



DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ
COMMITTEE OF PUBLIC ACCOUNTS

FOURTH INTERIM REPORT ON SPECIAL REPORT 10
OF THE COMPTROLLER AND AUDITOR GENERAL
AND FÁS 2007 ACCOUNTS

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Chairman's Preface

This Fourth Interim Report arises from the Committee's extensive examination of issues relating to expenditure by the State's Training Agency, FÁS, and focuses in particular on the fact that the integrity of procurement of goods and services in one area of FÁS was undermined and also on the issue of waste of public money on luxury foreign travel. The issues raised in this Report were dealt with at five public hearings in late 2008 with a range of current and former senior executives in FÁS and with members of the current and previous Boards of FÁS.

The Committee has been advised that, while the Committee is entitled to speak robustly in furtherance of its constitutional functions of supervising the disbursement of public monies, the Supreme Court's decision in *Maguire v. Ardagh* (the *Abbeylara* decision) precludes the direct attribution of personal blame in respect of any named or identifiable individual. While that judgement did not prevent the Committee from asking the hard questions during its public examinations, it does restrict the Committee from commenting more directly in this Report on what went wrong at FÁS.

The examination of FÁS does not end here as the Comptroller and Auditor General is undertaking an extensive audit as a follow-up to what has been uncovered to-date in FÁS whose reputation has been damaged by what has emerged. This report therefore is not a comprehensive analysis of FÁS, however it does recommend measures that will ensure that corporate governance measures are strengthened across the public sector and will minimise the risk of a re-occurrence of what went on in FÁS dating back many years.

As Chairman, I want to thank the Members of the Committee for their hard work in dealing with this matter and also the staff of the Committee for their assistance in compiling this report.

The Committee recommends this report to Dáil Éireann.

BERNARD ALLEN, T.D.,

Chairman.

February 2009

Executive Summary

This Report arises from an examination by the Committee of Special Report 10 of the Comptroller and Auditor General which found serious breaches of procurement by the Corporate Affairs division of FÁS. (A copy of the relevant extract from that Report is contained in Appendix 1). This breakdown in procurement had been ongoing for a number of years and only came to light as a result of a “whistleblower” whose anonymous letter to the then Tánaiste in 2004 sparked off an investigation within FÁS which found that the integrity of the procurements processes, involving expenditure worth many millions of euro, had been seriously undermined. In addition, it emerged in the course of the Committee’s examination that FÁS had incurred lavish expenditure on foreign travel and this and other expenditure issues were examined by the Committee and are also the subject of this Report.

What the Committee’s examination has found, in simple straightforward terms, is as follows:

1. The integrity of procurement by the Corporate Affairs Division of FÁS was undermined which exposed the organisation to serious risk and resulted in a loss to the Exchequer.
2. The culture within the Corporate Affairs Division of FÁS was such that the controls that were in place were simply by-passed; best value for public monies was not achieved; and certain individuals and companies who

were awarded contracts did not operate at arms length in their relationship with FÁS.

3. The level of oversight of the Corporate Affairs Directorate by senior management in FÁS was inadequate.
4. The Board of FÁS did not engage sufficiently with the issues with the result that it failed to discharge its responsibilities in regard to ensuring good corporate governance.
5. FÁS did not abide by the public sector policy on foreign travel.

The Committee accepts that, in a public service that is responsible for expenditure of €50 billion, irregularities can occur from time to time. The key accountability issues are to establish whether weaknesses in systems allowed the irregularities to arise and go uncovered and more importantly how they are dealt with. FÁS has now taken some corrective steps, even though senior management handled the whole issue badly and the issue was allowed drag out for far too long. There are lessons in this Report, especially in areas such as controls and risk assessment and on better ways to handle alleged irregularities that can end up proving more costly for the taxpayer. There is an emphasis also throughout the Report on the need for absolute probity when it comes to the expenditure of public funds.

Chapter One: Introduction and Proceedings before the Committee

BACKGROUND

FÁS was established in 1988 under the Labour Services Act, 1987: that Act provided for the amalgamation of ANCO and the National Manpower Training Service. Its remit at the time of its establishment was to provide services for the unemployed. As well as training people in preparation for employment, it has responsibility for the apprenticeship scheme and for community employment schemes. With the advent of full employment in Ireland in this decade, its focus shifted to up-skilling people in employment and it also sought to attract employees from abroad to meet labour force shortages here. FÁS also got extra responsibilities, especially in the area of disability training and local enterprise. It has an independent board of 17 Members that reports to the Minister for Enterprise, Trade and Employment and it had a budget of just over €1 billion in 2007. FÁS has 2,200 employees.

