

22 Welfare Overpayment Debts

- 22.1** The Department of Social Protection (the Department) makes welfare payments to about 1.4 million people each week. Its overall budget for 2012 is approximately €21 billion.
- 22.2** Cases of welfare payments in excess of entitlement may come to light where a claimant provides new information voluntarily or as a result of control activity by the Department. When an excess payment is identified, the payment is terminated or the amount is reduced to the correct level. A legally-enforceable overpayment debt may be recorded.
- 22.3** The Department's Fraud Initiative 2011-2013, published in September 2011, recognised that an effective deterrence regime is important. It recognised that if a perception exists that the likely penalty or sanction for committing fraud is minimal relative to the potential gain, fraudulent activity will not be discouraged and is likely to continue. The Fraud Initiative noted that effective debt recovery is an integral part of the deterrent regime as it creates a climate where people who have received overpayments are aware of their responsibility to repay and that the Department will take appropriate steps to effect recovery of the debt.
- 22.4** This chapter examines the Department's effectiveness in accurately recording overpayment debts, recovering amounts due and prosecuting cases where there is evidence of significant fraud. The management information available to enable the Department to assess the effectiveness of its efforts to recover overpayments was also examined.
- 22.5** The audit fieldwork consisted of a review of the Department's policies in relation to the recording, recovery, cancellation and write-off of overpayment debt. Two local offices – Clonmel and Navan Road (Dublin) – and the Central Overpayment and Debt Management Unit were visited to examine implementation of the Department's debt management policy. In addition, the number of overpayment cases resulting in prosecutions and the outcomes achieved were examined.

Overpayment Debts Outstanding

- 22.6** The value of welfare overpayments recorded has increased steadily since 2007 (see Figure 22.1). Recovery of debt has also increased but, on an annual basis, the value of new overpayments exceeds the amount recovered. As a result, the total stock of overpayment debt due for recovery has increased from €232 million at the end of 2007 to €343 million at the end of 2011.

Figure 22.1 Movement in the Department's debt balances 2007 to 2011

	2007	2008	2009	2010	2011
	€m	€m	€m	€m	€m
Outstanding debts at 1 January	149.5	232.1	256.6	276.6	314.8
Prior year adjustments	61.6 ^a	1.8	(1.0)	—	—
Overpayment debts recorded	50.5	55.6	66.8	83.4	92.4
Debts cancelled	(1.4)	(1.1)	(1.3)	(2.2)	(6.7)
Debts written off	(4.3)	(4.9)	(11.6)	(8.5)	(5.6)
Total recoverable debts	255.9	283.5	309.5	349.3	394.9
Debts recovered ^b	(23.8)	(26.9)	(32.9)	(34.5)	(51.5)
Outstanding debts at 31 December	232.1	256.6	276.6	314.8	343.4

Source: Department of Social Protection

Notes: a Adjustments were required after the introduction of the Department's Overpayment Debt Management system in November 2006. The adjustments related to debts that had previously been written off for accounting purposes (€44 million) but were considered to be potentially recoverable and overpayments not previously recorded centrally (€17 million).

b Debts recovered through cash received, or welfare payments withheld.

- 22.7** 72% of the value of overpayment debts recorded in 2011 were in relation to social assistance payments. In total, overpayments were recorded in relation to over 63,000 claimants in 2011 (See Figure 22.2).

Figure 22.2 Number and Value of Overpayments 2007 to 2011

	2007	2008	2009	2010	2011
	€m	€m	€m	€m	€m
Value of overpayments recorded					
Social insurance	17.7	18.5	20.3	27.7	26.0
Social assistance	32.8	37.1	46.5	55.7	66.4
Total	50.5	55.6	66.8	83.4	92.4
Number of overpayment cases					
Social insurance	26,250	29,490	24,630	26,300	23,750
Social assistance	20,150	19,610	17,880	26,300	39,560
Total	46,400	49,100	42,510	52,600	63,310

Source: Department of Social Protection

Causes of Overpayments

- 22.8** The Department distinguishes between overpayments it attributes to fraud or suspected fraud, client or departmental error, and Estate cases. Overpayments in Estate cases arise where mandatory returns to the Department from the estates of deceased individuals indicate that the individual may have received welfare payments in excess of entitlement. The breakdown of overpayments over the period 2007 – 2011 is shown in Figure 22.3.

