



## ***An Coiste um Chuntais Phoiblí***

**Tuarascáil a eascraíonn as na nithe seo a leanas a scrúdú:-**

- 1. Socruithe babhtála talún i dtaca le tithíocht incheannaithe a sholáthar**
- 2. Tionscadal an Fhoirgnimh Paiteolaíochta Stáit**
- 3. Stiúrthóir Dhánlann Náisiúnta na hÉireann a cheapadh**
- 4. Failíocha sna rialuithe in Institiúid Teicneolaíochta Phort Láirge**

**Deireadh Fómhair 2014**

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## ***Public Accounts Committee***

**Report arising from the examination of:-**

- 1. Land swap arrangements in the provision of affordable housing**
- 2. The State Pathology Building Project**
- 3. The appointment of the Director of the National Gallery of Ireland**
- 4. Lapses in controls at WIT**

**October 2014**



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### **Chairman's Preface**

I welcome the publication today of this Committee Report on certain hearings of the Committee held in late 2013 and in 2014. This Report is one a number of reports that will be published by the Committee this year. The four topics covered in this report have a degree of overlap with each other, such as weaknesses in oversight, a failure to coordinate the delivery of either a project or a contract and the consequent cost to the State of that failure and poor risk management. In reporting based on its examinations of the reports of the Comptroller & Auditor General, the Committee's focus is on what lessons can we take so that other public bodies will not find themselves facing similar problems in the future. That is because, in acting as the taxpayers watch-dog, the PAC cannot undo what has gone wrong, but it can call those who were responsible to account for their stewardship of public funds and get explanations which will help others avoid the same mistakes.

One of the key issues for the Committee when dealing with expenditure that does not deliver on intended outcomes is to consider the opportunity cost of that spend. In the case of the €4 million that was ploughed into developing a suite of offices for the State Pathology Service for example where there was no return for that money or the €1million legal costs in the case of the land swap, there is an opportunity cost in this as that money could have been used to deliver a number of new schools for example. Likewise the Department of the Environment and the OPW will have to meet certain liabilities to NAMA running into millions over a five year period and while that money is tied up in NAMA it means that it is not available to the State to deliver key infrastructure projects.

What this Report points out in its recommendations is that there is scope to do better and ultimately delivering value for money is the bottom line when it comes to spending taxpayers money.

It is now a matter for the relevant Government Departments to review recommendations of the PAC and I anticipate that all recommendations will be accepted and implemented.

I commend this report to Dáil Eireann

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John McGuinness, T.D.,  
Chairman,  
Public Accounts Committee,  
2<sup>nd</sup> October, 2014

## CHAPTER ONE

### Land Swap Arrangement in the Provision of Affordable Housing

#### **Introduction**

The Committee examined one case involving a land swap arrangement where the State failed to deliver on its part of the arrangement and incurred legal and other costs when a High Court challenge was initiated by the developer. In this case the State's site was in Harcourt Terrace and at the time the agreement was made in 2006 it was in use as a Garda Station. While the site was owned by the OPW, the contract to deliver the affordable homes in return for the State's site in Harcourt Terrace was between the developer and the Affordable Homes Partnership, which was a body established by the Government to deliver affordable housing at that time.

#### **Accountability issues**

The Committee examined this issue with the Accounting Officers from the Department of the Environment, Community and Local Government and the OPW at a meeting on 30<sup>th</sup> January 2014. The accountability issues that arise relate to

1. The failure of the State to deliver on its commitment and
2. The costs arising from the non-delivery of the site.

#### **Background**

In 2004, the Government, in order to address the shortfall in the availability of affordable housing, decided to pursue land swaps as a means of delivering affordable housing in an accelerated way. High value parcels of State owned land, which were surplus to requirements, were to be exchanged in return for the delivery of affordable housing units. As part of this process a number of sites, including army barracks that had closed, were identified by public authorities as suitable for disposal. In the case of the Harcourt Terrace site, the details of the transaction are outlined in Chapter six of the C&AGs Report<sup>1</sup>. In summary, the developer having delivered the affordable houses failed to secure vacant possession of the State's site and the High Court in 2012 awarded the developer €32.6 million. The State was also liable for other costs including the developer's legal costs.