FÁS EXPENDITURE

A breakdown of the principal areas of the FÁS budget is set out below in Table 1.

Description	Amount €ml
Staff costs and overheads	200
Training for the unemployed	216
Training for those in employment (including apprenticeships)	186
Integration supports	40
Employment schemes (including CE schemes)	413

A major part of the budget of FÁS is spent on the wages of the 24,500 people who participate in the community employment scheme. That scheme cost €358 million in 2007 and the Committee was informed that, as the scheme involved large movements of funds through the accounts of FÁS, the focus of internal audit had been primarily on that scheme in recent years. In total, 56% of the FÁS budget was on training allowances and payments to FÁS participants.

FÁS OUTPUTS IN 2007

The Committee is of the view that any overview of FÁS should highlight the important work it is doing, especially for the unemployed. Table 2 gives an outline of the number of people who interacted with FÁS, either through participation in a programme or by contacting it regarding employment opportunities.

A more detailed analysis of those figures will show that:

- 1,790 early school leavers completed training in community training centres

**TABLE 2:
PARTICIPATION/INTERACTION WITH FÁS IN 2007**

Scheme	Number
Referral of those who were three months on the live register	50,000
Training schemes for those seeking a job	23,000
Community Employment	24,500
Apprenticeships	18,000
Training for those already in employment (CDP)	45,000
Vacancies notified to FÁS	142,000
Jobs filled by candidates referred from FÁS	71,000

- 2,792 people from disadvantaged backgrounds completed local training initiatives programmes
- 1,503 people with disabilities received specialist vocational training
- 2,200 people with disabilities participated in CE schemes
- 2,000 employees with low skills participated in the workplace basic education programme.

The figures outlined above give an indication of the role of FÁS in the day to day lives of people, especially those who are marginalised. While this Report predominantly concentrates on issues where things went wrong, the Committee is strongly of the view that the good work being done by the 2,200 employees of FÁS should not be overlooked and this examination by the Committee is no reflection of their role or the valuable contribution they make to Irish life.

CORPORATE AFFAIRS AREA

The special report of the Comptroller and Auditor General, inter alia, related to procurement issues in the Corporate Affairs area of FÁS. This area was under the control of a director who reported to an Assistant Director General. The position of director of corporate affairs is at a level equivalent to principal officer in the civil service. Corporate Affairs was responsible for three main areas as follows: all FÁS public relations (including the management of its large advertising budget), the management of Opportunities events and finally the Discover Science Programme. The budget within the control of the director of corporate affairs was just over €11 million in 2006.

ALLEGATIONS LEADING TO INTERNAL AUDIT INVESTIGATION

In late September 2004, the office of the then Tánaiste and Minister for Enterprise, Trade and Employment received an anonymous letter which made various allegations of a criminal nature. This letter was ultimately passed to the Director General of FÁS who directed the organisation's

internal auditors to conduct an investigation into these allegations and to submit a report. The audit was extensive, covering the period from 2000 to 2004, and it began in November 2004. Due to the seriousness of the allegations, the investigation was conducted by the head of internal audit and an audit manager, who initially investigated the list of allegations of criminal behaviour made in the anonymous letter. Internal Audit found no evidence to substantiate any of those criminal allegations. However it did uncover major breaches of procurement procedures and, having outlined these to the Director General in February 2005, it investigated those and produced a draft report which was presented to the Director General in January 2006.

That report, which became known as Inv 137, was given formally to FÁS management in May 2006 and led to disciplinary action being taken against the Director of Corporate Affairs in June 2007. In mid 2007, Inv 137 was sent to the Comptroller and Auditor General and his report thereon was published in April 2008.

One of the issues that arises from the timelines, outlined above, is that the investigation, and the aftermath of it that led to disciplinary action being taken, dragged on too long. This in part was due to the seriousness of the allegations and the implications the findings had for the personal reputation of the Director of Corporate Affairs.

PROCEEDINGS BEFORE THE COMMITTEE

The Committee held its first public meeting on the Comptroller and Auditor Generals report on FÁS on 2nd October 2008 and further public meetings were held on 6th and 27th November 2008 and on 4th and 18th December 2008. Those called to give evidence before the Committee included the then serving Director General, senior officials in FÁS, the

current and former chairman of FAS, the retired Assistant Director General and a former Director General of FÁS. The resignation of the Director General on 24th November 2008 proved disruptive to the Committee's examination and this is an issue that will be dealt with again in Chapter three of this Report. The Committee also sought and were supplied by FÁS with a large volume of documents and while the Committee acknowledge that staff in FÁS worked hard in order to supply these to the Committee, the fact remains that the Committee was at times frustrated in trying to get to the bottom of what went on in FÁS because the documents were supplied late and therefore could not be comprehensively analysed prior to the public meetings. The Committee felt further hindered by the fact that some of the documents supplied to the Committee were redacted so as to comply with the Data Protection Acts. The Committee has a serious concern about its ability to get access to information that was central to its investigation and will deal with this issue in more detail in Chapter three.