Figure 22.3 Breakdown of Recorded Overpayments 2007 to 2011

	2007	2008	2009	2010	2011	
Value of overpayments recorded	€m	€m	€m	€m	€m	%
Client error	19.7	24.1	31.5	42.4	40.5	44
Fraud or suspected fraud	21.4	21.1	20.7	25.9	34.9	38
Estate cases	6.7	7.3	10.6	9.9	11.5	12
Departmental error	2.7	3.1	4.0	5.2	5.5	6
Total	50.5	55.6	66.8	83.4	92.4	100

Source: Department of Social Protection

Accurate Recording of Overpayments

- 22.9** When an overpayment is detected, it is recorded on the Department's payment system and the Overpayment Debt Management system (ODM) — a separate computer system introduced in 2006 to manage overpayment debt.
- 22.10** The extent to which overpayments were accurately recorded on the Department's payment system and on ODM was examined on a sample basis. In general, the cases examined in both local offices were accurately recorded on both systems.
- 22.11** In Navan Road, a number of overpayments in respect of Supplementary Welfare Allowance (SWA) had been recorded on the Department's payments systems but had not been recorded in ODM. These accounted for 14% of the value of the sample cases examined. The Department stated that prior to October 2011, the Community Welfare Service, which had responsibility for SWA, did not have direct access to ODM. The practice was for Community Welfare Officers (CWOs) to forward details of SWA overpayments to the Department's local offices or to the Central Overpayment Debt Management Unit for upload to ODM, but this did not happen in all cases. The Accounting Officer noted that the non-recording of overpayment debts on ODM would not have affected the Department's efforts to recover the overpayment.
- 22.12** The Accounting Officer stated that since the integration of the Community Welfare Service into the Department (in 2011), work has been ongoing to ensure that all former CWOs fully adhere to the Department's debt recording procedures. Divisional managers are also working to ensure that all future SWA overpayment debt is recorded in a more timely manner.
- 22.13** A sample of 60 cases with overpayment balances recorded on ODM was also examined. It was found that all the overpayments in that sample were also recorded on the Department's payments system.

Recovery of Overpayments

- 22.14** The Department seeks to recover overpayments in a variety of ways, and takes account of whether the individual continues to receive welfare payments. The methods used include lump-sum payments from the claimant, standing orders, the withholding of arrears and/or deductions from future welfare payments.
- 22.15** Recovery of overpayments is attempted in the first instance by local offices and scheme headquarters. Where an individual is claiming welfare payments, the Department can seek to recover the overpayment via a deduction from future entitlements. An overpayment on a scheme may be recovered from future payments under any other scheme, with the exception of Child Benefit. Deductions from Child Benefit may only be made for Child Benefit overpayments. In order not to impose undue hardship, the Department does not recover overpayment debts from bereavement or respite care grants.
- 22.16** There is a statutory requirement that no deduction to recover an overpayment, regardless of the cause, will reduce the payment to an individual below the SWA rate appropriate to his/her circumstances. Consequently, the maximum amount the Department can usually recover from individuals, is the difference between their current entitlement and the applicable SWA rate. Larger deductions can be applied only if agreed in writing between the Department and the individual.
- 22.17** Where the individual is no longer claiming welfare payments, the Department seeks to agree a recovery plan. In cases where the debt is over €1,000 and a recovery plan cannot be agreed, the overpayment is referred to the Department's Central Overpayment and Debt Management Unit.
- 22.18** In cases where all recovery options have been pursued (by the local office and the Central Overpayment and Debt Management Unit) and the outstanding debt is in excess of €5,000, the overpayment is referred back to the local office so that legal proceedings can be considered.¹ Where the debt is less than €5,000, a letter is issued to the debtor advising that the debt will remain on the system and will be deducted from any future entitlements.
- 22.19** The Department stated that its recovery procedures are the same irrespective of the cause of the overpayment. It does not distinguish in its approach between overpayment debts arising as a result of client or departmental error and those arising as a result of fraud. However, in cases of serious fraud, consideration is given to criminal prosecution. The amounts recovered by recovery method are set out in Figure 22.4.

