approval in respect of the project had been withdrawn by Bord Fáilte in 1999.

As the funding and backing of Kerry Co. Council and South Kerry Development Association was not forthcoming, the project was reduced in scale and split into two phases. By postponing construction of onshore facilities, the capital costs were scaled down to €3.1m excluding VAT. The promoters then agreed a fixed price contract, in advance of formal grant approval from the Department.

Project Assessment in the Department

The Marine Leisure and Research Division carried out an assessment of the revised business plan in April 2001. The Department's engineers believed that the viability of the project would have been maximised by proceeding with the original plan in its entirety. They did, however, consider it feasible to proceed from a technical point of view with the separate phases. They recommended amendment of the foreshore licence, a proper site investigation, and that dredging work be better quantified than outlined in the plan. The engineers also expressed a view that the estimated costs seemed quite tight, not allowing for cost overruns which could be anticipated with such a project.

The Department's Marine Leisure and Research Division's assessment concluded that

- The promoters were unable to fulfil three of the principal conditions set down by the Minister in signalling agreement in principle on 14 December 2000. These were that Kerry Co. Council would underwrite the entire project, and that agreed contributions would be received from the Council and South Kerry Development Partnership Ltd
- The long-term financial viability of the project was questionable, without a clear indication of when the on-shore facilities would be developed and how they would be funded
- Income projections were insufficient, with doubts being expressed over whether the revenue generated from as yet unsold berths would be sufficient to sustain the maintenance and running costs of the marina
- Doubts existed over the necessary management personnel, infrastructure and training arrangements being in place
- The Department would not be justified in bowing to pressure for an early decision, so that a contract could be signed
- It could not recommend that such a course of action would be justified in replacing what should be normal practice in assessing infrastructural projects involving proper evaluation and analysis of all the issues followed by good design, pricing, evaluation of tenders, review of funding and management of the final agreed project.

For those reasons, the Division was unable to offer its approval of the business plan or issue a sanction for funding, as requested by the promoters.

Financial advisers engaged by the Department highlighted more serious concerns regarding the viability of the project and expressed strong reservations about the manner in which the estimated capital funding was put together

- The promoters had failed to raise any capital funding, the only contribution being from the pre-sale of berths – funds that should be used to meet operational costs
- The Department was providing between 85% and 100% of the capital costs, depending on how the estimates were interpreted. This is because of the fact that 11% of the total estimate consists of refunds of VAT already accounted for in the moneys paid from the Department's grant in respect of construction, contingency, professional fees and pontoons. The maximum grant aid for such a project under the then proposed Marine Tourism Grant Scheme was 50%
- Available finances did not provide for a contingency fund to account for cost overruns or revenue shortfalls. These latter were likely, as the development of on-shore facilities had been postponed.

Kerry Co. Council concerns

Kerry Co. Council had very strong reservations about the revised business plan for the project and in particular

- Expressed concern over the ability of a non-professional group, the project promoters, to successfully see the project to conclusion within budget.
- Expressed particular unhappiness at the pressure being put on it to take on a role in the project, together with significant responsibilities and liabilities, both real and potential
- Was not prepared to recommend that it guaranteed the project or any of the capital costs involved.

Developments

A consultation process then ensued, involving the Department, Kerry Co. Council and the promoters. Changes to the business plan were agreed. The changes included

- The formation of a steering group to advise the promoters on matters relating to the construction of the marina. The group was to comprise representatives of the Department, Kerry Co. Council and the promoters
- The promoters underwriting the moneys due from the sale of berths
- The appointment of a quantity surveyor and a financial controller
- Kerry Co. Council to provide a total of €95,230 over 5 years
- Kerry Co. Council to provide engineering assistance and advice
- Full details of the revised business plan to be agreed between Kerry Co. Council and the promoters

Department papers indicate that, in May 2001, Kerry Co. Council confirmed that all actions required of the promoters had been undertaken and that it was now happy to back the project. The Department regarded this as a major step in providing the assurances required regarding the viable planning and development of the project. The Department still considered that the finances for the project remained tight. However, the Department accepted that structures for the project had been put on a stronger footing, that the promoters had shown the viability of the project from a financial viewpoint, and that they had sufficient resources to meet the maintenance and running costs for a reasonable period of time after completion. The final proposal comprised 38 berths designated for tourism and 55 berths to be leased privately.

The Minister approved a grant of €2.54 million on 7 June 2001, the letter of approval being signed by a Department official, on the direction of the Minister. It contained conditions reflecting the standards outlined in the Marine Tourism Grant Scheme as well as conditions specific to the project and which reflected Kerry Co. Council's own conditions for the project. The conditions were accepted by the promoters on 11 June 2001.

The Department appointed a consulting engineer as its representative on the steering group. In December 2002, the engineer certified that the marina had been operational since August 2002, that its operation had been satisfactory and its technical performance acceptable. The engineer also expected that the outcome of the final account, then being completed, would be acceptable, and he confirmed, to the best of his knowledge, compliance with the grant conditions as set out by the Department in its letter of offer. Final payment of the grant was made in December 2002.

The Department has undertaken to carry out a post-project review in Autumn 2004. The review is to establish whether the project represents a good value for money investment, and will cover operations, financial and marketing aspects, as well as providing an assessment of economic impact.

Roundstone

In July 2000, Roundstone Development Council submitted a proposal for the development of a 20-berth marina at a cost of €521,000. The applicants submitted a brief summary with revised costings of €930,972 in December 2000 and the Minister agreed, in principle, partial funding for the revised project on 25 January 2001. In July 2001 the applicants made another revised submission for a 34-berth marina at an estimated cost of €1,446,868. Approval in principle for a grant of €1.16m was given in July 2002, by which time the development was expected to cost €1.75m.

The promoters were invited to demonstrate the financial viability of the project and acquire planning permission and a foreshore licence. Since then, a revised proposal submitted to the Department in January 2004 indicates that the estimated cost of the project has risen to €2,660,000. The promoters sought a revised grant of €1,910,000. In the revised proposal, 25 of the 34 berths are reserved for private use and 9 for tourism purposes. Assessment of the revised proposal has not been completed by the Department, which is still in the course of evaluating the financial viability, qualifying expenditure, level of State grant as a proportion of total cost, status of promoters and their ability to underwrite the project. The Minister, on 18 May 2004, approved a further €530,000 in grant assistance, subject to the promoters satisfying a number of conditions.

Rosses Point

The first formal application for funding of a 42-berth marina was received in February 2001. Grant assistance of €1.27m in respect of the project was approved in June 2001. The promoters, Sligo Co. Council, estimated the cost of the project to be €1.75m. By April 2002, the cost of the project had risen to €2.62m for a 47-berth marina, which was at that stage regarded by the applicant's consultant marine engineers as the smallest viable size. Financial difficulties resulted in the project being divided into two phases. A revised application was submitted in respect of Phase 1, the construction of a 27-berth marina, costing €1.73m. It was envisaged that 12 berths be reserved for tourism purposes, the remainder being let for private use.

As Sligo Co. Council had given no indication of how Phase 2 would be funded, the application was assessed for viability as a stand-alone option. The Department's Engineering Division's report highlighted technical and safety issues, with consequent potential liabilities for the Minister. These issues were later addressed to the Department's satisfaction. The financial assessment concluded that the marina was not

financially viable, unless spin-off activities could be quantified. The application of Capital Investment Appraisal Technique showed a very poor return on investment, with a negative discounted cash-flow projection and a payback period of 106 years.

By June 2003, the estimated cost had risen to €2.2m. A revised financial appraisal was submitted by the promoters in September 2003. As a result of evaluations carried out within the Department, doubts have been expressed regarding the financial and technical viability of the scaled down marina as follows

- The Finance Unit questioned the concept of the proposed management company being one that is limited by guarantee, which would limit Sligo Co. Council's liability and, effectively, mean that it would not be underwriting the project
- The Finance Unit also found that the business plan submitted contained an incomplete balance sheet, indicated a very tight margin between profit and loss, and suggested inevitable liquidity problems
- The Internal Audit Unit expressed concerns about the plan and was of the opinion that the sale of berths to members of the local yacht club represented a very good deal for the purchasers.

Little progress has been made during 2004 and the schedule that had been set out for completion has not been adhered to. Problems also exist regarding the foreshore lease. Sligo Co. Council, who applied for the grant, intend setting up a management company to run the marina. A Deed of Covenant is currently being prepared. Agreement has not yet been reached with regard to an undertaking by Sligo Co. Council that it will support the operation of the project for a 10-year period.

Audit Concerns

The unorthodox way in which these four projects have developed prompted me to make inquiries of the Accounting Officer.

Accounting Officer's Response

General

The Department had no role in the initiative taken by the promoters to develop these projects nor did the Department at any time seek to become involved in the projects. The Department's role in allocating grant funding for these projects arose from a Budget Day adjustment in 2000 agreed by Ministers, which set out the individual amounts to be allocated to each of the four projects.

The Marine Tourism Grant Scheme

As was made clear at the Budget Day announcement in December 2000, these four projects were to be progressed outside the project selection and assessment procedures provided for in the NDP Programme Complement for the Marine Tourism Grant Scheme, which, at that time, was in draft form only and had neither been finalised nor approved.

The criteria, which were laid down in the draft Marine Tourism Grant Scheme, were outlined to the applicants for the four projects and they were required to demonstrate that their projects satisfied these criteria. All applications did address the criteria as outlined. However, the Department's rating of the extent to which the criteria were satisfied could not be fully in line with the rating and assessment procedures that would have been put in place under the scheme. Had such a rating scheme existed, it

would also have proved difficult to rescind approval already given in principle if the projects had not achieved a sufficiently high score to qualify for grant assistance.