STRUCTURE OF THE REPORT

Chapters two to five of this Report deal with the Report of the Comptroller and Auditor General and Inv 137, and address the key questions the Committee raised in its examination, which are:

- (i) what happened?
- (ii) how did it happen?
- (iii) how were the issues dealt with?
- (iv) what measures have been put in place to ensure it doesn't happen again?
- (v) who was held responsible?

Chapter six deals with foreign travel which was an issue that arose from the Committee's examination of the 2007 Accounts of FÁS.

Chapter Two: Procurement of Services by Corporate Affairs Division

INTRODUCTION

This chapter is an analysis by the Committee of the Comptroller and Auditor General's Report based on the public hearings of the Committee in late 2008 when it examined the issue arising in FÁS in great detail. In order to get a full picture of the procurement issues that arose, the Committee received a large volume of written evidence from FÁS, including a version of Inv 137 which FÁS redacted to comply with the provisions of the Data Protection Acts. The Committee wanted to ascertain the extent to which there was a loss, if any, to the taxpayer, the extent to which there was exposure to risk from the undermining of procurement and whether the integrity of procurement was in fact undermined. The examination of the Committee was hampered to a degree by the fact that information sought by it could not be

released by FÁS in compliance with its obligations under Data Protection legislation. That said, the Committee is satisfied that it has taken sufficient evidence on this issue to arrive at certain conclusions and to make recommendations that are outlined in chapter seven of this Report.

IRREGULARITIES UNCOVERED IN INV 137

In the light of the evidence given to the Committee, it would appear that:

- (i) one company won a number of key contracts over a five year period, some without going to tender;
- (ii) much of the €2 million annual budget for Opportunities was allocated for services not procured by competitive tender and it is difficult to avoid the impression that certain contracts were awarded in a manner which was

- significantly at odds with the procurement rules;
- (iii) the advertising agency retained by FÁS was often bypassed as Corporate Affairs dealt directly with newspapers and advertising agencies. An effective return on the large advertising spend, which in 2006 reached an annual high of €9.8 million, was not achieved;
 - (iv) the Jobs Ireland website had to be shut down because it duplicated the website of FÁS and this resulted in a loss of at least €1.2 million. A company that received €1.7 million for development and maintenance of the website was set up specifically to deal with this work and was incorporated as a company only ten days before it was awarded the contract for this work;
 - (v) certain issues raised in the report are the subject of an ongoing Garda investigation into overcharging. The amount lost to FÁS in this regard is at least €160,000.

DIRECT LOSS TO FÁS

It is difficult to pinpoint the amount of public funds that have been lost by the activities of the Corporate Affairs Division. The best prospects of acquiring a service at the most economically advantageous cost is through competitive tender. While public procurement guidelines do not stipulate that the lowest tender should be always accepted, cost is normally given a weighting in deciding the award of contracts which is based on the most economically advantageous tender. It appears to the Committee that that certain companies appear to have benefited without having to tender competitively for FÁS contracts and that spending controls were lax. The Committee has analysed the information made available to it and Table 3 contains its estimate of the non-effective expenditure through loss, waste or extra contractual expenditure.

The Committee estimates that value was not achieved based purely on the information presented to in, for at least €1.8 million of expenditure. There are serious question marks over

the value received for other contracts which did not go to full competitive tender. Data supplied by FÁS to the Committee shows that the budget for Corporate Affairs for the seven years from 2001 to 2007 amounted to €50 million and the Committee can only conclude that good value was not received for a large portion of that spend.

RISK EXPOSURE

Public bodies are exposed to a high level of risk where executives of those organisations step outside public procurements guidelines. It can lead to legal claims from others who submitted legitimate tenders that they were the victims of unfair practice. Indeed where a contract is not advertised or where there is an inherent unfairness in the process used to award contracts, there is case law which demonstrates that the courts will award damages and legal costs where it has been established that an outside party was denied the right to compete for business or was treated unfairly. An indicative example of the damages awarded to aggrieved third parties can be an amount equal to the profit being made on the contract. Based on the evidence presented to the Committee, Table 4 contains the value of contracts which appear to have been awarded without either going to tender or where the tender process was flawed or controlled.