Figure 22.4 Overpayments recovered by method of recovery 2007 to 2011

Recovery Method	2007	2008	2009	2010	2011
	€m	€m	€m	€m	€m
Welfare benefits withheld	11.2	11.3	16.9	19.7	24.2
Cash from estate cases ^a	4.8	7.1	8.7	7.2	14.1
Other cash receipts	7.8	8.5	7.3	7.6	13.2
Total recovered	23.8	26.9	32.9	34.5	51.5

Source: Department of Social Protection

Note: a Direct payments received in relation to Non-Contributory State Pension overpayments. Most of these overpayments are identified following the deaths of claimants.

¹ This includes civil proceedings to recover debt and criminal prosecutions in the case of fraud.

Recovery Rate

- 22.20** The Department's success in recovering overpayments can be monitored in terms of amounts recovered each year relative to the total debt due for recovery in the year. Recoveries in 2011 amounted to 13% of the total recoverable debt. Between 2007 and 2010, the Department had succeeded in recovering between 9% and 11% of the total debts listed for recovery.
- 22.21** A better measure of the effectiveness of debt recovery is the percentage of debt for a specific period which is recovered. As a result of current reporting limitations in the ODM system, the Department was not in a position to provide a report showing for each year, the total overpayments recorded, the amounts recovered, cancelled or written off to date and the current balance owing. However, the Department was able to provide data showing the current balance outstanding in relation to overpayments raised in the period 2007 to 2011. How debts were cleared in the intervening period (recovered, cancelled or written off) was not identifiable.
- 22.22** An estimated 59% of the overpayments recorded during 2011 remained outstanding at the end of June 2012. The proportion of overpayment debt outstanding in respect of earlier years was progressively lower, which is consistent with the longer periods for recovery. Notwithstanding this, the estimated proportion of overpayment debt recorded during 2007 that remained outstanding some five years later was significant, at 39% (see Figure 22.5).
- 22.23** Data provided by the Department indicated that approximately 26% of the debt at the end of June 2012 was less than 18 months old, with 27% aged between 18 months and five years and the remaining 47% being greater than five years old.

Figure 22.5 Aged Analysis of Overpayment Debt, 2007 to 2011

	Overpayments recorded	Balance outstanding (June 2012)	Proportion outstanding
	€m	€m	%
2007	50.5	19.5	39%
2008	55.6	23.5	42%
2009	66.8	31.1	47%
2010	83.4	42.2	51%
2011	92.4	54.7	59%

Source: Comptroller and Auditor General analysis of overpayment data supplied by the Department

Recovery of Overpayments at Local Offices

22.24 Thirty overpayments recorded in Clonmel and thirty three in Navan Road were examined to review the success of the local offices in recovering overpayment debts.² Compliance with the Department's debt recovery procedures was also examined. At April 2012, the performance of the two local offices was as follows

- The Clonmel local office had recovered 21% of the value of overpayments raised in the sample cases and had active recovery plans in place in relation to a further 24%. No recovery plans were yet in place in respect of the remaining 55% of overpayments.
- At Navan Road, 12% of the value of overpayments in the sample cases had been recovered and active plans were in place to recover another 27%. It was found that no recovery plans were in place in respect of 59% of overpayments. The remaining 2% of overpayments had been cancelled.

22.25 Cases where an overpayment balance was outstanding and where no active recovery plan was in place were examined, to assess the efforts made by the local offices to recover the overpayment and to review compliance with the Department's recovery guidelines. The results are set out in Figure 22.6.

22.26 In relation to the 15 cases examined in Clonmel where a recovery plan was not in place, it was found that the local office had complied with the Department's guidelines on overpayment recovery in respect of 20% of the value of overpayments raised. In almost two thirds of the cases, overpayments had not been referred to the Central Overpayments and Debt Management Unit (CODMU), even though the debt exceeded €1,000 and the individual was no longer claiming welfare payments. In the remaining 16% of cases, the individual was in receipt of welfare payments but no deductions were being applied to recover the overpayment debt.