#### **The inability of the State to deliver its commitment**

The normal process involving land swaps was that the State's land was handed over when the affordable homes were delivered. In this case when the contract was signed in 2006, the developer was in a position to hand over almost all the 215 houses in south Dublin and as the Harcourt Terrace was occupied, the contract provided that the site would transfer in 2008. The intent was that the Garda station located on the site would close when the new divisional headquarters opened in Kevin Street. It is clear from evidence given to the

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<sup>1</sup> [Chapter 6 C&AG's Report](#)

Committee that the OPW was concerned about the timeframe involved and in 2008 it commenced negotiations with the developer with a view to leasing back the site for a period of five years. When ultimately those negotiations broke down in 2010, the developer, having seen the value of the Harcourt Terrace site collapse, forced the hand of the State by seeking payment of the full value 215 affordable houses. The developer essentially got paid, in 2012 the full value for 215 houses at rates that had been set in 2006 when the property market was at its peak. The State authorities were somewhat fortunate that by the time the payment of €32.6 million was made, the developer's loans had been acquired by NAMA and therefore the majority of the Court award involved a circular payment between two public authorities. However the transaction does have cash flow implications for the State as the money that is transferred from the OPW and from the Department to NAMA over a five year period is not available for capital projects.

While the Department of Justice & Equality had put forward this site on Harcourt Terrace in 2004 as being suitable for a land swap, the facts are that the OPW was not in a position to close the Garda Station until the new station in Kevin Street became available and in 2006 the site works on the new station were making slow progress due to archaeological examinations. It should have been clear in 2007 when the contract was signed that the OPW would have been under pressure to relocate, even temporarily, the Gardaí in Harcourt Terrace and sufficient cognisance was not taken of this risk when the contract was signed between the Affordable Homes Partnership and the developer in 2007. The key learning point from this experience is that the degree of coordination between public bodies was not adequate and, where a number of public bodies are involved in a project, there is a need for a lead agency that has the power to deliver the project.

### **Cost to the State**

As outlined above, the fact that NAMA was the ultimate beneficiary of the High Court decision to compensate the developer has lessened the overall impact on the public finances. However a cash flow issue arises as the Department and the OPW have to pay over this money over a five year period and this has an opportunity cost in terms of the use that money could have been put into delivering infrastructure projects if the liability to NAMA did not have to be met.

When the contract was signed in 2006, it appears that the State was getting a favourable deal and the developer was carrying the major part of the risk as:

- The open market value at the time indicated that the 215 houses were worth somewhere in the region of €77 million
- The houses were sold as affordable homes for €46million, which placed a value on the discount of €31 million
- The value of the Harcourt Terrace site was deemed to be approximately €18 million.

When the matter was dealt with by the Courts in 2012, the value of the Harcourt Terrace site had fallen to €2.8 million. In effect therefore, and were it not for the fact that NAMA was going to be the beneficiary, the State would have ended up paying compensation of €31 million for a site that was then worth less than €3 million. What that shows is that the risks associated with this venture, which initially lay with the developer, had transferred in full onto the State. It would have been better in hindsight if the initial contract had placed a value on the Harcourt Terrace site which would then have provided a ceiling on the any potential claim in the event that the contract was not fulfilled.

In total the High Court awarded the developer €32.6 million and the State must also pay Court interests and the legal cost of the developer. An interim payment of €861,000 has been made to the meet the developers

legal costs, which have not been submitted and which will be subject to taxation. In addition the Chief State Solicitors Office incurred costs of €131,000 in respect of this matter.

## **Findings and Recommendations.**

### **Findings.**

1. The land swap for affordable housing scheme related to surplus State properties. As the States property in Harcourt Terrace was still in use when a contract was signed, it is clear that this property was not surplus to requirement. In the event the property only became available in 2012
2. The land swap for affordable housing involving the Harcourt Terrace site was complex and involved a number of Departments and agencies with no lead agency acting behalf of the State.
3. The State, as a result of a High Court judgement, paid in 2012 house prices that were based on 2006 values when the property market was at its peak.
4. The State has incurred extra costs of in excess of €1million arising from the failure to fulfil a land swap with a developer involving the Harcourt Terrace site.

### **Recommendations**

1. Public authorities should not enter into contracts to sell or lease State property without a degree of certainty that the property will be vacant and available for disposal.
2. When a number of State bodies are involved in property transaction with a third party, one agency should be designated the lead agency.
3. In order to avoid the State carrying all the risk, it would be advisable that a valuation be placed on property being transferred to third parties so that in the event of the transfer falling through, the entitlement to compensation is capped at the value of the property at the time of the contract to transfer is agreed.