The Committee notes that Table 4 does not provide a full picture of the way procurement rules were haphazardly applied in FÁS, but it is an assessment of the risk that FÁS was exposed to by virtue of the fact that, based on the evidence supplied, the Committee could find no evidence that contracts to the value of almost €7 million were awarded by FÁS based on open competition.

USE OF ADVERTISING BUDGET

Figures supplied to the Committee by FÁS show that, in the five years from 2003 to 2007, expenditure on advertising and

TABLE 3: ESTIMATE OF NON-EFFECTIVE EXPENDITURE INCURRED BY FÁS

Description	Amount lost
Part commercialisation of the Jobs Ireland website. An agency fee was charged, even though the contract did not go through the agency.	€3,000
Review of Corporate Affairs Expenditure Controls where double the amount of the quote was paid.	€7,500
FÁS Opportunities Sales Contract in 2002 was double previous and subsequent years.	€125,000
Event Management Contract 2005 where top up on tendered fee was paid.	€41,139
Sales Contract 2005 where an incentive payment was added on when the contract was complete.	€27,442
Work on the FÁS corporate website when little achieved.	€65,000
Jobs Ireland (overpayment when invoices were split).	€32,000
Jobs Ireland where payments made though the advertising agency, thus attracting fee.	€130,000
Incorrect charges on invoices (subject to the Garda investigation).	€160,000
The loss, estimated by Internal Audit, on the Jobs Ireland Website.	€1,200,000
Purchase of a Toyota Car for the Opportunities Fair.	€9,000
Total:	€1,800,081

TABLE 4: LIST OF CONTRACTS WHERE FÁS WAS POTENTIALLY EXPOSED TO RISK DUE TO PROCUREMENT ISSUES

Nature of Tender	Value
Part-commercialisation of Jobs Ireland	€25,000
Employers Conference 2003	€45,000
Financial Analysis of advertising agency contract	€10,000
Sales Contract for Opportunities 2002	€250,000
Sales Contract for Opportunities 2003	€125,000 (approx)
Work on the corporate website in 2004	€65,000
Establishment and maintenance of the Jobs Ireland website	€1.7 million
Display and build of exhibition stands at Jobs Ireland (1995 to 2006) given to one company at value of €386,000 per annum	€4.6 million
Total	€6.82 million

publicity related activity amounted to just over €35 million giving an average of €7 million per year. That budget came within the control of the Corporate Affairs division and serious concerns have been raised about the appropriate use of this budget and, in particular, whether value for money was achieved for this expenditure. The main concerns are:

1. Control of the expenditure

FÁS had a contract with an advertising agency in order to make best use of these funds. However that agency was often by-passed as FÁS dealt directly with newspapers, magazines and design consultants. It appears, based on the evidence presented, that there was a deliberate policy to control how the advertising budget was used, ultimately to the benefit of certain individuals and media groups. Inv 137 raises serious issues as to how the media and advertising budget was spent and in particular whether FÁS were getting value for money for that level of expenditure, given that it was not using the expertise of its contracted media agency. This whole area now requires re-examination by way of a detailed follow-up report and the Committee will review overall expenditure in this area when it reviews that report.

2. Absence of a media strategy

Even though FÁS was spending an average of €7 million per annum that level of expenditure was not the subject of a detailed communication strategy. The Committee notes that FÁS has accepted the recommendation of Inv 137 and now has a detailed communication strategy. However it finds that the Board and the senior executives in FÁS should have ensured that such a business strategy was in place, as its absence allowed the expenditure on advertising and publicity to be controlled in a manner that was not to the ultimate benefit of FÁS.

3. Level of expenditure on outdoor posters

The Report of the C&AG drew attention to the fact that there

was an unusually high level of outdoor media usage, when considered as a percentage of the total media spend. Whilst the average outdoor spend would be under 10% for a media campaign, in FÁS that percentage reached almost 30% in 2004. The Committee is aware that there is a Garda investigation ongoing in relation to overcharging for work carried out on poster sites and it will be requesting a review of this area of expenditure as the return on this level of expenditure is far from clear. In addition, it would appear that some poster companies did not operate at arms length from FÁS.