Figure 22.6 Status (April 2012) of Sample Cases where no Recovery Plan was in place

	As proportion of overpayment value	
	Clonmel	Navan Road
Overpayment debt under appeal	6%	—
Case referred to CODMU ^a (debt exceeding €1,000)	6%	—
Case referred to Central Prosecutions	8%	—
Case not referred to CODMU (debt below €1,000)	—	1%
Recovery actions compliant with guidelines	20%	1%
Case not referred to CODMU (debt exceeding €1,000)	64%	98%
Claimant receiving current payments with no deduction	16%	1%
Recovery actions not compliant with guidelines	80%	99%

Source: Comptroller and Auditor General audit testing.

Note: a The Central Overpayments and Debt Management Unit.

² Eight cases related to overpayments in 2011, 45 related to 2010 and ten related to earlier years.

- 22.27** In relation to the 18 cases examined at Navan Road where a recovery plan was not in place, it was found that departmental guidelines had been complied with in respect of just 1% of the value of overpayments raised. Almost all of the non-compliance related to instances where overpayments in excess of €1,000 had not been referred to the CODMU.
- 22.28** During the audit, staff in Navan Road local office indicated that departmental guidelines relating to the recovery of overpayments had not been complied with because they had not been aware of the various guidelines and applicable circulars.
- 22.29** The Clonmel local office has introduced its own system, within the framework specified in the Department's guidelines and circulars, to increase its effectiveness in managing overpayments. A 'red card' is attached to all case files where there has been an overpayment. The card details the overpayment amount, the date the overpayment arose and details of the recovery plan, if one is in place. This card remains in place until the overpayment has been fully recovered. This is a simple but effective way of highlighting claims with an overpayment debt and mitigates the risk of such files being destroyed in error.³

Recovery by the Central Overpayments and Debt Management Unit

- 22.30** The total number of cases referred from all local offices to the CODMU is set out in Figure 22.7.

Figure 22.7 Overpayment cases referred to CODMU 2008 to 2011

	Number of cases
2008	180
2009	258
2010	182
2011	244

Source: Department of Social Protection

- 22.31** According to the Department's guidelines, cases should be referred to the CODMU if the overpayment is in excess of €1,000, the individual is no longer receiving welfare payments and a recovery plan cannot be agreed. The Department stated that the number of cases fulfilling these criteria in 2011 was approximately 4,500. The number of cases actually referred to the CODMU during 2011, at 244, appears low in comparison, about one in 20 of the eligible cases.
- 22.32** As part of this examination, the number of cases referred to CODMU in 2011 by each of the Department's 61 local offices was reviewed. It was found that 35 local offices did not refer any cases to CODMU in 2011, 24 offices referred between one and ten cases and two offices referred more than ten cases.

³ The Department's policy in relation to file retention outlines general considerations to be taken into account in the decision to destroy files. Subject to the general considerations set out in the policy, the decision is at the discretion of individual scheme managers. The policy is not explicit in relation to the appropriate retention period for case files where there has been an overpayment.

22.33 The 15 largest cases (totalling €800,000 in value) referred to the CODMU in 2011 were reviewed to examine its success in recovering amounts due and its recovery efforts in relation to those cases where a recovery plan was not agreed. It was found that the CODMU had active recovery plans in place in relation to five overpayments, accounting for 27% of the value of overpayments in the cases reviewed. At 31 December 2011, a total of €1,400 had been recovered in respect of the 15 cases reviewed — this represents less than 0.2% of the total value of the overpayments recorded.

