18 Management of Redundancy and Insolvency Scheme Debts

18.1 Two schemes are operated by the Department of Social Protection (the Department) in relation to payments to employees who have been made redundant.

- The redundancy payments scheme was established under the Redundancy Payments Acts 1967 to 2011 to ensure workers who lose their jobs by reason of redundancy receive (at least) minimum levels of compensation – referred to as 'statutory redundancy'.
- The insolvency payments scheme operates under the Protection of Employees (Employers Insolvency) Acts 1984 to 2007 and is designed to protect certain outstanding statutory entitlements – arrears of wages, holiday pay, etc. – due to employees in the event of the insolvency of their employer.

18.2 Redundancy and insolvency payments are paid from the Social Insurance Fund (SIF), which is administered by the Department.[1] The expenditure incurred by the SIF in 2014 in relation to the two schemes was as follows

- €64.6 million was paid under the redundancy payments scheme
- €23.6 million was paid under the insolvency payments scheme.

In addition, costs totalling €1.3 million were charged to the SIF in 2014 in relation to the administration of the schemes.

18.3 In the past, employers who made redundancy payments were entitled to claim a rebate from the SIF. Up to and including 2011, the rebate payable was 60% of the statutory redundancy amount. In 2012, the rebate was reduced to 15% of the statutory redundancy amount. Since 2013, no rebate has been payable.

18.4 Where an employer could not pay statutory redundancy, the amount paid by the Department on behalf of the employer (net of an amount equal to the rebate) was recorded as a debt to the SIF. If the Department believed that an employer had the capacity to pay but did not, they were designated as 'defaulters' and 100% of the debt was recoverable.

18.5 No interest or charges are applied to employer debts.

18.6 The Department seeks to recover the payments made under the schemes from the relevant employers. However, employers who resort to the SIF to make redundancy/insolvency payments are already in financial difficulties, so full recovery is rarely possible. Recovery of debt under the redundancy scheme may be possible in cases where the employer is able to trade out of its difficulties.

18.7 In company insolvency situations, the Minister for Social Protection is a preferential creditor alongside the Revenue Commissioners and local authorities. However, they only stand to receive payments after secured creditors (banks) and liquidation expenses have been discharged. The amount recoverable depends on a surplus becoming available for distribution following the completion of the company liquidation.

1 Prior to 1 January 2011, the schemes were administered by the Department of Jobs, Enterprise and Innovation, but the associated costs were charged to the SIF.

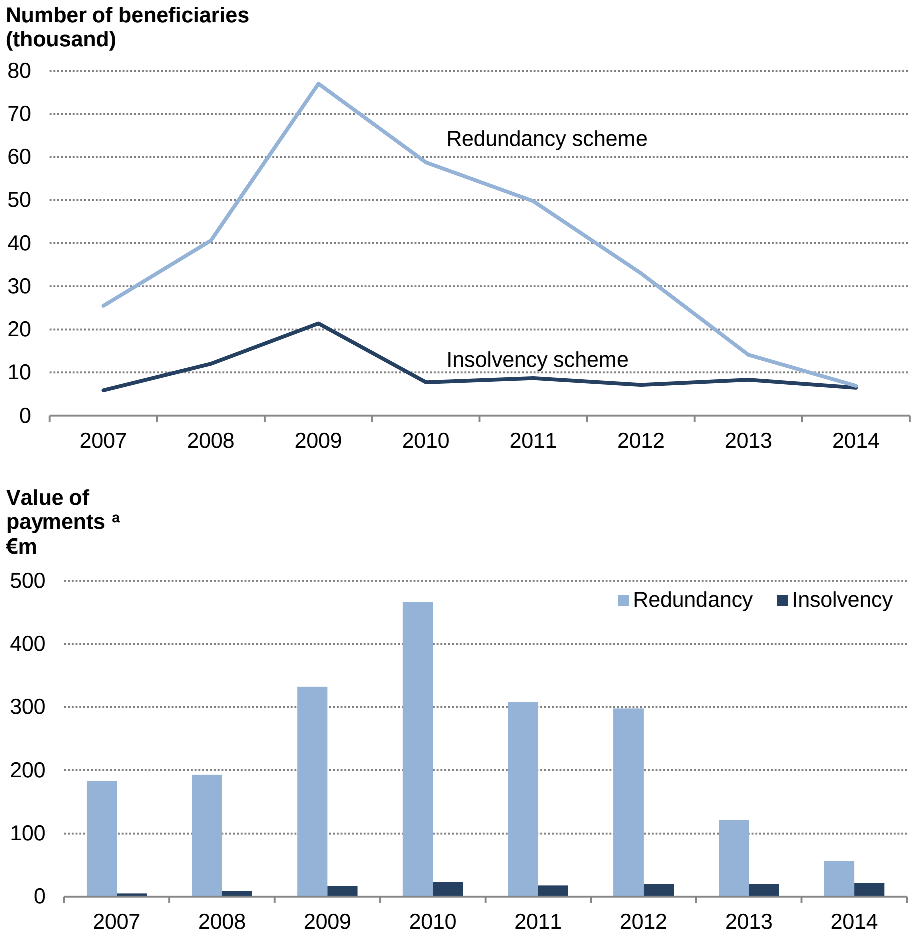
18.8 The Department considers that approximately 90% of the €469 million debt recorded as outstanding at the end of 2014 will require write-off given that it related predominantly to insolvent companies in liquidation.