## CHAPTER TWO

### State Pathology Building Project

#### Introduction

The State Pathology Service has operated since the 1990s from prefabricated accommodation in Marino on a site owned by Dublin City Council. This accommodation is unsuitable primarily because it lacks the range of facilities required for a modern pathology service. The Dublin Coroner's office, which includes the city morgue, is situated in adjoining prefabricated premises which have also been deemed unsuitable. In 2006, the Department of Justice & Equality and the Dublin City Council agreed to develop a modern 'medico-legal centre' facility in Marino which would cater for both services and funds were allocated to the Department from 2007 onwards to meet the construction costs. As outlined in the C&AG Report <sup>2</sup>, the project was not delivered; in 2012, the Department had to write off €2.73 million it had invested in the project; and the provision of this much needed facility has been delayed by at least ten years. In total €4.2 million of public funds was spent on this abandoned project.

#### **Accountability Issues**

The Committee examined the issues raised by Chapter 9 of the C&AG's Annual at its meeting on 13<sup>th</sup> March 2014, with the Accounting Officer of the Department of Justice and Equality <sup>3</sup> and the following accountability issues arise:

1. Lapses in project management
2. Nugatory expenditure by the State
3. Delivery of future capital projects

#### Lapses in Project Management

This project was not delivered primarily because of poor project management. Two events, both of which should have been foreseen, delayed the project by over two years and by the time construction did start, the collapse in the construction industry resulted in the appointed contractor going into receivership.

The two key delays were

1. Planning delays where one Government Department objected to the plans being supported by another Department
2. Procurement delays as the project team used an outdated tender document in 2008 and, following an objection by the Department of Finance, the entire project had to be re-tendered.

In the case of the planning issue, a capital project was being built on the site next to one of the States prime monuments, namely the Casino in Marino. The Committee is of the view that issues and concerns of the State body charged with the protection of our National Monuments should have been dealt with prior to a

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<sup>2</sup> [Report of C&AG](#)

<sup>3</sup> [PAC Meeting 14th March 2014](#)



planning application being submitted given especially that the applicants were also public bodies. It is always undesirable for State bodies to find themselves on opposite sides when matters are being dealt with by independent tribunals such as the courts or in this case the planning authorities.

In the case of the procurement issue, the tender competition was launched in August 2008 and the form of contract that was used had been replaced in February 2007. Again, this is a basic error which proved costly in that the whole project had to be retendered. It simply should not have happened.

These two issues caused the project to be delayed until 2010 and do not reflect well on the capacity of the public bodies. Had either of these two delays not occurred it is likely that the State Pathology would now have its new facility.

### **The Cost**

When the decision was made in 2006 to develop this facility, the State had ample resources to develop the project and in 2007 a sum of €3 million was set aside in the estimates of the Department to meet the initial costs of the project. As this was not spent, a sum of €8 million was set aside in the 2008 estimates. Up to the time the construction firm went into receivership in November 2010, a total of €3.6 million was spent, mainly on consultancy and construction. At that time, the project was partially completed and other options were then considered in order to finish off the project but none of these came to fruition. Ultimately in 2012, the Department of Justice & Equality abandoned the project on the basis that by then, with public service cut-backs, it no longer was in a position to finance it. The end result was the partially completed project had to be demolished due to health and safety concerns.

The project in total cost €4.164 million and in 2012, a sum of €2.78 million was written-off the 2012 Appropriation Account of the Department of Justice & Equality. The need to write-off almost nearly €3million is shocking and should set alarm bells off across the public service and clearly there are lessons to be learned if the State is to avoid similar waste in the future.

### **Development of future capital projects**

This development was to be a valuable part of the States justice infrastructure and should have been delivered given that the money was available to meet the costs. The State should review future projects and give the task to those whose day to day job is capital project development. In this regard, the Committee is of the view that OPW has the necessary expertise in delivery capital projects and that it should have an involvement unless the public body has the capacity and a dedicated unit on capital projects. The OPW also has a role in the upkeep of a large number of our national monuments and would have been ideally placed to deal with the specific issues that arose in respect of the protection of the Casino in Marino.