22.34 There were ten cases where the CODMU had no active recovery plan in place at end December 2011.

- In one case, involving a debt of €55,000, the CODMU sent a letter to the claimant in October 2011 but has not taken any further recovery action. The Department stated that no further action has been taken in this instance as the customer is querying the nature of the overpayment and the case has been referred back to the scheme area for further investigation. The Accounting Officer informed me that the status of the case was reviewed in May 2012 and July 2012 and is still under investigation. She stated that it is normal practice in such cases to await the outcome of the investigation, before taking any further debt recovery action.
- In another case, involving a debt of €38,000, a recovery plan was agreed and put in place but then the payments ceased. Letters were sent in September 2011 and January 2012 and cash amounts of €100 were received in response to each. The Department stated that it is the practice for some individuals to make irregular payments and that, in this case, a statement had been sent requesting the individual to continue making regular payments. The Accounting Officer noted that normal practice had been followed in this case and that a further request for recovery issued in May 2012.
- In the remaining eight cases, totalling €490,000 (an average of over €61,000 per case), the CODMU had followed the prescribed recovery procedures but had not succeeded in agreeing a recovery plan. Over one third of these overpayments, in value terms, was attributed to suspected fraud cases and the remainder was classified as due to client or departmental error.

22.35 In relation to the three cases attributed to fraud, amounting to €171,000, the CODMU noted that

- One overpayment to the value of €89,000 had been referred back to the scheme area for legal proceedings to be considered. The Department's Central Prosecutions Service subsequently deemed that the case was not suitable for legal proceedings. The Accounting Officer stated that the Department will nevertheless continue to pursue the debt.
- In another case (involving a debt of €44,000), the original overpayment had amounted to €95,000 but €51,000 had been written off. The matter is being further reviewed by the CODMU.
- In the remaining case (involving €38,000), it was confirmed that an amount of €25 had been recovered, but the Department stated that recovery action had been suspended while it was being established whether the individual had made any more repayments which the CODMU had not been notified of. The Accounting Officer stated that this customer is continuing to make cash payments on an irregular basis and is being monitored by the CODMU.

- 22.36** In relation to the five cases attributed to client or departmental error (with a combined value of €319,000), the CODMU noted that
- Two cases were referred back to the scheme area and it was decided that they were not suitable for legal proceedings. The Accounting Officer stated that the Department will nevertheless continue to pursue the debt.
 - In another case, the whereabouts of the customer is not known, so recovery action cannot be taken.
 - Of the remaining two cases, one is being pursued via a request for recovery sent to the welfare system in another state and the other is being queried with the relevant branch office. The branch office is seeking deductions from the claimant's partner who is in receipt of Jobseekers Allowance and is now being paid an adult dependent allowance in respect of the claimant.

Cancellation and Write-Off of Overpayments

- 22.37** The Department can decide to cancel or to write off overpayment debts. Overpayments can be cancelled in instances where it is deemed by a deciding officer or appeals officer that no overpayment actually occurred or that an overpayment was recorded in error. Overpayment debts can be written off (in accordance with relevant legislation) where it is deemed that there is no realistic prospect that the debt will be repaid.⁴ Such cases can arise where an individual dies without leaving an estate, pursuit of an overpayment becomes statute barred, or where an overpayment debt is small and arises from an error by the Department.⁵
- 22.38** Departmental guidelines provide examples of instances where overpayments may be cancelled or written off. The current system does not provide for the approval or review of a decision to cancel or write off overpayment debts. There is no segregation between the decision to cancel or write off an overpayment and the execution of that decision. There is no provision for regular review by management of cancellations and write-offs. However, local staff stated during the audit that write-offs and cancellations can only be recorded by officers with supervisory access on ODM – usually officers at the level of Staff Officer or higher.
- 22.39** Files for a sample of cases in the two local offices visited were examined to establish whether adequate evidence was held in respect of the cancellation or write-off of overpayment debts. The majority of cases selected referred to overpayment debts written off or cancelled in the period 2009 to 2011.

⁴ Provided for under Article 246 (5) of SI 142 of 2007.

⁵ When an overpayment arises, the Department must inform the individual within a six-year timeframe in order for recovery to be pursued.

22.40 In relation to the sample of files reviewed at the Clonmel local office (30), the results were

- Documentation on 16 of the files examined provided adequate evidence in relation to the decision to cancel or write off the overpayment.
- In eight cases, there was inadequate documentation on file to explain the reasons for the decision to cancel or write off the overpayment.
- In three cases, review of the supporting documentation showed that no cancellation or write-off had actually taken place. The reductions in the overpayment balance actually arose from amounts being recovered from the customer but the transaction was incorrectly recorded on ODM as a cancellation or write off.
- Three files were in other offices and not available for review.