The application of grant assistance could not be on the same basis as that which would have applied under the scheme, insofar as the selection process was not competitive and the procedures for assessment were not in place. However, the Department insisted on the conditions for the grants being met and these conditions mirrored precisely the criteria being laid down for the scheme.

The Marine Tourism Grant Scheme was a sub-measure of the Tourism Measure and formed part of the two operational programmes of the National Development Plan 2000-2006. Under the scheme, a total of €25.4 million was allocated to marine tourism and targeted particularly at improving marine access infrastructure such as marinas, berths and slipways. The delay in launching the scheme arose from the protracted process of obtaining State Aid approval for the overall Tourism Measure, of which the Marine Tourism Grant Scheme was one sub-measure. State Aid approval for the Measure was not received until November 2001. Tg109he first call for applications was made in late December 2001 with a closing date of March 2002. Operational guidelines were published on 4 February 2002. Following the call, over 60 applications were received, of which 15 eligible projects were identified as being suitable for a detailed assessment. These projects were to have been assessed in detail by consultants in consultation with a Project Assessment Committee and recommendations sent forward to the Tourism Product Selection Board who were to have made the final decision on which projects would receive funding. The detailed assessments were not carried out, however, as it became evident that the funding for the Scheme would not be available in 2003 and could not be guaranteed in the following years. The scheme was suspended in December 2002 and no projects have been approved for funding.

The mid-term review of the National Development Plan recommended that the funding allocated to the Marine Tourism Grant Scheme be reallocated to other priorities. In the light of this recommendation, and the lack of any funding in 2004, it has been agreed with the Regional Assemblies that the scheme could be sent to the Monitoring Committee for formal closure in Autumn 2004.

Involvement of Other Public Bodies

The requirement to seek the views of the Department of Arts, Sport and Tourism and Bord Fáilte was contained in a letter from the Department of Finance, dated 18 January 2001, which was issued in response to a specific request to sanction payment of the grant to the Kenmare project. Bord Fáilte issued a BES certificate in respect of the Kenmare project, which meant that the project met with the Board's product standards requirement and was placed on the appropriate Bord Fáilte register of approved tourist products. Bord Fáilte's favourable opinion of the project was also confirmed by a phone call from the Department.

In the case of the Caherciveen project, Department of Finance sanction for payment of the grant was issued in a letter dated 28 August 2001. It made no reference to seeking the views of the Department of Arts, Sport and Tourism, and Bord Fáilte, or to the earlier Department of Finance sanction letter. However, it is accepted that the earlier letter, dated 18 January 2001, did include this requirement for all four projects. The Department, however, confirmed with both Bord Fáilte and the Department of Arts, Sport and Tourism that an offer of a grant of €952,000 (based on an overall estimated project cost of €2.06m) had been approved in principle in November 1999 for this project but had been withdrawn by the Tourism Operational Programme Advisory Board as a number of details were not supplied by the promoters within the required timescale. Bord Fáilte and the Department of Arts, Sport and Tourism both confirmed that while they had given no commitment to the promoters with regard to funding, they indicated that they would welcome the project being submitted anew when the new Operational Programme was in place later in 2000.

While no specific declaration that the projects were not in receipt of other State funding was sought, details of the full funding arrangements for each of the projects was supplied. These gave a breakdown of all sources of funding for each of the projects, including how the applicants were to meet their share of the project costs.

The Department of Finance guidelines assume that no decision has been made to support a project in principle in advance of the appraisal being undertaken. As this was not the case in relation to these four projects, the guidelines could not be applied in their entirety. The Department did, however, apply the guidelines in as far as possible, particularly in relation to the financial assessment of the projects at Caherciveen, Roundstone and Rosses Point. The applicants have been required to present profit and loss and balance sheet projections and to apply sensitivity analysis to their business plans, as specified in the Department of Finance guidelines. The business plans for Caherciveen, Roundstone and Rosses Point have also been assessed by qualified accountants on behalf of the Department.

EU State Aid Regulations

The amount of the Budget Day announcements did not appear to take into account the limits allowed under State Aid rules that would have applied under the Marine Tourism Grant Scheme. The level of grant approved for Kenmare was only marginally over the limit. In the case of Caherciveen, the original plans were scaled back because the applicants could not raise sufficient funds. This meant that the Department's grant constituted a larger proportion of the revised project costs, representing an 83% grant to cost ratio as against the maximum of 50% permissible. Department concerns about the level of grant being considered were included in the submissions for approval of the grant to the Minister. There is a question over the status of the Roundstone project and the amount of grant aid proposed may exceed the State Aid ceiling depending on how the project is categorised. The amount of grant aid proposed for the project at Rosses Point is within the State Aid limits.

Kenmare

The Kenmare project may not have qualified for grant aid under the terms of the Marine Tourism Grant Scheme. However, it was selected by Ministers as a flagship marine leisure project outside the scheme, and therefore the strict eligibility criteria under the scheme did not apply.

The Department was under pressure to expedite payment of these grants. Payment of the first instalment of this grant was made on the basis of invoices in respect of matured liabilities and copies of the planning permission and foreshore lease that had been obtained. The Department accepted, in good faith, that the transmission of the planning documents with the application for payment constituted a clear implication that the work was in accordance with these conditions. Certification of construction in accordance with statutory conditions will be required in the event that it is completed as originally intended.

It was envisaged that security for the grants by way of a Deed of Covenant would be put in place, but payment was made in advance of the legal documents being drawn up and agreed. The Minister has directed that the Chief State Solicitor's Office (CSSO) be instructed to seek to put in place the necessary legal formalities to regularise the position with regard to the Kenmare project, including the putting in place of a Deed of Covenant and a Charge on the facility to protect the State's investment. The Deed will include clauses to address recalling the grant moneys in the event of breaches of the conditions laid down. It is considered that greater value would be derived for the State if the project were completed in line with the original planning conditions, rather than running the risk of nugatory expenditure.

The foreshore lease was granted to an individual who is Director and Secretary of the company which is the legal entity to which the grant was paid. The distinction between the two legal entities is a technicality

which was not fully appreciated within the Department until it was highlighted as an issue by the CSSO. The CSSO has advised that this anomaly can be regularised and has been instructed to deal with the individual's solicitors on this matter.

Compliance with procurement procedures was not included as a condition for grant approval, and evidence of compliance with these procedures was consequently not sought. It is not evident what form of procurement procedure was employed.

Caherciveen

The eligibility conditions of the Marine Tourism Grant Scheme did not strictly apply in the case of this project, as it did not form part of the scheme. It was, however, laid down in the grant award letter that invoices or certified payments for works carried out prior to the date of grant allocation would not be accepted for payment purposes. As the non-marina elements originally envisaged were not included in the revised plan, all grant moneys paid were in respect of the core marina infrastructure and were verified by the Steering Committee established by the Department and Kerry Co. Council to oversee construction of the marina.

It was made clear in relation to payment for the Caherciveen project that the payment was by way of a repayable grant, and it was indicated that the Department would be putting the necessary security arrangements in place. This matter will be addressed in the Deed of Covenant, which will include clauses providing for repayment of the grants if any conditions are breached.

In the grant award letter for the Caherciveen project it was made clear that the grant was being made for the proposed marina development at Caherciveen. It was also stipulated that Kerry Co. Council would provide financial support for the operation and maintenance of the marina for the first five years. These items are also explicitly addressed in the Deed of Covenant that has been drafted by the CSSO for Caherciveen.

Correspondence and details of tenders received in the case of Caherciveen indicate that the lowest tender was accepted.

Roundstone and Rosses Point

Both of these projects have still to satisfy the Department's conditions for funding approval. In the case of Roundstone, the estimated costs increased and a revised business plan was submitted to the Department in May 2004. The plan is still under consideration from a financial and technical point of view. A Dumping at Sea Licence has also yet to be approved, and any final funding decision will be contingent on the Licence being issued.

The Rosses Point project has not yet secured its foreshore lease, which is also essential before funding approval can be given. A difficulty has also arisen with the requirement for Sligo Co. Council to take responsibility for maintaining sufficient working capital to operate the marina over a 10 year period. This has also yet to be resolved.

While the grant funding for these projects is identified in the Department's Vote for 2004, it is a matter of concern that neither of these projects is in a position to commence.

Chapter 11 Department of Agriculture and Food

11.1 Arrangements for Disposal of Meat and Bone Meal

Background

My Annual Report for 2001 outlined details of an audit carried out on the BSE Eradication Programme administered by the Department. The report referred to the various controls introduced in Ireland for managing and eradicating BSE including a ban on the feeding of meat and bone meal to all animals intended for human consumption. The report also referred to certain support measures including State funding for the rendering industry that were put in place to sustain the domestic and foreign markets for Irish beef during the BSE crisis.

Animal by-products are the parts of a slaughtered animal, mainly offal and bones, that are not directly consumed by humans and also animals that die on farms. Each year the meat processing industry produces approximately 550,000 tonnes of animal by-products, from the slaughter at meat plants and butchers' premises of some 1.8m cattle, 4m pigs, 3.5m sheep and 60m poultry, together with the carcases of the approximately 180,000 animal deaths on farms. The material is removed from animals at slaughter and disposed of by sending it to rendering plants where, through a controlled pressurised cooking process, it is converted into about 150,000 tonnes of Meat and Bone Meal (MBM) and approximately 60,000 tonnes of tallow. Prior to the BSE crisis, about 90% of the MBM produced in Ireland was exported for use in animal feed.