### **Findings.**

1. *The Department of Justice & Equality wrote-off **€2.78 million** in 2012 arising from the abandonment of the project to provide a new State Pathology building. The total amount of public funds expended on this abandoned project came to €4.2 million.*

2. Whilst in 2012 the Department of Justice & Equality no longer had the capital resources available to complete this project, adequate resources had been set aside in 2007 and 2008 in order to complete this necessary development.
3. Two issues relating to planning and procurement delayed this project by three years. These issues should have been foreseen.
4. The State Pathology Service has since the 1990's operated out of unsuitable prefabricated buildings and do not have the range of facilities that the Service requires.

**Recommendations.**

1. The Department of Public Expenditure & Reform should draw up a protocol on the requirements necessary in order to write-off expenditure. Such write-offs should require the sanction of the Department.
2. Capital expenditure which involves expenditure that spans a number of calendar years should be ring fenced in a capital envelope with a separate and distinct provision being made in the Appropriation Accounts. In this way funding can be protected, retained and available when the expenditure is incurred.
3. Where a public body does not have a dedicated capital project unit, all its major capital projects should be put under the care and management of the Office of Public Works.
4. The State Pathology Service should be provided with infrastructure which has facilities that would have been available had the project in Marino gone ahead.

## CHAPTER THREE

### The appointment of the Director of the National Gallery of Ireland

#### Introduction

In April 2012, the National Gallery of Ireland (NGI) appointed a new head (Director) on a five year contract. The appointment was as the result of an open competition and the appointee had to re-locate to Ireland from his home base in the UK. As part of the terms of the appointment, the Gallery agreed to pay removal expenses at a gross cost of €87,854 (the net payment to the individual concerned was €40,000). The source for this money was the Gallery's own funds and did not come from the exchequer. This payment was not in accordance with the approval given by the Gallery's parent Department or the sanction of the Department of Public Expenditure and Reform.

#### Accountability Issues

The payment of removal expenses to the Director is dealt with in Chapter 15 of the C&AG Report <sup>4</sup> and this was examined by the Committee at its meeting on 21<sup>st</sup> November 2013<sup>5</sup>.

The accountability issues examined by the Committee were:

- The circumstances whereby removal/relocation expenses can be paid
- The need to adhere to DPER sanctions.

#### **The Payment of Removal Expenses**

There is no provision in the public service for travel expenses to be paid to new appointees on fixed contracts. It is clear however that the Department of Public Expenditure and Reform [DPER] can sanction certain reasonable vouched removal expenses where a new appointee is relocating to Ireland from abroad to take up a job and where a case is made that the expertise of that person is required by a public body. It is clear also, as outlined in evidence to the Committee that the Gallery felt it needed to make this appointment as:

1. There was a major development project about to commence in 2012
2. The competition had not found any suitable candidates who were based in Ireland and
3. There was no other candidate as the first placed candidate had turned down the offer and this appointee was the only other candidate on the panel.

The Committee accepts that the board of the Gallery need to make this appointment, if for no other reason than to avoid holding a second competition. The first competition, which was run by the Public Appointments Service, had cost €35,000 and, given the nature of this post and the outcome of the first competition, there was no guarantee that the Gallery would get a suitable candidate from a further competition. In addition, the Committee sees merit in the public authorities having the scope to pay certain re-location expenses where it wants to attract qualified candidates who are living abroad. While every situation may differ and, in that regard, a circular to all Government bodies may not be the most appropriate

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<sup>4</sup> [Chapter 15 C&AG Report](#)

<sup>5</sup> [PAC Meeting 21<sup>st</sup> November 2013](#)

way of regulating this matter, the Department of Public Expenditure and Reform should prepare a guidance note outlining the limited circumstances in which relocation expenses are payable.

### **Non-adherence to the terms of a DPER sanction**

The evidence given to the Committee, including the papers of the DPER, show that it was prepared to sanction reasonable removal vouched relocation expenses to a limit of €15,000. What was paid in this case did not equate to this sanction and instead an up-front payment of €40,000 was made to the incoming Director to cover the costs associated with travel between Ireland and the UK over the duration of his five year contract. While the Director is submitting receipts of travel costs as they arise, there was no provision in the agreement to repay any amounts if the total costs fell short of €40,000. The view of the Gallery, in determining the figure of €40,000 was that the candidate would be no worse off in taking the position than a person domiciled in Ireland. Notwithstanding the pressure it was under to make this appointment and thus avoid another competition and also the need to ensure that the UK based candidate would not be financially disadvantaged by taking the job, the board of the Gallery did take a decision that was at variance with the intent of both its own parent Department and DPER.