22.41 In the Navan Road local office, the results of a sample of files reviewed (25) were

- Documentation on ten of the files provided adequate evidence in relation to the decision to cancel or write off the overpayment.
- In five cases, there was no documentation on file relating to the original overpayment or the decision to cancel it or write it off. In one of these cases, the claimant was not in receipt of welfare payments during the period in respect of which the overpayment was recorded on ODM.
- In one case, an overpayment (of €1,326) had been written off and a second overpayment (of €428) recorded but there was no documentation on file to explain the transactions.
- Six files were in other offices and were not available for review.
- Three files had been destroyed.

Performance Measurement

22.42 The ODM system introduced in November 2006 is the primary system for recording and managing the Department's overpayment debt. In order to be an effective management tool, a debt management system should have a number of features including an ability to produce management information to assist in evaluating effectiveness in recovering overpayment debt, and reports showing the total overpayment debt segmented according to the specific characteristics of the debt which would allow staff to devise and implement appropriate recovery actions. It would also be desirable for the system to have case working functionality which would allow for the automatic production of correspondence to the debtor as well as issuing alerts when recovery actions are required.

22.43 The Department's ODM system was assessed against these criteria as part of this examination.

Management Information

- 22.44** The Department does not routinely analyse overpayment debt outstanding, by size of debt, in order to identify high value cases that could be prioritised for further recovery action. It takes the view that all overpayments (including those of high value) are managed by the scheme area of payment.
- 22.45** Analysis produced by the Department for the purposes of this examination showed that 2% of the debt cases at 31 December 2011 related to overpayments in excess of €20,000 and accounted for over one third of all overpayment debt outstanding. 70% of cases related to overpayments of less than €1,000 each and accounted for just over 8% of the value of debt outstanding.
- 22.46** Ideally, the management information system would facilitate monitoring of debt management activity on a periodic basis using a number of key performance indicators including: the overall recovery rate for debt where a reasonable amount of time has elapsed; the recovery rate by individual local offices and the time taken to recover debt. However, it was noted that the system, as currently constituted, is not capable of producing reports which identify the overall recovery rate, by year and by scheme type and cannot produce reports which allow the effectiveness of recovery actions of individual local offices to be compared.
- 22.47** The Department stated that the most reliable indicator of debt management is its success in recovering outstanding debt and that this is closely monitored year on year.

Case Management

- 22.48** An overpayment debt management system would, ideally, be capable of recording the recovery actions taken on individual cases and automatically producing alerts when the next action is required.
- 22.49** Both the local offices and the CODMU use spreadsheets to record and monitor the recovery actions taken in relation to individual cases. Reliance on this (effectively manual) system has led to delays and instances of follow-up correspondence not being issued within the timeframes specified in Department guidelines and procedures.
- 22.50** In addition, the system does not produce a list of cases where, although a recovery plan had been agreed, the repayments have ceased. The Department should have automated alerts in such cases to ensure that recovery action can recommence.

Enforcement Options

- 22.51** The 2010 Report on the Accounts of the Public Services noted the Department's intention to carry out a review during 2011 of its overall approach to recovery of overpayment debt. The Accounting Officer provided the following updates on the options identified.
- **Removing the current restriction on the recovery of overpayments** — This option was explored in the context of preparing the Social Welfare Act 2012, but a number of issues arose which were too complex to resolve in the legislative timeframe. A working group has been established within the Department with a view to making recommendations for any necessary legislative changes in late 2012.
 - **Recovering overpayments through the tax system** — This option is likely to require legislative changes for both the Department and Revenue. Agreement in principle has been reached between the two parties and the necessary work to activate the measure is being progressed.
 - **Recovering overpayments from other State payments including redundancy, farm payments and student grants** — Regarding the potential for recovering overpayments from farm payments and student grants, initial contact was made with the Departments of Education and Skills and Agriculture, Food and the Marine in March 2012 and discussions are ongoing in relation to the practical issues arising. The option of recovering overpayments from redundancy payments is still under consideration in the Department.
 - **Pursuing overpayments from other EU member states** — EU regulations provide a mechanism to recover overpayment debts arising in one member state from social welfare payments made in another member state. However, a number of potential issues arise including the difficulty in establishing whether individuals have gone abroad, where they have gone and whether they are in receipt of social welfare payments in another member state. The Department is still considering how this option for recovery can be pursued effectively.