Following the detection of BSE in cattle herds in certain Member States, where the disease had not previously been confirmed, the EU, in November 2000, introduced a total ban on the feeding of MBM, which up to then could be included in animal feed for certain species and under certain conditions, to any farmed animals kept for food production.

In order to eradicate and prevent cattle acquiring BSE it is essential to prevent the material thought to contain the infectious agent from being fed to cattle. This material has been designated in Ireland as Specified Risk Material (SRM) and is separated and converted into MBM at four rendering plants designated for this purpose. MBM is also produced from low risk (non-SRM) material at five other rendering plants.

As there are no domestic disposal facilities available in Ireland, the only means of disposing of MBM has been by way of export, under contract, for incineration in the UK or Germany.

Assistance to the Rendering Industry

The immediate effect of the November 2000 EU ban on the use of MBM in animal feed was to transform what had been a valuable product making a positive contribution to the economics of livestock production into a waste product with significant disposal costs. In the aftermath of the ban, most EU Member States provided financial aid to maintain essential rendering and disposal of animal by-products in order to allow the continued operation of the livestock and slaughter sectors.

In January 2001, to address the situation faced by the Irish meat processing industry, the Department introduced a scheme of financial assistance to the industry. The original subsidy scheme paid approved rendering plants a fee per tonne of raw material rendered together with the cost of handling, transporting

and storing the MBM produced. In May 2002 the scheme changed to a production based payment system whereby the renderers were paid on tonnes of MBM produced. A new modified scheme which, inter alia, incorporated a subsidy towards disposal costs was introduced in December 2002 to run to 2 March 2003. This was subsequently extended to 31 May 2003 when the scheme was finally terminated. Since then all costs relating to production, storage and disposal of MBM are borne by the meat industry. The Department supervises the renderers' operations under BSE eradication measures. The cost of production, storage and destruction is spread across the livestock sector. The renderers pay for storage and destruction. They pass the charges to the meat plants and butchers and the charges are reflected in the prices paid to farmers.

A total of €145 million was spent by the Department in the three year period 2001 to 2003 comprising €117 million on rendering and €28 million on the disposal of MBM.

Storage of Meat and Bone Meal Stocks

Under the modified scheme introduced in December 2002, the renderer at all times would retain ownership of and responsibility for and risk in respect of all MBM from the time of production to the time of destruction by incineration. For MBM produced prior to December 2002 the Department retained responsibility for its storage and ultimate destruction. In the absence of approved disposal facilities in the State and the high cost of disposal outside the State, stocks of MBM steadily increased to over 172,000 tonnes by November 2002. This was stored at 32 stores throughout the State.

The annual storage charges for the stocks that the Department had responsibility for amounted to approximately €3.75 million.

Storage of BSE Carcases

The Department has been storing the carcases of BSE positive animals in a cold store in Co. Tipperary since October 2000, when the on-farm burial of such carcases was outlawed. The Department purchased the facility in 2000 at a cost of approximately €1.2m. The running costs of the store amount to approximately €90,000 per annum. There are over 900 carcases in store at present. The Department estimates that with declining BSE numbers the store has capacity to the end of 2005. Efforts to dispose of the carcases have been unsuccessful to date.

Interdepartmental Committee

An Inter-Department/Agency Committee established by the Government in April 2002 to consider the options for disposing of MBM reported on 4 December 2003. The Committee concluded that several disposal options are acceptable in Ireland including co-incineration of MBM by the cement manufacturing industry, co-incineration of MBM in the generation of electricity, incineration, and the manufacture of certain categories of pet food. The Committee recommended that certain other disposal outlets for MBM including use of landfill and incorporation of MBM in fertiliser be kept under review especially in light of developments in relation to BSE in the future.

Contracts for the Disposal of Meat and Bone Meal Stocks

The Department commenced a tender competition for the disposal of approximately 172,000 tonnes of MBM on 7 October 2003. This volume was reduced to 164,000 tonnes, when following a fire at a store in Co. Louth, the Department had to quickly dispose of 8,000 tonnes of material in the interests of health and safety. The deadline for the receipt of tenders for the 164,000 tonnes was 28 November 2003 and 18 tenders were received by that date.

Table 45

Contractor	*Tonnage of MBM*	*Contract Amount €*	*Contract Signed*	*Start Date*	*Finish Date*
Company A	89,284	12,796,793	1/3/ 2004	14/6/2004	July 2006
Company B	57,779	7,847,837	10/2/ 2004	17/2/2004	February 2005
Company C	17,062	2,341,770	30/4/2004	5/5/2004	December 2004
Total	**164,125**	**22,986,400**			

Following a tender evaluation process, three successful tenderers were selected and contracts were signed. Contract details are in Table 45.

The 2003 Estimates did not provide for the funding of the disposal contracts. During 2003 the Department identified sufficient savings within the Vote, mainly in regard to BSE compensation to herdowners, to meet the estimated €25m cost of disposing of the MBM. The availability of savings, together with declining incineration costs abroad, the risks associated with MBM storage (e.g. fire hazard) and the cost of continuing storage were the factors which led the Department to initiate the destruction of the MBM stocks under their responsibility.

The Department received sanction from the Department of Finance on 3 October 2003 for a proposal to invite tenders with a view to placing contracts for the destruction of MBM stocks and to make payment by escrow. This would involve payment being made to a nominated intermediary, who would hold the payment in trust for the contractor and only release the payment on foot of evidence that the MBM had been incinerated to the satisfaction of the Department. The sanction was granted on condition that before any payment was made the Department was satisfied that the terms and conditions of the contract resulted in a liability being incurred by the Department which constituted a matured liability under the provisions of *Public Financial Procedures*.

Funding Arrangement

In November 2003 the Department sought expressions of interest from three leading banking institutions regarding their terms and conditions for operating the proposed escrow accounts. Following an evaluation by the Department of the terms and conditions submitted by the three banks separate tri-partite escrow agreements were concluded on 24 December 2003 between the Department, the selected bank (the escrow agent) and the three proposed disposal contractors. It was also noted that three payments totalling €22,979,232 were made to three escrow accounts in the bank on 31 December 2003 representing the value of the contracts to the intended contractors. An additional amount of €7,168 was transferred on 9 March 2004 bringing the total transferred to €22,986,400.

Timescale of Agreements with Disposal Contractors

- Ownership, responsibility and risk in regard to the MBM stocks did not pass from the Department to the three successful contractors until the disposal contracts were signed in February, March and April 2004
- Storage charges continued to be paid by the Department up to the date of the signing of the contracts
- Work did not commence on the destruction of the MBM until 2004 and the first payment from the escrow accounts was made on 4 May 2004. As of 28 May 2004 only one of the contractors has received payments, totalling €1,003,722 from the escrow accounts
- Contracts specify a timetable for the removal from storage and destruction of the MBM. The final batch is scheduled to be destroyed in July 2006.

Audit Concerns

As it appeared to me that the escrow arrangement entered into contravened the principle of matching expenditure to the accounting period in which the service provided is paid for I sought the views of the Accounting Officer.

Accounting Officer's Response

The Accounting Officer stated that the escrow arrangement was entered into in order to protect the interests of the Exchequer while dealing with the need to dispose of the MBM in the hands of the State as rapidly and safely as possible. The escrow mechanism was suggested in discussions with legal advisers. It was a key element in a legally unified contractual arrangement that provided for the contractors to assume responsibility for the meal, including full liability for transport, storage and risks, immediately on execution of the contracts. At the same time it ensured that the Department retained sufficient leverage to ensure that the product was subsequently disposed of properly and on schedule.

In this process the Department was conscious at all times of the need to respect the *Public Financial Procedures*. There is no provision in the Procedures that forbids the use of escrow accounts. The requirement in the Procedures to pay matured liabilities was met by the mechanism used. The Department consulted fully prior to entering into these arrangements and received no indication from any source that escrow arrangements were not acceptable. The arrangement was sanctioned by the Department of Finance.

At the start of 2003, the Department was faced with significant difficulties in relation to the prolonged storage of over 170,000 tonnes of MBM at 32 stores around the country. There were particular concerns about the threat to food and feed security, the fire risk (a number of fires had occurred) and the ongoing financial and resource costs associated with storage and supervision.

Therefore, the disposal of the stocks of MBM became an increasing priority. The necessity to provide for the destruction of the stocks was raised in the context of the estimates for 2004 and subsequently in the light of savings which emerged on the relevant subhead in 2003, mainly due to improvements in the BSE situation.

Fortunately, 2003 also saw a fall in the price of incineration. Prices available were about half of those paid in previous years. It was in this context, and in view of the storage difficulties and the available savings on the subhead, that the Department concluded that the time was right to contract for the removal and destruction of all remaining MBM stocks. The Department consequently gave consideration to the options available to progress the matter. The following were among the options examined

- Deferred payment
- Payment in advance against a secured bond for 110% of contract value
- The escrow option.

Having considered the options open to the Department, an application was made to the Department of Finance for approval to issue the Request for Tender incorporating one of two of the payment options i.e. payment in advance or the escrow option. The deferred payment option was discounted on the basis that it would cost the Exchequer more. The Department of Finance granted sanction in respect of the tender competition and indicated that it had no objection to either payment methodology. It was decided that the escrow option was the best and most suitable business arrangement. A deciding factor was that

escrow was considered by the Department to afford a much greater level of protection and security for Exchequer funds in the event of underperformance by a contracted company.