While the circumstances of this appointment were to a large extent unique, there is a need for greater transparency so that all parties are clear as to the extent and nature of any relocation payments. The guidelines referred to above which the Committee recommend, will help this process. In addition and irrespective of the circumstances, public bodies cannot ignore DPER sanctions and parent departments should ensure that public bodies are fully aware and remain fully compliant with this obligation.

### **Findings.**

1. Removal/Re-location expenses can be paid in limited circumstances when an appointment of a person based abroad is being contemplated: There are no guidelines as to when such payments are deemed appropriate and all decisions are made on a case by case basis.
2. In the case of the appointment of the Director of the National Gallery of Ireland, the payments of relocation expenses were not in accordance with the sanction of the Department of Public Expenditure and Reform.
3. There is no provision whereby the Director of the National Gallery of Ireland will have to repay monies if his vouched expenses fall short of the up-front payment of €40,000 which was made to him in 2012.

### **Recommendations**

1. There is a need for a guidance note to be drawn up to cater for situations where the public service needs to recruit talent from abroad and where such appointees incur extra costs arising from the need to relocate here.
2. All public bodies should take cognisance of the need to adhere to the terms of any sanctions of the Department of Public Expenditure and Reform.
3. Payment of removal/relocation expense should be vouched and should not be paid in advance of the expense being incurred.



## CHAPTER 4

### Lapses in controls at Waterford Institute of Technology

#### Introduction

Special Report 78<sup>6</sup> of the Comptroller and Auditor General dealt with issues arising from educational audits including control failures in respect of non-pay expenses incurred by the office of the president of the Waterford Institute of Technology [WIT] between 2003 and 2008. The details in relation to this expenditure are highlighted in the Committee debates and these give rise to a wide range of accountability issues that have application across the third level sector. The Committee was informed that legal proceedings have been initiated in respect of some expenditure and this Report will therefore focus primarily on enhancing controls in the third level sector.

#### Accountability Issues:

The Committee examined this issue with the Accounting Officer of the Department of Education and Skills, the Chief Executive of the Higher Education Board and the President of the WIT at meetings on 27<sup>th</sup> September 2012<sup>7</sup>, 4<sup>th</sup> October 2012<sup>8</sup> and 10<sup>th</sup> October 2013<sup>9</sup>. The accountability issues that arise from those meetings are as follows:

1. Need for enhanced corporate governance in the third level sector
2. The need to review the systems of accounting relating to the presentation of expenditure
3. The reporting of non-compliance with public service procurement policy
4. The need for measures to allow for confidential disclosure
5. Adequacy of reviews commissioned by WIT.

#### Enhancing Governance

Primary responsibility for the care and management of public funds rests with the internal management of each public body with ultimate responsibility resting with the head of that body that can be called to account before the PAC. To support public service managers, a governance system involving independent oversight is also in place and it is these systems and the need to enhance same, arising from the experience at WIT, that are the primary focus of this Report.

The issues highlighted in the reports made available to the PAC relate primarily to lapses in controls which were facilitated by weaknesses in overall governance. The key issue for the PAC therefore was to examine how such failings arose and to assess whether the steps that have been taken by public authorities arising from the experiences at WIT are adequate.

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<sup>6</sup> [Special Report 78 C&AG](#)

<sup>7</sup> [PAC Meeting 27<sup>th</sup> September 2013](#)

<sup>8</sup> [PAC Meeting 4<sup>th</sup> October 2012](#)

<sup>9</sup> [PAC Meeting 10<sup>th</sup> October 2013](#)

During the Committee debates, reference was made on numerous occasions to the “cascade of responsibility” which is in place in the third level sector. The performance of the different players in this cascade needs to be assessed given the failures identified in the Report of the C&AG on WIT.