Legal Enforcement

- 22.52** Legal action by the Department may entail criminal prosecutions in relation to significant cases of welfare abuse and/or civil proceedings to facilitate the recovery of scheme overpayments or the collection of Pay Related Social Insurance arrears.⁶

Criminal Prosecution Cases

- 22.53** The number of cases referred for criminal proceedings in 2011, either under social welfare legislation or the Criminal Justice (Theft and Fraud Offences) Act 2001, was 381. The equivalent figure for 2010 was 341.
- 22.54** At the beginning of 2011, the Chief State Solicitor's Office (CSSO) and local state solicitors had a total of 742 criminal cases on hand that had been referred to them by the Department. A further 207 cases were referred during 2011, bringing the active caseload for the year to 949.
- 22.55** In 2011, the Department's Special Investigation Unit concentrated its attention on serious fraud involving impersonation and multiple claiming of social welfare payments. A total of 174 of these cases were referred by the Department to An Garda Síochána in 2011, for possible prosecution under the Criminal Justice (Theft and Fraud Offences) Act 2001, as compared to 132 in 2010.

⁶ Apart from overpayments of welfare, debts to the Department may arise where employers evade payment of Pay Related Social Insurance (PRSI) contributions that are due.

22.56 Overall, between 2% and 3% of cases classified as fraud are referred for prosecution. In general, cases prosecuted are those that involve high value overpayments. The average overpayment in cases that were the subject of court proceedings finalised in 2011 was €7,700, whereas the overall average of overpayment cases classified as fraud was around €1,700.

Outcome of Prosecution Cases

22.57 Excluding any cases finalised in court under the Criminal Justice (Theft and Fraud Offences) Act 2001, the number of criminal prosecution cases pursued by the Department against welfare payment recipients has been decreasing in recent years. A total of 209 cases were finalised in 2011, as compared to 246 in 2010 and 347 in 2009. In 2011, a further 56 cases that had been referred to the CSSO in prior years, and where summonses remained unserved, were finalised without court proceedings.

22.58 Almost two thirds of the cases finalised in court resulted in fines being imposed. In some cases, the fines were accompanied by other penalties such as community service, a prison sentence or a suspended sentence. The average fine imposed in 2011 was just under €700.

22.59 In addition to proceedings against welfare recipients, nine employer-related cases were finalised in 2011 (seven in 2010). Two of these cases were struck out. In five cases, fines were imposed, averaging €780 each. The Probation Act was applied in the other two cases.

22.60 At the end of 2011, 675 criminal cases were on hand and at various stages of the prosecution process.

Civil Debt Enforcement Proceedings

22.61 The Department pursues civil proceedings as a means of recovering debts only where there is a reasonable expectation that the debtor has sufficient means to discharge the debt. The Department's use of civil proceedings to recover amounts due has been limited.

22.62 Between 2007 and 2011, the Department finalised a total of 125 civil proceedings. Positive outcomes were achieved in 63 cases which included

- lump sum settlements agreed in six cases resulting in the recovery of debts amounting to €206,000
- the agreement of instalment arrangements in 52 cases
- judgements in favour of the Department in five court cases.⁷

22.63 The remaining 62 cases were terminated due to changes in the circumstances of the debtor (39 cases) or because the case had become statute barred. At the end of 2011, the Department had 48 civil cases that had yet to be finalised. The equivalent figure at the end of 2010 was 51.

⁷ These included decrees awarded (two cases), instalment orders granted (two cases) and a judgement mortgage (one case).

Conclusions and Recommendations

- 22.64** In a high proportion of the sample examined at two local offices, it was found that cases were not being referred to the Department's CODMU in accordance with departmental guidance. Staff at one of the local offices indicated that they were not familiar with the relevant guidelines and circulars.

Recommendation 22.1: The Department should ensure that local office staff are familiar with and comply with guidance issued. In particular, the Department should put procedures in place to monitor recovery plans and ensure follow-up in cases where payments cease.