Eighteen companies tendered from which three were selected. The Department allocated each of the successful companies specific stores for which they would assume full responsibility up to the point of the destruction of the meal. These allocations formed the basis for calculating the precise amount of money that needed to be transferred into the escrow account. Once the contractors had accepted the allocation, and signed up to the escrow agreement, the required moneys were transferred into the escrow account. A liability to lodge these funds to the escrow account arose when the escrow agreements were signed with the escrow agents and contractors in December 2003. This aspect of the arrangement was recognised by the Department of Finance in their letter of sanction[23] and was notified in the Request for Tender issued in October 2003 as the basis upon which the contracts would be funded.

Following the evaluation of tenders, and subsequent announcement of the successful tenderers, three separate escrow agreements were drawn up between the successful companies, the escrow agents and the Department. These agreements include the following provision: "The Minister agrees to transfer to the Escrow Account the sum of [x] (including VAT), being the amount based on the estimated quantity of Materials as of the date of the contract which the Minister agrees to pay to the Contractor for the provision of the services in accordance with the terms of the Contract." The escrow agreements were signed by all relevant parties on 24 December 2003 and arrangements were made immediately to transfer funds to the escrow account.

The signing of the escrow agreement, and consequent establishment of the escrow account, was a necessary step before the signing of the removal, transportation and incineration agreements which inter alia provided that: "The Contractor acknowledges that the Minister has pursuant to the Escrow Agreement, lodged the sum of [x] to the Escrow Account being the quantity of materials estimated to be in storage at the location of the Materials (and set out in Part A of Schedule 3), and which are the subject of this Agreement, by the relevant price per tonne, plus VAT".

The Department's view was that the escrow arrangement represented the best option given the scale and complexity of the operation. It allowed the Department through a precise legal arrangement to disengage fully from responsibility for the stock of MBM, and it provided the best protection for the Exchequer and was consistent with the *Public Financial Procedures.*

11.2 Dublin and Cork District Milk Boards – Redeployed Staff

Background

I referred in my Annual Report for 1997 to the abolition of the Dublin and Cork District Milk Boards in 1994 and the sale of their businesses to two private companies in 1995.

The Report also outlined details of a rationalisation agreement concluded with trade union representatives to protect the interests of the staff of the former Boards. The agreement provided that some 50 staff were to be granted voluntary early retirement and that the remainder would transfer to the employ of the new owners on the sale of the businesses. The 69 staff who were in full time employment with the

[23] *"Such mechanisms under consideration include…making payment by escrow with the payment being made to a nominated intermediary who would hold the payment in trust for the contractor and only release the payment on foot of evidence that the MBM had been incinerated to the satisfaction of the Department."*

Boards were guaranteed the option of redeploying to the public service at a salary level analogous to their previous Milk Board salary in the event of their subsequently being made redundant by the new owners.

As part of the conditions of sale the new owners were required to pay redundancy compensation at the going rate (as opposed to the statutory minimum entitlement) to any staff they might make redundant and who opted for redeployment. The staff, as part of the agreement undertook to hand this money over to the Exchequer as one of the conditions of their redeployment back into the public service.

The new owners began to make staff redundant from mid-1995 and staff exercised their right to redeploy to the public service. By the end of 1997, 22 such staff (20 in the Dublin company and 2 in the Cork company) had received only statutory minimum redundancy payments which they handed over to the Department upon redeployment. The Interim Board, which was established to sell the Milk Boards' businesses and property and discharge their liabilities, formulated a claim for over €1.27m against the new owners for redundancy compensation and took steps to initiate legal action against the two private companies for the recovery of this money.

Developments since 1997

Redundancies

During the course of audit it was noted that an additional 28 staff had been made redundant by the Dublin company. All received redundancy payments in the region of €12,697. All of the Dublin company's employees opted for redeployment to the public service and handed over their redundancy payments to the Department.

Legal case

The Interim Board initiated legal action against the two companies on the basis that they had not paid redundancy compensation at the going rate as had been set out in the rationalisation agreement. The Interim Board interpreted "the going rate" as the same rate that the Department paid to the former Milk Boards' staff who had opted for voluntary early retirement under the agreement, i.e. statutory entitlement plus four weeks pay per year of service. In the case of the 47 employees made redundant by the Dublin company at that time (one staff member was made redundant in 2002) this would amount to approximately €2.8m while in the case of the two former staff of the Cork company the amount would be €66,000.

High Court proceedings for the recovery of these sums commenced when a Plenary Summons was served on the defendants on 10 August 1998 and a Statement of Claim was served on 23 October 1998. The solicitors for the defendants responded on 27 November 1998, with a Notice of Particulars.

The Interim Board was abolished in 1999 and the case became the responsibility of the Department acting through the Chief State Solicitor's Office. The Department did not respond to the Notice of Particulars because of difficulties it had in substantiating points made in the Interim Board's Statement of Claim regarding

- Establishing how redundancy entitlements based on 4 weeks pay per year of service together with statutory entitlements is the redundancy rate usually applied in the sector operated in by the defendants

- Providing the names and addresses of all employers involved in the sector operated in by defendants who had paid redundancy payments at that rate.

Settlement of Legal Case

On 22 August 2001 the Chief Executive of the Dublin company submitted a proposal (having had previous discussions with the Department), without prejudice to settle its differences with the Department whereby the company would be prepared to pay €12,697 per redeployed employee to the Department. This would amount to a total of €596,759 in respect of the 47 redeployed employees less the amount of €342,974 already refunded by the redeployed employees to the Department. The Dublin company proposed to pay the balance in two instalments.

Following consultations with the Attorney General's Office and the Chief State Solicitor the Department concluded a legal agreement on this basis with the Dublin company on 12 January 2002. Both parties would bear their own legal costs. The first instalment of €126,973 was received in January 2002 and the second and final instalment of €126,855 was received by the Department in April 2003. The total amount received represented a shortfall of approximately €2.2m on the amount estimated by the Department to be due to the Department under the terms of the rationalisation agreement.

The case against the Cork company remains outstanding. The Department received the redundancy cheques from the employees made redundant but did not cash the cheques.

Redeployment of Staff

I also referred in my Annual Report for 1997 to the constraints on the Department's ability to find positions for the then 22 former Milk Board staff that had opted for redeployment on being made redundant. Constraints arose because under public service regulations the redeployed staff could not be appointed by a Department of State unless they were deemed qualified by the Civil Service Commissioners or were covered by a relevant Excluding Order or were appointed by the Government in the public interest.

Of the 50 staff in all that exercised the redeployment option, 44 who were in the equivalent of recruitment grades in the Civil Service were redeployed under an Excluding Order issued by the Civil Service Commissioners. However, their redeployment was not immediate. The 6 remaining staff, in grades equivalent to Executive Officer/Higher Executive Officer (EO/HEO), though on the Department's payroll, were not appointed to positions for a significant period of time.

Payments to staff while not working

The total amount paid to the 6 officers at EO/HEO level between the date of their redundancy and their retirement or taking up a position in the Department amounted to €1,063,972 and is detailed in Table 46.

Table 46

Date of Redundancy	*Date employed in Department*	*€ Payment*
30 June 1996	2 September 2003	260,332
31 August 1996	29 September 2003	214,460
28 November 1997	14 April 2003	186,761
28 November 1997	24 April 2003	165,026
31 August 1996	Retired 29 January 2001	129,030
25 August 2000	14 April 2003	108,363
		1,063,972

The total amount paid to the remaining 44 staff employed by the Department from the date of the redundancy to their appointment to departmental posts was €751,271. Only 17 of the 44 staff received payments with the 2 highest payments being €143,339 (from 21 July 1995 to 31 March 2002 when the officer was taken off the payroll for refusing to take up any offers of employment) and €135,115 (from 21 July 1995 to 11 February 2002 when the person concerned took up the Department's offer of employment).

Accounting Officer's Response

Legal case

Negotiating a rationalisation programme for the Dublin and the Cork District Milk Boards' staff and subsequently arranging for the sale of the businesses as going concerns was a complex and difficult process which, by its nature, took a considerable time. It was much more than merely privatising the business of a State body.

The guarantee of redeployment to the Public Sector in the event of staff being made redundant was part of the Staff Rationalisation Agreement between the Department, the Department of Finance and SIPTU and was put in place before the sale of the milk board businesses. The Interim Board inserted a requirement in the tender document that the purchaser would pay redundancy at the going rate, as opposed to the statutory minimum entitlement, in the event of redundancies ever arising. This was intended as a disincentive to the purchaser making the staff redundant in the knowledge that they would have an automatic right to be re-employed in the public service.

The Interim Board engaged the services of a firm of legal advisors and they had an input into drawing up the documentation for the sale of the businesses. The tender document did not include any definition of the "going rate", and at the time the businesses were being sold the Interim Board did not have any specific legal advice as to what constituted the "going rate" for the industry. When the purchaser began to make staff redundant, thereby activating their option of returning to the public service, the Interim Board at that stage decided to define "going rate" as that which was paid to temporary staff availing of Voluntary Early Retirement under the Rationalisation Agreement. The Board initiated legal action to enforce this in the light of the refusal of the purchaser to engage in negotiations on the level of redundancy payments.

The Department, having assumed responsibility for all outstanding business of the dissolved Interim Board, received strong legal advice, both from the Attorney General and from private counsel that the best option was to settle on the best terms available. The advice was based to a large extent on difficulties experienced by the Department in substantiating points made in the Interim Board's Statement of Claim equating the "going rate" with that paid under the original rationalisation agreement.

The Dublin company owns a one third share of the Cork company. Senior management in the Dublin company have undertaken to explore the possibility of the Cork company too being prepared to settle on the same basis as themselves. Their response is awaited. The claim against the Cork company is for some €66,000. A settlement on the same basis as that with the Dublin company would yield about €25,400. If the Cork company was not to settle, then the question of disengaging the Dublin company from the proceedings and continuing against the Cork company alone will have to be considered.