#### Role of the oversight bodies

In terms of the overall governance, the Departments of Public Expenditure and Reform, the Department of Education and Skills and the Higher Education Authority all have an involvement in allocating money to the third level sector and all were unaware that there were lapses in controls at WIT until an FOI reply made the issue public in 2011. While the Committee accepts that it is not possible for agencies like the HEA to be able to drill down into the accounts of all third level entities, the two Departments and HEA have a responsibility not just for putting the control frameworks, such as codes of governance, in place but for also ensuring that a culture of compliance is embedded in each of these entities. In the past there may have been a tendency to do this by simply issuing circulars: increasingly there is a need to follow up on policy initiatives by meeting key groups such as the internal auditors, chief financial officers, HR managers and the presidents of institutes. Such meetings are not just to impress on these individuals, who hold key posts of responsibility, the need for adherence to controls, but can also act as a two-way process in term of listening to concerns especially where new controls are being put in place. It would also allow the oversight bodies to build up relationships so that confidential reporting, which will be dealt with later, can be facilitated and become more embedded in the culture of third level institutes.

#### *Role of the Governing Body.*

Governing bodies have a dual role in the third level sector: clearly the development of the institute and enhancing capacity is a major element and, in that regard, WIT is deemed an excellent and highly regarded institution and this came across several times at the hearings. The other role however is that of control (or governance) and, in that regard, the institutes’ chief officer is answerable to the board of governors for the expenditure of funding. While members of these boards serve in a voluntary capacity, they have a duty to interrogate accounts and follow up vigorously on audit reports etc. It is clear in the case of WIT that there was a focus on the developmental role and the push to get University status during this period appears to have been given priority and lessened the focus on controls. There is now a new code of governance in place which places responsibility on boards of governors and it is important that oversight of expenditure and in particular the oversight of what are referred to a “proprietary expenditure” such as the travel and subsistence, remuneration and entertainment expenses are given priority.

Given the responsibility that is placed on board of governors, it may now be appropriate to examine the size and composition of boards of governors. The Committee acknowledges the voluntary input of those who serve on boards: the focus of the Committee is to ensure that such boards operate efficiently and effectively. In that regard, the Committee will recommend that the Minister review whether smaller boards are more appropriate. In addition, the experience of boards and their ability to questions chief officers and to examine expenditure now requires that boards have a balance of experience and skills and it is a matter that should be considered by the Minister in the context of future appointments. Institutes should also look at investing, by way of training, coaching and mentoring, so as to develop the capacity of newly appointed boards.

#### Role of Internal Audit

The Committee notes that the Internal Audit at WIT did not examine the expenditure at the office of the president which had almost doubled in a four year period between 2004 and 2008. In that time there were

clear breaches of public sector guidelines on procurement in areas such as public relations and in the supply of taxi services: there was also a large amount of expenditure which did not have a clear business purpose. The Committee accepts that examinations by internal audit functions are guided by risk based assessment with priority given to areas where there are material levels of spend. Given the need to prioritise, the Committee will recommend that a review of “proprietary” expenditure should become a part of the multi annual work-programmes of Internal Audit functions that are agreed with the boards of governors of third level institutions.

On a broader level, there is a need for Internal Audit functions, which are outsourced at Institutes of Technology, to ensure that there is a greater sharing of evidence based reports which show findings which can increase effectiveness of Internal Audit across the spectrum of third level institutions. Finally board of governors should review the performance of Internal Audit as part of its annual review of controls.

### **Accounting for expenditure**

The expenditure of the office of the President, which grew from €348,000 to €648,000 between 2004 and 2008, was a sub-set of the bigger accounting cost centre and, to that end, evidence that the budget had doubled would not have been evident to the Board of Governors, the Internal and External Auditors or the HEA. The issue of having a clear line of sight on certain key aspects of the budget of a public body was an issue that arose at FÁS for example and it is an issue that should now be addressed across the third level system.

There is a need to review the structure of accounts so that a much higher level of information is available to decision makers and also to those who are evaluating expenditure. The Committee will recommend that there be a review of accounting mechanisms so that a far greater level of transparency in how public money is both allocated and accounted for is put in place.

The other accounting issue that arose at WIT relates to the catch-all nature of the cost centre that was assigned to the office of the President. It appears that some of the expenditure, such as affiliation fees and costs associated with the promotion of the Institute, were not directly related to the functions of the office of the president and in that regard there is a need for greater uniformity in the way that costs associated with the running of a third level institute are assigned.