Analysis of Expenditure and Debt Trends

18.9 The number of employees who received statutory redundancy payments has fallen sharply in recent years, from a peak of 77,000 in 2009 (see Figure 18.1). In contrast, the number of employees who had recourse to insolvency-related payments averages around 10,000 a year (excluding a peak in 2009).

18.10 Aggregate payments under the schemes reflect the number of workers and employers entitled to avail of the benefits, and the reduction in the level of rebate payable to employers.

Figure 18.1 Number of claims and scheme expenditure, 2007 to 2014



Source: Department of Social Protection – analysis by the Office of the Comptroller and Auditor General.

Note: a The value of payments are stated net of recoveries each year.

18.11 Figure 18.2 sets out the movement in employer default payments, recoveries received from employers, and write-offs made over the last six years.

Figure 18.2 Cumulative amounts recorded for recovery from employers, 2009 to 2014

	2009 €m	2010 €m	2011 €m	2012 €m	2013 €m	2014 €m
Balance at start of year	103.1	144.7	196.4	242.9	393.1	460.5
Employer debts recorded	57.0	64.4	60.0	156.0	98.6	82.1
Amounts recovered	(6.3)	(3.9)	(4.5)	(5.8)	(7.0)	(10.2)
Amounts written off [a]	(9.1)	(8.8)	(9.0)	–	(24.2)	(63.5)
Balance at year end	**144.7**	**196.4**	**242.9**	**393.1**	**460.5**	**468.9**

Source: Department of Social Protection

Note: a 2009 and 2010 write-offs include adjustments of €0.4 million and €0.6 million respectively to the liability following reconciliations by the Department of Jobs, Enterprise and Innovation.

18.12 Payments of redundancy and insolvency are accounted for in the SIF account on a cash receipts and payments basis. The balance due from employers at the year end represents the book value of debts which have not been recovered or written off. However, the Department considers that, on average, less than 10% of the outstanding balance has a realistic chance of recovery. Due to the uncertainty of collection, the Department does not recognise the debt as an asset in the SIF balance sheet. Instead, the amount outstanding is disclosed by way of note in the account.

Debt Management Function

18.13 Normal statute of limitation rules also apply for the recovery of debt i.e. if the debt is older than six years and one day, and the Department has not taken any debt recovery action in that period, then no legal action can subsequently be taken to recover the debt.

18.14 Debt management comprises a series of activities to ensure that debts are collected in a timely and efficient manner and include

- documented debt management policies and procedures
- early and accurate data collection and maintenance
- a dedicated information system including single debtor view and age analysis
- timely debtor contact
- appropriate contact with other State agencies.

18.15 The Department operates a debt management unit (DMU) as part of the administration of the schemes, dealing solely with the management of the redundancy and insolvency debts. It was noted that

- The Department does not have any policies or statement of procedures in place in relation to redundancy and insolvency debt management. These are in the process of being drafted.
- Except where a new debt is recorded against a debtor, the Department has not initiated any debtor contact in relation to legacy debt that transferred over from the Department of Jobs, Enterprise and Innovation in 2011.
- The Department has not sent reminders to debtors where there was no response to initial debt recovery communication in relation to debt recorded by the Department up to 31 October 2014.
- The Department's liaison with other agencies (e.g. Revenue, Insolvency Service of Ireland) is of an ad hoc nature.