Redeployed Staff

All staff redeployed from the former Milk Boards have been appointed to posts in the Department.

This Department requested sanction for the issue of Excluding Orders by the Civil Service Commissioners, to cover all former milk board staff from the Department of Finance in April 1997.

An Excluding Order was issued by the Civil Service Commissioners in April 1998 in respect of staff of the former Milk Boards including technical grades and clerical staff. Appointments were made in June, July and August 1998. This brought the number of staff officially assigned to relevant posts in the Department to 44.

The Department of Finance were reluctant to sanction the issue of an Excluding Order for the remaining 6 staff as they were at levels above the normal Civil Service recruitment grades and it was not immediately clear that they were qualified for the full range of duties appropriate to their level. In the absence of the Excluding Order it was not possible to employ them or to request them to go to work.

An alternative policy recommended by the Department of Finance was to hold a confined recruitment competition for both grades. Two competitions were organised but proved unsuccessful as the majority of the staff in question maintained their opposition to such a course as they had no experience of undertaking such competitions.

The issue of an Excluding Order was sanctioned by the Department of Finance in 2003. The staff were then interviewed and allocated appropriate duties.

These staff were not paid any allowances other than basic pay in the period from redundancy to appointment to post. In regard to increments, all of the staff except one were on the maximum of the scale when redeployed. That officer was paid increments by the Department under the agreement which provided for the maintenance of conditions.

In the absence of an Excluding Order, which the Department had no option but to await, the redundant staff could not be officially assigned duties and therefore the questions of reporting for work or supervision did not arise. At the time, it was not possible to apply another mechanism to take the staff into the Department.

Chapter 12 Department of Health and Children

12.1 Follow-up of 2001 Report Issues

Recovery of Overpayments to Doctors

In my 2001 Report I drew attention to potential overpayments to General Practitioners (GPs) which came to light when the Department was implementing a Budget decision to bring all persons aged 70 years and over within the Medical Card scheme. The matter was subsequently examined in detail at the Committee of Public Accounts.

The Accounting Officer has since informed me that in advance of resolving certain outstanding issues with the Irish Medical Organisation (IMO), the GMS (Payments) Board has continued, in co-operation with Health Boards, to update the GMS register and identify expired medical card records. As of July 2004, a total of 104,236 records have been removed from the GMS register. Most would be considered by the Health Boards to be normal deletions due to death, change in eligibility status or persons moving from one board area to another.

The number of records relating to over-70s, and more than 3-months expired, was 29,165. The estimated overpayment arising from the removal of these cards from the register now amounts to €8.468 million (of which €0.769 million relates to superannuation). The overpayment amount was calculated in line with detailed guidelines drawn up by the Health Boards Executive in early-2003. The number of GPs involved was approximately 1,780 with individual overpayments ranging from €31 to €42,000. Nothing had been recovered by July 2004.

The Accounting Officer informed me that negotiations with the IMO on this matter were ongoing. Immediately after his attendance at the Committee of Public Accounts in September 2003, the IMO were informed of the Department's intention to fully recoup the overpayments identified, in line with the commitment given to the Committee. The IMO resisted recoupment of overpayments and maintained that GPs have been underpaid for certain other categories of medical card clients under 65, namely unregistered newborn babies and teenagers who become eligible for a card in their own right on reaching the age of 16.

He added that given the strong probability of a legal challenge, the Department agreed to have the alleged underpayments examined. The IMO have only recently responded to draft terms of reference for an examination of alleged underpayments and have also raised a number of other concerns. The GMS (Payments) Board and Health Boards have undertaken a preliminary examination of the issues raised by the IMO and, following acceptance of the terms of reference, the formal examination was expected to get underway shortly. He hoped to have this process completed by end September 2004.

I asked the Accounting Officer if the general contract with GPs has been amended to meet the concerns raised by the Committee of Public Accounts.

In response he informed me that the terms of the existing GMS contract reflect the agreed outcome of industrial relations negotiations between the Department of Health and Children and the IMO. There was no provision in the existing contract that would allow for the automatic deduction of an identified overpayment. However, the Department had offered to engage with the IMO in a wide-ranging review of general practice, which would address all aspects of the relationship between GPs and the public health system, including a full review of the current contract. The review would take full account of the structural changes taking place in the Health services, the Health reform agenda, the Primary Care

Strategy, the flexibility terms under Sustaining Progress and other relevant issues. He added that the IMO had refused the Department's offer of a review until certain industrial relations issues are addressed. Discussions on these issues were ongoing.

Refunds under the Drugs Payments Scheme

In my 2001 Report, I also drew attention to the overpayment and underpayment of subsidy to persons availing of the then new Drugs Payment Scheme arising from the delay in making regulations to give the scheme legal effect.

In response to my request for an update regarding the payment of refunds due under the Scheme, the Accounting Officer informed me that 36,278 refund cheques in total had been issued by July 2004 amounting to €6,437,845. The average refund was €177.

He added that apart from a small number of valid claims being finalised, query cases and late claims – which would be dealt with sympathetically - the process was complete.

The administrative cost of processing the overpayment refunds was approximately €55,000.

Chapter 13 Department of Social and Family Affairs

13.1 Medical Assessment and Review

Introduction

Medical assessment and review is the main control mechanism of illness and disability related schemes administered by the Department of Social and Family Affairs. Medical assessments are made to provide an independent second opinion for the guidance of Deciding Officers when determining eligibility for illness and disability related benefits on medical grounds. Deciding Officers are department staff appointed by the Minister to decide on claims under the provisions of the Social Welfare Acts. Claimants may appeal decisions on eligibility.

The illness and disability schemes subjected to medical assessment and review are

- **Short term schemes**
  - Disability Benefit
  - Injury Benefit
- **Long term schemes**
  - Disability Allowance
  - Invalidity Pension
  - Disablement Benefit
  - Carers Benefit/Allowance

Table 47 summarises the numbers of recipients of illness/disability benefits.

Table 47

Scheme	*No. currently in receipt of benefit*	*Claims processed during 2003*
Disability Benefit	58,912	267,000
Injury Benefit	1,183	15,000
Disability Allowance	69,898	17,405
Invalidity Pension	54,214	5,698
Disablement Benefit	12,002	1,750
Carers Benefit	631	1,267
Carers Allowance	21,474	6,319

Referral

When and how applicants for any of the Department's illness/disability schemes are referred for medical desk review and/or physical examination depends on several factors. Long term and short term schemes are treated differently as are particular illnesses e.g. lower back pain. Payment of short term benefits commences following registration of a claim. However, payment of long term benefits does not commence until an applicant is found to be medically qualified.

Short Term Schemes

The Department processed 282,000 short term benefit (Disability and Injury) claims in 2003 and approximately 60,000 cases are currently in benefit. Such cases are referred for assessment 4, 6 or 8 weeks from the date of application. The type of illness declared determines the referral date. Minor illnesses are allocated a 4 week referral date, while more serious illnesses are given later referral dates. Lower back pain cases in Dublin, Cork and Galway are referred immediately.

Claimants must provide medical certificates covering the entire period of an illness to ensure continued payment of benefit. The medical referral process is activated when a medical certificate extends beyond the allocated referral date. When a claimant is found medically qualified for benefit the medical assessor sets a date for reassessment - the review date. Final certificates are regularly received before the referral/ review date is activated. This happened in 61,498 cases in 2003 and no assessments took place in these cases. When no certificate is received, payment is immediately suspended if the claim is subject to weekly certification. If the claimant's illness is long term and subject to monthly or 6-monthly certification, payment is suspended after three weeks if a certificate is late. If no certificate is received for eight weeks, the Department automatically suspends the claim in all cases, the referral is cancelled and no further action is taken. If medical certificates are later provided the case is rescheduled for referral and prioritised as 'urgent'. In 2003, payment was stopped in 22,870 cases when medical certificates were not submitted as due but payment was restored to 5,021 of these cases following the submission of 'late' medical certificates.

Long Term Schemes

All new applicants for long term schemes such as Disability Allowance and Invalidity Pension are subject to medical assessment/examination.

Existing beneficiaries of these schemes are scheduled for recall for a second or subsequent medical assessment.

Table 48 shows the review status of Disability Allowance and Invalidity Pension cases at May 2004.

Table 48

	Disability Allowance	*Invalidity Pension*
'Do not refer again'	27,505	44,343
Review dates not yet reached	8,462	7,395
Review dates overdue	19,683	2,476
Review dates not assigned	14,248	-
Number of claimants in payment	**69,898**	**54,214**

Table 49 shows the numbers of Disability Allowance and Invalidity Pension review dates which have passed without reassessment taking place.

Table 49

Year	*1997 or Earlier*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*Uncertain*	*Total*
Disability	17	161	2,683	3,194	4,150	4,370	4,993	115	**19,683**
Invalidity	223	188	175	155	78	963	694	-	**2,476**

Only 16 overdue Disability Allowance review cases were examined in 2003. All were found unqualified for the scheme.

The Department stated that it has two separate computer systems, one of which supports payments and the other medical review. The payment support computer system does not correctly reflect the referral status of overdue Invalidity Pensions reviews in all cases. There are some 1,200 cases with a one or two year review date among the overdue review cases but all were, in fact, referred to Medical Review and Assessment Section.

The Department stated that an analysis of Invalidity Pension cases medically reviewed in 1999 and 2000 showed that the systematic review of all cases with review dates of one year or more may not be cost effective. Only 3 claimants out of 3,788 examined had their entitlement disallowed. Risk is low given that medical eligibility criteria for Invalidity Pension are rigorous and 50% of claimants are over 55 years old.