### **Adherence to Procurement rules**

The evidence taken by the Committee show breaches of public procurement where there was a failure to go to tender for certain services and even where a contract was put in place for public relations services, the Institute continued to use the services of a company that no longer had a valid contract. Circular 40/2002 requires the thirty four Government Departments and offices to make an annual return to DPER and to the C&AG where contracts over €25,000 are awarded without a competitive process. While the requirement to award contracts of €25,000 or more arises from an EU Directive and therefore has application to the third level sector, the provision of Circular 40/2002 do not apply to the wider public sector. Had they applied, it is likely the breaches of procurement at WIT would have been uncovered sooner.

The Committee will recommend that the all third level bodies disclose instances of non-competitive procurement in the Governance and Control Statement that is attached to the Annual Financial Statement. In that way, the HEA and the Department of Education & Skills and the Department of Public Expenditure & Reform will be made fully aware and can follow up as appropriate on the extent of non-competitive procurement in the third level sector.



## **Confidential disclosure**

The failure of staff to bring concerns to appropriate authorities was an issue that was raised by the Committee with the authorities at WIT. While it was clear that the finance function did raise concerns at senior executive level and members of the board of governors were made aware, on an informal basis, that expenditure controls were not working, these did not lead to a change at WIT. Had, for instance, staff made internal audit or indeed the auditors from the C&AGs office aware of issues, the likelihood is that auditors would have examined and reported on these issues at an early stage. A culture change is needed across the public sector which protects whistle-blowers while facilitating the examination of legitimate concerns raised by staff. Arising from the experience in WIT, the College authorities informed the Committee that a whistle-blower charter was being rolled out. The Committee will recommend that a similar charter should be rolled out though-out the third level sector.

## **Reviews of expenditure commissioned by WIT.**

As outlined in paragraph 2.27 of the C&AG's Special Report, WIT, on becoming aware in 2011 of concerns relating to non-pay expenditure in the office of the President, commissioned Deloitte to undertake a review of the expenditure from January 2004 to March 2011. That review cost €25,630. Arising from the report of that review, a second review was also commissioned and undertaken by Deloitte which involved a detailed review of expenditure between 1<sup>st</sup> January 2009 and 31<sup>st</sup> May 2011. At the meeting of the Committee on 27<sup>th</sup> September, the President of the Institute relied on findings of the first Deloitte Report in giving evidence to the Committee. That evidence to the Committee had to be corrected at the meeting of 4<sup>th</sup> October, 2012, as a further review of the files at WIT showed that the Deloitte Report was inaccurate as it had not captured key information on the chartering of private planes by WIT in 2007. The issue of chartering a private plane to take certain passengers from Waterford to Dublin had been raised at the PAC meeting on 27<sup>th</sup> September, 2012 and after that meeting a thorough review of the files at WIT identified that there was also a second return flight between Fulbright in the UK and Dublin involved. The Committee was critical of the fact that such information, which was central to the review undertaken by Deloitte, had not been uncovered. Ultimately, where large sums are paid to consultants to do a review, the performance of that review should be analysed and contracts should enable penalties to be applied where the performance of the consultant becomes an issue.

## **Findings**

1. Weakness in governance at all levels resulted in a failure to challenge inappropriate levels of expenditure and breaches of procurement rules at WIT.
2. Third level institutions do not have to make an annual return to the HEA on instances of non-competitive procurement.
3. The primary focus of the Board of Governors of WIT in the time period covered by the C&AG Report appears to have been on achieving university status for the institute. Scrutiny of expenditure by the College was not given a priority.
4. The internal audit function of WIT did not examine the expenditure associated with the office of the President in the period from 2003 to 2008.
5. While concerns relating to the expenditure being incurred by the office of the President were raised, they were not brought formally to the attention of the board of Governors.

6. Deloitte's initial review of expenditure in the office of the President of WIT cost €25,630: a subsequent review of this expenditure uncovered expenditure relating to flights which was material and should have been uncovered by the initial Deloitte review.

## **Recommendations**

1. The HEA should engage directly with networks of key officials involved in controls in third level institutions, such as Chief Finance Officers and heads of internal audit, in order to share learning and to ensure that issues relating to governance are implemented across the sector with a high degree of uniformity.
2. There is a need to review the size and skill- mix of boards of Governors in the third level sector so as to ensure that each board operates efficiently and effectively.
3. Third level institutions should be required to disclose instances of non-competitive procurement in their annual statements on governance and internal controls.
4. All Internal Audit should review "proprietary" expenditure by public bodies at regular intervals.
5. All third level colleges should develop a whistle-blowers charter and could use the one developed by WIT as a blue-print.
6. There is a need to place a performance clause in contracts between public bodies and consultants so that there can be a claw-back in fees where underperformance is subsequently established.