Accuracy of Debt Data

18.16 Though administration of the schemes transferred to the Department on 1 January 2011, the schemes payments continued to be processed on the Department of Jobs, Enterprise and Innovation's system up to the end of September 2011. From the beginning of October 2011, payment processing moved to the Department.

- The Department of Jobs, Enterprise and Innovation provided the Department with a report listing debts to the SIF as at 30 September 2011, which amounted to €245.3 million. Over time, around half of these debts were transferred to the Department's overpayments and debt management system (ODM) where a new debt arose in relation to a transferred debtor or a recovery was received in respect of a debt. The bulk of the remainder has been written off, with an amount of €27.8 million remaining as outstanding debt. This amount has not been recorded on ODM but is kept in spreadsheet format.
- In November 2014, the Department introduced a new debt and receipts accounting system (DRAS). All debt held previously on ODM was carried over to DRAS at 1 November 2014. The total debt recorded on DRAS at the end of 2014 was €396.3 million.

18.17 The figures prepared by the Department's accounts section for the 2014 SIF account showed the debt outstanding at the end of 2014 at €468.9 million. The figures recorded on DRAS and the spreadsheets at the end of 2014 total €424.1 million giving rise to a difference of €44.8 million. The Department has been unable to explain this difference.

Aged Analysis of the Debt

18.18 Timely review and follow up of debts is a key factor in achieving higher debt recoveries. An aged analysis of the debts setting out the debtor, amounts and the duration of the debt is an important part of this process.

18.19 The Department's DRAS can produce an aged analysis of new debt recorded since October 2011. This has a value of €243.2 million, representing 57% of the recorded debt. The remaining €153.1 million of debt recorded on DRAS cannot be accurately aged because it was transferred from spreadsheets to DRAS with the date of posting rather than the original date of recording of the debt. €27.8 million is recorded on spreadsheets that do not record the original date.

Recovery of Outstanding Debts

18.20 The rate of recovery of outstanding debts is the key performance measure for debt management. Ideally, recoveries should be assessed relative to a realistic estimate of recoverable debt.

18.21 While the Department aims to recover as much employer debt as possible, it has no formal targets for recovering outstanding amounts.

18.22 The Department's rate of recovery of employer debts averages around 2% to 3% of the recorded opening outstanding debt level each year from 2010 to 2014. However, because the opening debt level includes an undetermined level of what is in reality uncollectable debt, this gives a distorted view of the Department's recovery performance.

18.23 Calculating the rate of recovery based on the debt recovered in a year (irrespective of age) relative to the level of debt recorded in the year indicates an average annual recovery rate of 7.4% over the period 2010 to 2014.[1]

18.24 However, this also presents a distorted view of the recovery performance, because the debt collected is not necessarily related to the debt recorded as collectable, and does not take account of carryover of collectable debt from previous periods.

Write-offs

18.25 The process for writing off debts is important to the proper management of debts to ensure that

- the value of the debt arrears gives an accurate picture of the amounts expected to be recoverable
- debt management resources can be targeted at debts which have a greater chance of recovery.

Write-offs should only occur where there is no reasonable prospect of recovery.

18.26 The DMU deals with debt write-off for both schemes, where it is determined that the debt is irrecoverable. Write-offs are carried out under delegated sanction from the Department of Public Expenditure and Reform.

18.27 Write-off occurs for the following reasons

- cases in which liquidations have been completed and/or the companies concerned have been struck off the register of companies
- cases in which receiverships have been completed and the receiver has disposed of all assets of the company
- cases involving bankruptcies
- cases such as partnerships and sole traders which have ceased trading and where the Department determines that the debt cannot be repaid
- cases in which the High Court has struck off or dissolved a company
- cases where the debt is over six years old.

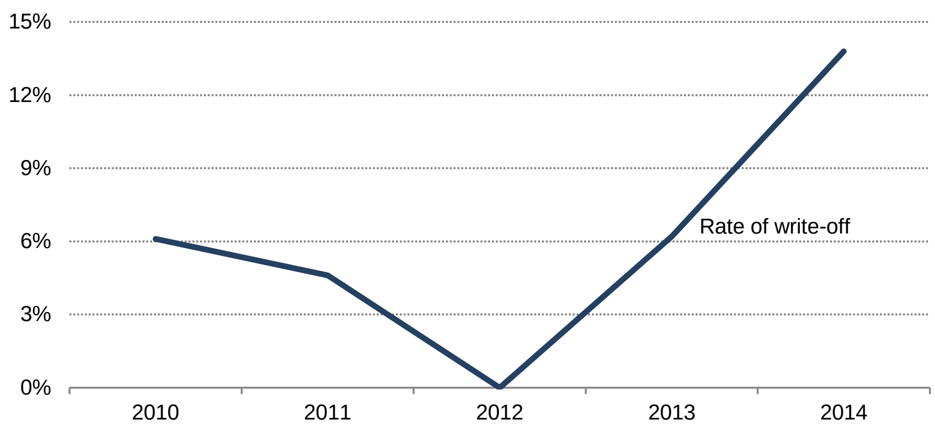
1 Applying a similar calculation to data from Great Britain and Northern Ireland National Insurance Fund Accounts yields comparable averages of 10.1% and 8.4% respectively.