The Department's current policy is to review all Invalidity Pension claims that have a 1-year review date. Claims with a review date of more than 1 year are targeted on a sample basis.

Medical Review and Assessment

The Department's Medical Assessors are specially trained to perform medical assessments. They carry out desk assessments of medical evidence presented in support of claims and physically examine claimants in appropriate cases to determine fitness for work. A nurse attendant is present with the Medical Assessor during each examination, in accordance with the accepted guidelines of the Medical Council.

Medical evidence is provided to assessors by

- illness details recorded on a claimant's application forms
- weekly and monthly medical certificates from a claimant's certifier usually his/her General Practitioner (in some cases of serious long term illness 6-monthly certificates are provided)
- a detailed medical report requested by the Department from a claimant's General Practitioner in certain cases.

The assessment process starts with a desk review that either confirms the medical eligibility of the claimant or results in a date for physical examination. Eligibility on medical grounds cannot always be determined from medical reports alone.

In the conduct of the examination, the medical assessor reviews the history of the case, considers any fresh medical evidence and expresses an opinion based on the clinical examination. The medical assessor does not dispute the certified cause of incapacity but assesses the degree to which the loss of function resulting from the illness affects the person's ability to perform his/her own job or alternative work.

The Department's medical review policy provides for the assignment of either a review date or a review status of 'Do not refer again (DNRA)' to all claimants. Table 50 shows the review status of the different types of case managed in 2003.

Table 50

Case Type	*Review in 0 to 2 years*	*2 years +*	*DNRA*
Disability/Injury Benefit	17,840	1,173	945
Invalidity Pension	464	171	177
Disability Allowance	1,879	466	641
Carers Allowance	3	-	1
Appeals Cases	2,015	119	112

Physical examinations are prioritised as follows

- Appeals by claimants against declarations of ineligibility and suspension of payments
- Applications for long term illness schemes
- Urgent requests from scheme administrators
- Claimants with bad attendance records at previous examinations
- Other normal applications (mainly Disability Benefit) and reviews of persons to determine continued entitlement to payment (also mainly Disability Benefit).

Resources

The medical assessment and review system is supported by 21 medical assessors employed full-time by the Department. The Department also employs over 60 nurse attendants (6 of whom are full-time). Administrative support is provided by 36 staff.

Physical examinations are carried out at 61 centres throughout the country. Six examination rooms in Dublin and three in Cork are in use on a full-time basis. The frequency of use of the other centres depends on the volume of cases on hand and on the availability of centres, nurse attendants and medical assessors.

Table 51 provides details of the costs of the Medical Review and Assessment Section in 2003.

Table 51

Expense Type	*€000*
Salaries – Medical Staff	1,910
Salaries (including overtime)- Administration staff	850
Fees to part-time nurses	217
Travel	473
Incidentals	158
Room Hire	14
Total	**3,622**

Outturn

In 2003 a total of 118,362 cases (128,552 in 2002) were scheduled for either desk assessment or examination. Of these 59,737 were desk reviewed while 58,222 Irish cases and 403 UK cases were called for physical examination. The latter group are examined on foot of reciprocal arrangements between the two countries. Table 52 provides details of the results of medical examinations of Irish cases in 2003.

Table 52

Scheme	Called for examination	Examined		Not examined			
		Qualified	Not qualified	Final certificate received	Unfit to attend	Did not attend	Cancelled/not examined
Disability/Injury Benefit	38,670	19,958	6,406	3,840	240	7,062	1,164
Disability Allowance	8,450	2,985	2,689	70	65	2,279	362
Invalidity Pension	1,128	529	391	11	14	135	48
Carers Allowance	423	4	172	9	9	206	23
Disablement Benefit	3,234	2,296[24]	-	-	3	811	124
Appeals	6,317	2,246	2,534	604	27	665	241
Total	**58,222**	**28,018**	**12,192**	**4,534**	**358**	**11,158**	**1,962**
Percentage	**100%**	**48%**	**21%**	**8%**	**1%**	**19%**	**3%**

Benefit is terminated when a final medical certificate, indicating that the claimant is fit to return to work, is received. The Department estimates that 26% of final certificates are submitted following notification to claimants of appointment for medical examination.

Excluding Disablement Benefit, where the purpose of the examination is to assess the degree of disablement, one in three who are examined are found capable of work. In all, three quarters of those desk assessed and/or examined are deemed qualified for the particular scheme applied for.

Found capable of work

If a claimant is found capable of work a disallowance notice is issued automatically and payment of benefit is terminated. 950 claimants whose Disability Benefit payments were terminated in the period January to May 2004 were subsequently paid Unemployment Benefit/Assistance (903 cases) or Supplementary Welfare Allowance (47 cases).

The average length of time that these 950 cases were not in receipt of social welfare payment was 13 days.

Non-attendance for examination

Those who fail to attend for medical examination are suspended from benefit payment. Suspension may, however, be lifted and payment restored if a claimant subsequently provides a valid excuse. 7,062 Disability Benefit claimants failed to attend medical examinations in 2003. 4,826 claimants had payments restored, while the other 2,236 remained suspended from payment.

Those who fail to attend for medical examination are rescheduled for review and prioritised as 'urgent'.

[24] The examinations assess the degree of disablement.

Current Caseload

A review of the current caseload revealed that while desk assessments were up to date, there were 31,542 referred cases awaiting medical examination on 6 April 2004. Table 53 shows the distribution of those awaiting medical examination by scheme.

Table 53

Scheme	*Number*	*%*
Disability Benefit	29,141	93
Injury Benefit	739	2
Disability Allowance	704	2
Disablement Benefit	907	3
Carers Allowance	51	-
Total	**31,542**	**100**

The bulk of the backlog relates to Disability Benefit cases. Currently such cases are accorded the Department's lowest level of priority for examination. However, when this matter was examined in 1994 experience suggested that the longer a person remained on Disability Benefit, the less likelihood there was of the person being found capable of work at a medical referee examination.

The Department at that time decided to put greater emphasis on referring short term claimants for medical examination earlier and more frequently than previously. That policy change was regarded as a factor in the reduction in the overall number of Disability Benefit claims from 47,600 in January 1993 to 42,250 in December 1994. The April 2004 figure was 58,900. The number of PRSI contributors insured for Disability Benefit rose from 968,300 in the 1993/1994 contribution year to 1,906,516 in the 2002 contribution year.

Reasons for backlog

The Department indicated that some 14% of scheduled physical examinations did not take place in 2003 because

- Some 6,685 or 11% of claimants failed to show up on the day or gave insufficient notice of cancellation making it impossible for the Department to fill the vacant slots
- 88 examination sessions were cancelled by the Department resulting in the loss of 1,516 of all appointments, while a further 446 attended but were not examined (mainly as a result of being late for their appointments).

The Department attributed session cancellations to:

- Unavailability of nurse attendants. There are 3.5 permanent vacancies and the Department has difficulty recruiting part-time nurses. While Dublin has 6 examination rooms, on average only 3 rooms are in operation weekly due mainly to the Department's inability to recruit part-time nurse attendants.
- Insufficient caseloads to justify sending a medical assessor to particular examination centres. Some cases may be on referral for months while awaiting a sufficient caseload.
- Unavailability of suitable examination rooms. Examination sessions are infrequent in some areas due to the small caseload and held in temporary accommodation hired for the day. Eight former centres are closed.

- Participation by seven medical assessors in the lower back pain project in addition to their other duties.

Appeals

If a decision based on the opinion of the medical assessor is unfavourable to the claimant then he/she has a right of appeal to the independent Social Welfare Appeals Office (SWAO). Before an appeal is determined a different assessor gives the claimant a second medical examination. Of the 6,406 Disability Benefit claimants found capable of work following initial medical examination in 2003, 3,115 received a second examination. The second examination found 1,446 appellants were qualified/incapable of work. Of the remaining 1,669 capable of work, 1,158 went on to appeal while 511 withdrew or did not pursue their appeals prior to consideration by the Appeals Officer.

The appellant may be afforded an oral hearing or the Appeals Officer may make a decision based on the documentary evidence available. The average time for processing appeals is 22 weeks of which SWAO time is 10 weeks. The average time is distorted by the protracted nature of some appeals. Appeals decisions and case papers are returned to Medical Review and Assessment Section and filed.

Table 54 shows the results of appeals on medical grounds.

Table 54

Scheme	*Appeal Upheld*	*Appeal partially upheld*	*Appeal rejected*	*Total*
Disability Benefit	609	17	532	1,158
Injury Benefit	118	1	23	142
Disability Allowance	285	7	369	661
Invalidity Pension	91	1	61	153
Carers	185	18	239	442
Total	**1,288**	**44**	**1,224**	**2,456**

50% of appeals are upheld even though appellants have already been found unqualified on separate occasions by two different medical assessors. The Department is of the view that the main reason for upheld appeals is the presentation of additional information to SWAO on the claimants' illnesses/disabilities.

Department Initiative – Lower Back Pain

The number of claimants providing medical certification for lower back pain has been increasing steadily in recent years. In 2002, there was a significant increase in the number of Disability Benefit claims from 51,000 to 56,000 and lower back pain claims accounted for 9,675 (17%) of all open Disability Benefit claims. Some 6,500 of these fell into the 20-50 age group.

In 2003, the Department initiated a targeted approach in the management of lower back pain cases. New claimants were given top priority and referred for prompt medical examination. Pilot projects were undertaken in Dublin and Cork using specially trained medical assessors. Table 55 shows the results in respect of 1,532 lower back pain cases selected for the projects.