## APPENDIX 1

### Orders of Reference of the Committee of Public Accounts

(1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee of Public Accounts, to examine and report to the Dáil upon—

(a) the accounts showing the appropriation of the sums granted by the Dáil to meet the public expenditure and such other accounts as they see fit (not being accounts of persons included in the Second Schedule of the Comptroller and Auditor General (Amendment) Act, 1993) which are audited by the Comptroller and Auditor General and presented to the Dáil, together with any reports by the Comptroller and Auditor General thereon:

Provided that in relation to accounts other than Appropriation Accounts, only accounts for a financial year beginning not earlier than 1 January, 1994, shall be examined by the Committee;

(b) the Comptroller and Auditor General's reports on his or her examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and

(c) other reports carried out by the Comptroller and Auditor General under the Act.

(2) The Committee may suggest alterations and improvements in the form of the Estimates submitted to the Dáil.

(3) The Committee may proceed with its examination of an account or a report of the Comptroller and Auditor General at any time after that account or report is presented to Dáil Éireann.

(4) The Committee shall have the following powers:

(a) power to send for persons, papers and records as defined in Standing Order 83(2A) and Standing Order 85;

(b) power to take oral and written evidence as defined in Standing Order 83(1);

(c) power to appoint sub-Committees as defined in Standing Order 83(3);

(d) power to engage consultants as defined in Standing Order 83(8); and

(e) power to travel as defined in Standing Order 83(9).

(5) Every report which the Committee proposes to make shall, on adoption by the Committee, be laid before the Dáil forthwith whereupon the Committee shall be empowered to print and publish such report together with such related documents as it thinks fit.

(6) The Committee shall present an annual progress report to Dáil Éireann on its activities and plans.

(7) The Committee shall refrain from—

(a) enquiring into in public session, or publishing, confidential information regarding the activities and plans of a Government Department or office, or of a body which is subject to audit, examination or inspection by the Comptroller and Auditor General, if so requested either by a member of the Government, or the body concerned; and

(b) enquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policies.

(8) The Committee may, without prejudice to the independence of the Comptroller and Auditor General in determining the work to be carried out by his or her Office or the manner in which it is carried out, in private communication, make such suggestions to the Comptroller and Auditor General regarding that work as it sees fit.

(9) The Committee shall consist of thirteen members, none of whom shall be a member of the Government or a Minister of State, and five of whom shall constitute a quorum. The Committee and any sub-Committee which it may appoint shall be constituted so as to be impartially representative of the Dáil.

## APPENDIX 2

### Membership of the Committee of Public Accounts – 31<sup>st</sup> Dáil

Áine Collins TD <sup>1</sup>	(Fine Gael)	
Paul J Connaughton TD	(Fine Gael)	
Joe Costello TD <sup>2</sup>	(Labour)	
John Deasy TD	(Fine Gael)	
Robert Dowds TD <sup>3</sup>	(Labour)	
Seán Fleming <sup>4</sup>	(Fianna Fáil)	
Simon Harris	(Fine Gael)	
Mary Lou McDonald TD	(Sinn Féin)	
John McGuinness TD	(Fianna Fáil)	Chairman
Eoghan Murphy TD	(Fine Gael)	
Derek Nolan TD	(Labour)	
Kieran O'Donnell TD	(Fine Gael)	Vice Chairman
Shane Ross TD	(Independent)	

### NOTES

1. Deputy Áine Collins appointed to the Committee by order of Dáil Éireann on 18 July 2013 in place of Deputy Pascal Donohoe who was discharged on his appointment as Minister of State 12 July 2013.
2. Deputy Joe Costello appointed to the Committee by order of Dáil Éireann on 17 July 2014 in place of Deputy Gerald Nash who was discharged on his appointment as Minister of State 17 July 2014 having replaced Deputy Anne Ferris on 8 May 2012.
3. Deputy Robert Dowds appointed to the Committee by order of Dáil Éireann on 17 January 2013 in place of Deputy Colm Keaveney who was appointed on 28 November 2012 in place of Deputy Michael McCarthy.
4. Deputy Seán Fleming appointed to the Committee by order of Dáil Éireann on 21 June 2011 in place of Deputy Michael McGrath.