Accounting Officer's Response: Agreed. Guidelines on overpayment recovery have recently been re-issued to all divisional managers with instructions that they again be brought to the attention of the relevant staff. The ODM system provides the means for staff to flag cases for follow-up where recovery plans cease.

- 22.65** Reviews conducted during the audit indicated that the prescribed recovery process was not complied with in a significant number of cases. Monitoring local office recovery rates and referral of cases to CODMU (by local office) would provide the Department with useful indicators of the extent to which local offices were complying with guidance in relation to recovery of overpayments. Such analysis is not currently conducted.

Recommendation 22.2: The Department should monitor the performance of local offices including debt recovery rates and rates of referral of cases to CODMU, so that good practice from those with high recovery rates could be shared with those having lower recovery rates.

Accounting Officer's Response: Agreed. The Accounting Officer stated that local offices have been asked to identify cases where overpayments exist and where a recovery plan is not in place and to identify good debt recovery practices in their local offices.

- 22.66** For cases that were referred to CODMU in 2011, it was found that while the Unit succeeded in agreeing recovery plans for just over one quarter of the value of overpayment debt, at 31 December 2011, less than 0.2% of the debt had been recovered in relation to the fifteen largest cases with debts totalling €800,000.

- 22.67** There are no set criteria that must be satisfied before an overpayment can be cancelled or written off. There is an approval procedure for decisions to cancel or write off overpayments but these transactions are not subject to management review, even on a sample basis. In a significant proportion of cases reviewed during the audit, there was insufficient information on file to verify the cancellation or write off.

Recommendation 22.3: A standard approach, across all offices, should be implemented by the Department in relation to the cancellation or write-off of overpayment debt. At a minimum, there should be a standard form detailing the background and reason for the decision, which should be completed and signed by the relevant officer. The Department should consider the implementation of an approval process and random reviews by management of decisions to cancel and write off overpayment debts.

Accounting Officer's Response: Agreed. The Department is examining the guidelines for write-off of overpayments and updated guidelines will be finalised in autumn 2012.

- 22.68** In the period 2007 to 2011, approximately 36% of overpayments recorded were attributed to fraud or suspected fraud. In 2011, overpayments totalling €35 million were attributed to fraud. The rate of recovery of debt attributed to fraud is not known.
- 22.69** The proportion of fraud cases where prosecutions are taken is low, typically in the range of 2% to 3%. The Accounting Officer stated that the Department aims to ensure that prosecutions are taken in more serious cases, where there is strong evidence of fraud. The factors that the Department takes into account when considering whether to commence legal proceedings include the duration of the fraud, the amount of the overpayment and any previous incidences of social welfare fraud.
- 22.70** The Overpayments Debt Management (ODM) system introduced in 2006 is the primary system used by the Department to manage overpayments. The system requires development to enable effective management of the debt.

Recommendation 22.4: The Department should develop the ODM system in order to allow for effective pursuit of overpayment debt and provide adequate information to monitor overall departmental performance as well as the performance of individual local offices in recovering overpayments. The ODM system should facilitate the monitoring of recovery rates in respect of the period the overpayment was recorded broken down by the cause of the overpayment.

Accounting Officer's Response: Agreed in part. Since the introduction of ODM, the Department's ability to manage and report on its overpayments has been significantly enhanced. The legislation concerning overpayments is complex, so the system must accommodate a range of rules and requirements. The Department recognises that further enhancements are required and these are part of the planned evolution of the system which will be examined over the coming months. This examination will take account of the issues raised by the Comptroller and Auditor General and will also consider the feasibility and cost of developing the ODM system. In the meantime, the following actions are being taken to improve the Department's debt recovery procedures

- All scheme owners and divisional managers have been requested to ensure that their staff are familiar with the debt management guidelines.
- All scheme owners and divisional managers have been requested to ensure that the maximum deduction appropriate in each overpayment case is put in place.
- Timely recording of Supplementary Welfare Allowance overpayments will be pursued through divisional managers.
- Guidelines for write-off procedures of overpayments will be updated.
- The central monitoring of local offices with regard to recovery will be examined.