Table 55

Project Cases	**1532**	
Less Final Certificate Submitted before Notification of Appointment	**172**	
Called for Examination	**1360** [25]	
Final Certificate Submitted after Notification of Appointment	**736**	
Did not attend	**197**	
Examined	**556**	
Qualified due to lower back pain		154
Qualified for reasons other than lower back pain		127
Not Qualified		275
Appealed	**122**	
Deemed Capable of Work		77
Did not Attend Appeal or Returned Final Certificate		29
Appeal Upheld		16

It is noteworthy that

- Of 1,200 claimants removed from benefit under the project, 463 have submitted a new Disability Benefit claim of which 204 were back related. 369 of these repeat claims were subsequently terminated by the end of December 2003.
- An additional 257 subsequently claimed under other schemes as follows
  - Unemployment Assistance/Benefit 146
  - Supplementary Welfare Allowance 4
  - Long term schemes 107
- The number of back pain claims for disablement pension dropped by 100 (20%) during the project.

A follow up project in Dublin, Cork and Galway on a further 2,775 claimants has produced similar results.

Consideration is being given to extending the project to other areas.

Audit Findings

Disability Review Dates Not Recorded

Review dates for 13,165 cases transferred from the Health Boards in 1996 were not entered on the Department's computer records. According to the Department the process was discontinued in the interests of administrative efficiency because the bulk of the papers examined indicated that disabilities were long term and would have been unnecessary to review in the future. However, a further 1,083 cases have since not been assigned review dates. The Department has stated that review dates were omitted in these cases in error.

Low Level of Disability Allowance Review

The medical reassessment process for Disability Allowance claimants has almost ceased and there are 20,000 cases currently overdue. Only 16 claimants were reassessed in 2003 and, significantly, all were found unqualified for the scheme.

[25] This is the number of individuals called for examination. It should be noted that some individuals were called more than once and that the total calls over the three categories - final certificate submitted after notification of appointment, did not attend and examined - was 1,489.

Backlog Awaiting Examination

There are currently 31,681 cases awaiting physical examination and half of these are overdue by more than 3 months. The backlog problem is related mainly to resource issues.

It was noted that in some locations, for example Cork and Tralee, the backlog for medical examination of up to almost a year has built up in cases allotted a 'normal' priority review status.

Some 19,900 of those awaiting physical examination were previously called. Crucially 1,689 of these had never been examined: 47 had been referred at least five times.

Disability Benefit Average Duration

My 1994 Report noted that as a result of the Department's decision to focus its resources on referring short term claimants for examination earlier and more frequently than previously there was a marked reduction in the average duration of short term Disability Benefit claims from 5.5 weeks in March 1993 to 3.2 weeks in the first quarter of 1995. Earlier and more frequent medical referral could, similarly, have an impact in reducing the currently computed average of 4.9 weeks.

Success of Back Pain Initiative

The results in respect of those called for examination under the project were significantly different from those pertaining to medical referrals generally. A comparison of the project and general results revealed the following:

- 54% of the lower back pain project cases called for examination submitted final medical certificates before the date appointed for examination compared to 10% generally
- 49% of the project cases were found qualified following examination compared to 75% generally
- 43% of the project cases who failed the examination lodged appeals compared to 61% generally.

The success of the project was due to a number of factors including early intervention. The pilot project has been continued in Dublin and Cork and extended to other regions. It is intended to ultimately fast track all lower back pain cases for prompt medical examination. The Department should explore the scope for extending this type of approach to other identified high risk ailments.

General

Information relating to persons who fail to attend for medical examination or those who, having failed to qualify, reapply or apply for benefit under other social welfare schemes should be systematically recorded to serve as an input into risk rating of social welfare claimants.

Accounting Officer's Response

In response to the report's findings the Accounting Officer stated that

- The number of people eligible for illness or disability payments has increased significantly over the past ten years for a number of reasons. New schemes have been introduced, including Disability Allowance and Carer's Benefit and eligibility conditions for these and for other illness and disability

schemes have been eased. The number of people eligible for disability benefit in particular has increased because the numbers paying PRSI have risen in line with increased employment and because PRSI coverage has been extended to additional groups, such as new entrants to the public service.

- The Department acknowledges that there are particular difficulties in relation to Disability Allowance because of the increased number of claims (approximately 70,000 in payment at present compared to less than 57,000 three years ago) and is examining the possible reasons underlying this.

- Given the finite resources available to it, the Department must strike a balance between:

  - Processing new claims

  - Maintaining claims in the context of rising numbers in payment

  - Implementing eligibility and other improvements in schemes as announced from time to time

  - Implementing controls to ensure that payments are made in accordance with eligibility.

- The Department considered that the range and extent of control activities to date achieved a reasonable balance between competing priorities in the context of resources available while recognising that certain elements of control activities were in need of improvement. A new, dedicated, Control Unit is being established to improve control of the Disability Allowance, Carer's and Invalidity schemes. This Unit has been specifically tasked to address the points raised, including the very low rate of review in Disability Allowance cases. Measures have also been introduced to prevent the erroneous omission of review dates for new awards of Disability Allowance.

- The Department accepted that compliance with the medical eligibility criteria in respect of continued entitlement was of crucial importance. The Department depends on certifiers (usually general practitioners) in the first instance to attest correctly that the applicant for a social welfare payment is not capable of work. In that regard, the Department spends in excess of €23 million per annum on fees to medical practitioners in respect of certificates and medical reports.

- The Department also employs a team of independent Medical Assessors to advise on individual medical eligibility for its relevant schemes. The Department has found it difficult in the recent past to recruit suitably qualified medical practitioners to fill vacancies in the existing team and considers that increasing the number of Medical Assessors employed by the Department would be difficult. It has also encountered difficulties in recruiting nurse attendants and would require increased numbers of both doctors and nurse attendants in order to increase the number of examinations undertaken.

- The Department could adjust its referral criteria to achieve a better balance between the numbers referred for examination and the resources available to undertake examinations. However, it considers that there is a value in scheduling cases for medical review even though the backlog of cases for examination is such that many cases will be overdue when examined, because significant numbers of people cease claiming on being notified of referral for medical examination.

- The Department is currently undertaking a review of the Medical Review and Assessment System and it is intended to engage external consultants in that regard. The review will include consideration of any possible alternative or complementary methods of assessing medical eligibility in order to cope with the increased volume of assessments that need to be undertaken.

- The Department is also examining the backlog with a view to developing measures to deal with arrears of cases for medical examination.

13.2 Overpayments

The Department of Social and Family Affairs administers some 50 welfare schemes paid through Vote 40 and the Social Insurance Fund. Expenditure on assistance and insurance schemes was €5.46bn and €4.65bn respectively in 2003.

Tables 56, 57 and 58 outline overall expenditure on various schemes over the period 1999 to 2003, and for the same period, the amounts recorded as overpayments and the amounts of overpayments attributed to fraud or suspected fraud.

Table 56 - Scheme Expenditure

	1999	*2000*	*2001*	*2002*	*2003*
	€m	*€m*	*€m*	*€m*	*€m*
Social Insurance	2,681	2,993	3,517	4,198	4,649
Social Assistance	3,320	3,425	3,983	4,940	5,460
Total	**6,001**	**6,418**	**7,500**	**9,138**	**10,109**

Table 57 - Number and Amount of overpayments recorded for recovery (Numbers shown in brackets)

	1999	*2000*	*2001*	*2002*	*2003*
	€m	*€m*	*€m*	*€m*	*€m*
	7.66	6.39	6.79	9.72	10.60
Social Insurance	(18,080)	(15,252)	(15,786)	(23,723)	(26,174)
	20.79	20.59	19.26	19.41	28.77
Social Assistance	(21,346)	(18,110)	(14,274)	(15,084)	(17,459)
	28.45	**26.98**	**26.05**	**29.13**	**39.37**
Total	**(39,426)**	**(33,362)**	**(30,060)**	**(38,807)**	**(43,633)**

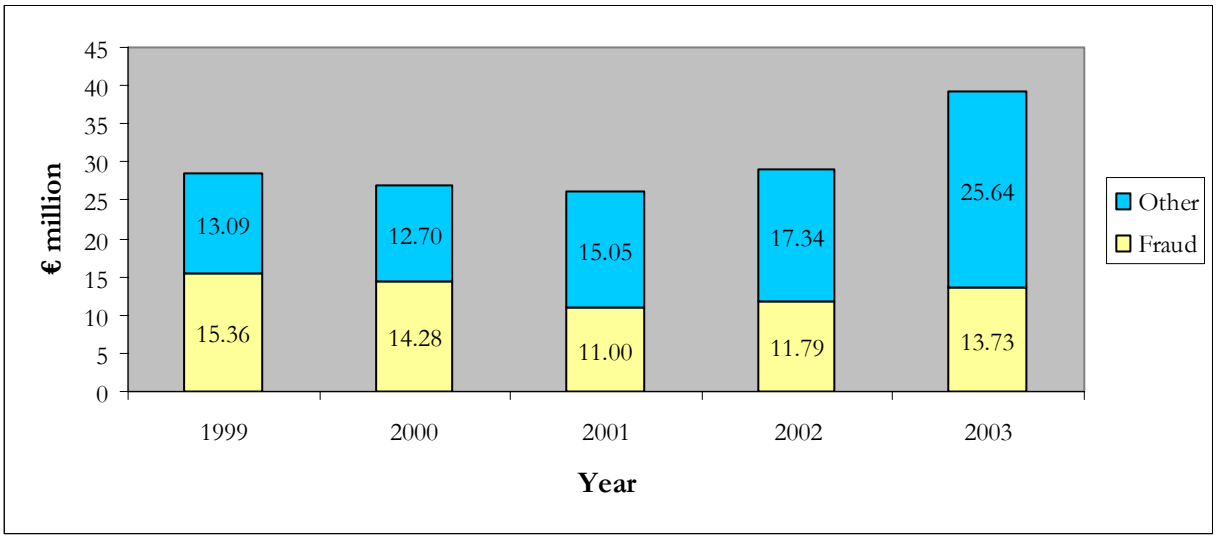
The increase in the value of Social Assistance overpayments recorded in 2003 was mainly attributable to the specific targeting in that year by the Department's Earnings Review Unit of persons in receipt of One Parent Family payments.