18.28 Write-offs are carried out as an administrative procedure only, and the write-off of debt does not discharge the liability of the debtor to the SIF. Where a recovery is obtained following write-off, the payment is accepted. This happens rarely, such as a dividend paid when a liquidation is finalised where the Department had previously been informed that no dividend would be payable.

18.29 The audit noted that the Department does not have a written policy which sets out the thresholds and related authority for writing off debts.

18.30 Figure 18.3 indicates the rate of write-off for the past five years.

Figure 18.3 Rate of write-off of employer debt, 2010 to 2014



Source: Analysis by the Office of the Comptroller and Auditor General.

Note: The rate of write-off is calculated as the amount written off as a percentage of the balance at the start of the year.

Overpayment of Rebates

18.31 When the rate of rebate to employers changed from 60% to 15% in 2012, the Department's internal audit unit undertook an exercise for the first three months of the year to ensure that the correct rate of rebate was being applied. It identified overpayments to employers totalling €220,000 in a sample of 2012 cases, due to the incorrect rate being applied. It also found that in a number of cases where the employer could not pay the redundancy, the liability to the SIF was also miscalculated – understating the liability by €33,000. Around €157,000 of the overpayment had been recovered by 31 December 2014, and €63,000 remained outstanding.

18.32 The Department did not undertake a similar internal audit for the remainder of 2012, or for 2013 when the rebate rate changed from 15% to 0%. Instead, quality control checks were carried out by the Department to ensure the correct rebate rate was applied.

Conclusions and Recommendations

18.33 The amount of redundancy and insolvency debt recorded as outstanding from employers is rising year on year – from just under €200 million at end 2010 to almost €470 million at end 2014.

18.34 There is a discrepancy of over €44 million between the figure recorded by the Department's accounts section and reported in the SIF as a contingent asset, and the Department's debt records.

Recommendation 18.1

A review of the outstanding debt figure needs to be undertaken to ensure that a complete and accurate picture of the amount due for recovery is disclosed.

Accounting Officer's response

Agreed. A comprehensive review of the employer debt balances to the SIF commenced in October 2014 and is ongoing. The Department is in the process of migrating all legacy balances to DRAS and will undertake a full examination of all such balances. When this work has been completed, the Department will then have a clear categorisation of all the book balances and will be able to identify cases for write-off. It will also be in a position to provide a figure of employer debt which is more representative of actual recoverable debt. It is expected that this work will be completed by June 2016.

As part of this process, the Department has obtained up-to-date sanction from the Department of Public Expenditure and Reform for employer debt write-offs in 2013 and 2014. In addition, formal delegated sanction has been granted by the Department of Public Expenditure and Reform to write-off irrecoverable amounts due from employers on an annual basis, in accordance with the debt management and write-off policy.

18.35 The Department has not formally set out policies and procedures to be followed for employer debt management or debt write-off, and does not set performance targets for debt management, even though it is over four years since it took over the direct administration of the schemes.

Recommendation 18.2

The Department should set out and implement formal policies and procedures for management and write-off of employer related debts.

Accounting Officer's response

Agreed. The Department has finalised and commenced implementation of new debt management and write-off policy and guidelines for the redundancy and insolvency schemes. The policy and guidelines provide the framework for the on-going debt management, recovery and write-off processes in respect of employer debt to the SIF.

18.36 Balances due to the SIF are subject to the normal statute of limitation rules. Therefore, where the Department has not initiated any debtor contact (in relation to legacy debt that transferred from the Department of Justice, Enterprise and Innovation and that was not recorded on ODM) or sent reminders where there was no response to initial debt recovery communication (in relation to debt recorded on ODM up to 1 October 2014), the Department is limiting the timeframe it has to pursue these debts. Some may already be statute barred.