Table 58 - Number and Amount of overpayments attributed to fraud or suspected fraud (Numbers shown in brackets)

	1999	*2000*	*2001*	*2002*	*2003*
	€m	*€m*	*€m*	*€m*	*€m*
	3.22	3.39	3.27	4.43	5.00
Social Insurance	(5,821)	(5,159)	(5,321)	(8,089)	(9,567)
	12.14	10.89	7.73	7.36	8.73
Social Assistance	(9,273)	(7,466)	(5,350)	(5,696)	(7,114)
	15.36	**14.28**	**11.00**	**11.79**	**13.73**
Total	**(15,094)**	**(12,625)**	**(10,671)**	**(13,785)**	**(16,681)**

The amount of overpayments attributed to fraud or suspected fraud compared to total overpayments since 1999 is summarised in Figure 2.

Figure 2



The Department's record of recovery of overpayments during the period 1999 to 2003 is shown in Table 59.

Table 59 – Department's record of recovery of overpayments 1999 to 2003

	1999 €'000	*2000 €'000*	*2001 €'000*	*2002 €'000*	*2003 €'000*
Overpayments not disposed of at 1 January	53,619	60,581	64,374	65,452	70,621
Overpayments recorded for recovery	28,448	26,982	26,049	29,130	39,367
less					
overpayments recorded in prior years cancelled	(292)	(447)	(668)	(394)	(381)
sums recovered in cash	(5,154)	(7,464)	(9,873)	(8,892)	(10,397)
sums withheld from current entitlements	(4,198)	(4,999)	(5,185)	(6,734)	(6,521)
net amounts written off as irrecoverable	(11,842)	(10,279)	(9,245)	(7,941)	(6,736)
Overpayments not disposed of at 31 December	**60,581**	**64,374**	**65,452**	**70,621**	**85,953**

Of the €85,952,516 overpayments outstanding at 31 December 2003 - €28,031,611 dates from 2003; €16,746,568 from 2002; €13,977,236 from 2001 and €27,197,101 from earlier years.

13.3 Prosecutions

Cases involving abuse of the system are considered with a view to taking legal proceedings. Prosecutions are taken against employers who fail to carry out their statutory obligations and persons who defraud the social welfare payments system. Prosecutions can either be by summary or indictment proceedings. Civil proceedings are taken to facilitate the recovery of scheme overpayments or the collection of PRSI arrears. Such cases are only taken where it has been established that the debtor has sufficient means to discharge the debt.

During 2003, 355 criminal cases (2002 - 205 cases) were forwarded to the Chief State Solicitor's Office (CSSO) for prosecution as shown in Table 60.

Table 60 - Criminal cases forwarded to the Chief State Solicitor

	2003	*2002*
Unemployment Assistance	146	91
Unemployment Benefit	158	61
Disability Benefit	29	18
One Parent Family Payments	1	8
Other Schemes	7	2
Offences Committed by Employers	14	25
Total	**355**	**205**

A total of 186 criminal prosecutions (2002 – 160 prosecutions) involving social welfare recipients were finalised in court in 2003. The total amount of overpayments assessed in these cases of persons who attempted to or obtained benefits/assistance fraudulently was €1,007,332 (2002 - €605,113). The results of these 186 court cases and the penalties imposed are given in Table 61.

Table 61 - Results of Court Cases involving Social Welfare Recipients

	Fines Imposed[26]	*Community Service*	*Imprisoned*[27]	*Probation Act*	*Proven No Penalty*	*Adjourned /Liberty to Re-enter*	*Bound to peace*
Unemployment Assistance	50	6	12	9	10	3	2
Unemployment Benefit	34	4	12	13	7	1	2
Disability Benefit	6	1	2	2	1	-	-
One Parent Family Payments	1	-	-	-	-	1	-
Other Schemes	2	-	2	-	3	-	-
Total	**93**	**11**	**28**	**24**	**21**	**5**	**4**

Prosecutions of 24 cases involving employers (2002 – 7 employers) were also finalised with 16 being fined[28], 1 sentenced to community service, 3 given the Probation Act and 4 recorded as Proven No Penalty.

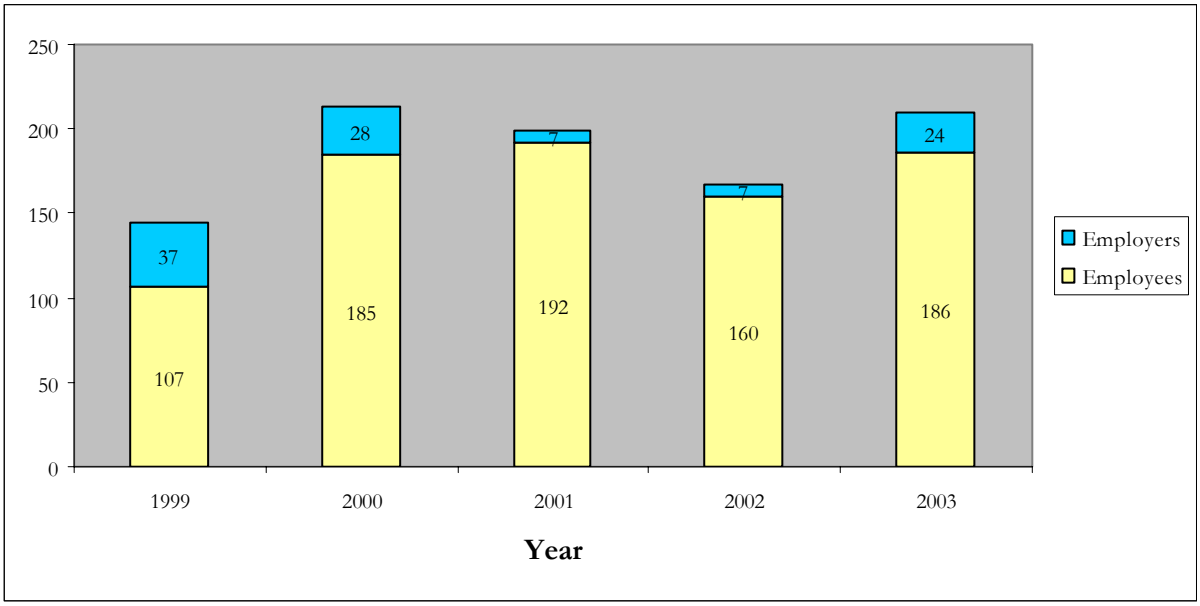
The number of prosecutions finalised in the courts since 1999 is summarised in Figure 3.

[26] Fines to a value of €54,711 were imposed by the courts (€24,782 in 2002 in 74 cases)

[27] 17 suspended

[28] Fines to the value of €15,228 were imposed by the courts (2002: €2,298 in 4 cases).

Figure 3



A total of 60 civil cases have been forwarded to the Chief State Solicitor's Office since 1999. Table 62 details the history of civil cases forwarded and the cases still pending with the Chief State Solicitor's Office and Table 63 details the outcome of the 34 civil cases finalised.

Table 62 - Civil cases sent to the Chief State Solicitor's Office

	1999	*2000*	*2001*	*2002*	*2003*	*Total*
To CSSO	9	6	14	11	20	60
Finalised	3	1	5	11	14	34
Pending	6	5	9	0	6	26

Table 63 - Results of civil cases finalised 0

	Total
Settlement reached without going to court[29]	10
Client had no assets	1
Not pursued due to the circumstances of the debtor	6
Case statute barred	5
Recovered by instalments	11
Finalised in Supreme Court	1
Total	**34**

[29] €107,256 in overpayments was recovered in these cases out of a total overpayment €625,143 recorded.

Chapter 14 National Treasury Management Agency

14.1 National Debt

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.

Expenses incurred by the Agency in the performance of its functions are met from the Central Fund. The Agency incurred expenditure of €15.1m on administration in 2003 (€13.7m in 2002).

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 make also 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 2003 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 2003 and its balances at year end.

Table 64 shows the outturn for the National Debt in the five year period 1999-2003.

Table 64 National Debt 1999 – 2003

	National Debt Outstanding €m	*Debt Service Cost* €m
1999	39,849	2,800
2000	36,511	2,575
2001	36,183	2,379
2002	36,361	2,169
2003	37,610	2,277

The composition of the National Debt[30] at 31 December 2003 is shown in Table 65.

Table 65 Composition of National Debt as at 31 December 2003

	€m
Medium/Long term Debt	29,217
Short term Debt	5,788
National Savings Schemes	4,330
Less: Domestic Liquid Assets	(1,725)
National Debt	37,610

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

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 €27.55m.

14.2 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 2004 they reported to me on their audit of the 2003 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.

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 66.

Table 66 Post Office Savings Fund

	2003 €m	*2002* €m
Liability in respect of funds due to depositors and creditors	1,126	976
Value of related investments held by Post Office Savings Bank Fund (at cost prices)[31]	1,136	983
Surplus at 31 December	10	7

[31] The market value of the investments held by the Fund was €0.16m more than their cost price.