JOBS IRELAND WEBSITE

Jobs Ireland was a project established in 2000 and its primary focus was to attract skilled workers to Ireland. The Corporate Affairs area delivered this programme and shortly after taking on the function it developed a stand-alone website to enable those interested in working in Ireland to register. FÁS already had a corporate website and its databases were substantially duplicated by this new website. Because of the economic downturn in 2001, the Jobs Ireland project was abandoned. However FÁS had entered into a 3 year contract with an outside company, which had been incorporated only ten days before it got this business, and paid €1.7 million for a venture that should only have cost in the region of €0.5million. The Committee heard evidence that the then Director General (Dr. Lynch) was unaware of the development of this website; the development, had it been properly costed, should have gone to the Board for approval. The first indication given to FÁS that it had a contractual commitment was when the firm that got the contract submitted twenty invoices in July 2001 totalling €687,000. Eventually FÁS agreed to pay a sum to the value of 30 months of the contract in settlement with this company. The evidence given to the Committee indicates that the ten day old company that got paid for the website was established purely to get that contract. While this in itself is not unlawful, it raises serious concerns as to the adequate capability and experience of the ten day old company to undertake this work. In addition, problems relating to the shut down of the website and sorting out of the verbal contract were not referred to the FÁS legal team. The Committee can only conclude that FÁS found itself exposed contractually and it decided to resolve these claim in a somewhat unorthodox manner. The whole affair led to a loss of €1.2 million.

OPPORTUNITIES

FÁS has organised Opportunity fairs since 1995 which are attended by over 100,000 people every year, many of them school leavers who are looking at career opportunities. The annual budget for Opportunities is approximately €2 million. This Report has already outlined above how many of the services needed by FÁS to run the event were not procured by way of competitive tender. For instance the contract to build the stands at Opportunities (to an estimated annual value of €386,000) was given to the same company every year. The Committee also questioned why the event in Dublin moved to Croke Park from the RDS and while the evidence given indicated that it was for safety reasons and also

because food at the RDS was deemed expensive, that matter has been disputed by the RDS (see Appendix 2). The Committee understands that the decision was taken by the Director General and it appears that public procurement guidelines were not followed and it will therefore ask that this matter be investigated further.

CONCLUSION

Loss, waste or extra contractual payments of at least €1.8 million occurred in FÁS in the period from 2000 to 2005. Procurement negotiated either by or on behalf of FÁS to the value of €7 million was not subject to competitive tendering and full value is unlikely to have been achieved where non competitive processes were used. There are concerns that the advertising spend of €35 million in the period 2003 to 2007 was not deployed under a coherent strategy; the structure of that spend departed from industry norms in that a higher than usual proportion was spent on outdoor media (poster sites).

The procurement of goods and services by Corporate Affairs and the fact that public procurement policy was disregarded can be attributed at best to carelessness on the part of officials in that area. Indeed it is hard to avoid the conclusion that the budget, in certain respects, was misused in that contracts appear to have benefited a restricted number of suppliers. The Committee will recommend that any third party who benefited from preferential treatment should be pursued, for instance by the Director of Corporate Enforcement in the case of company directors and by professional regulatory bodies in cases where professional firms benefited through what can best be described as sharp practice. The referral to the relevant regulatory authority should be undertaken by FÁS. While this Chapter gives an outline of what happened, Chapter three examines weaknesses in controls which allowed the disregard of procurement policy to happen.

Chapter Three: Weaknesses in Controls

INTRODUCTION

It took an anonymous letter to alert an organisation with a €1 billion budget that it had a problem: the issues identified in Inv 137 and reported to the Dáil in the Comptroller and Auditor General's Report would never have been allowed to develop had proper controls, which to a large extent were in place, been implemented. The evidence given to the Committee during the public hearings gave rise to concerns about the adequacy of controls and these are dealt with in this Chapter. This Chapter examines the control framework in place in FÁS and how this did not work. That framework consists of systems/structures and also oversight mechanisms which ensure that the controls are observed.

CONTROL FRAMEWORK

The central element of control in any organisation is the management structure that is in place. To supplement this element of control, large organisations segregate key functions including the provision of payments/finance, human resources, information technology, procurement. In the case of FÁS, this would also include advertising. The role of these central units is to provide internal services to the line directorates of the organisation. The internal audit function provides a third level of control as it looks not only at regularity of payments, but also at systems controls. At the top of the internal framework pyramid rests, in the case of State bodies, the board. Three final elements of the control framework relate to controls exercised by the parent Department, external audit and accountability of State Agencies to the Dáil, primarily to the Committee of Public Accounts. All elements in the framework have a key role to play in supporting and complementing controls and the issue for the Committee was to establish how these did not work effectively in FÁS.

REPORTING STRUCTURES

The Director of Corporate Affairs reports directly to an Assistant Director General (ADG) within FÁS. That reporting structure had been put in place in 2001 and, prior to that, the Director reported directly to the Director General (DG). When examined on this issue the former Director General, Dr John Lynch, stated that this was normal practice in corporations given that the area dealt with media coverage and there would be constant interaction with the DG. When Mr Molloy was appointed DG in 2000, he was of the view that his duties did not enable him to adequately supervise this area and he put in the structure whereby the Director of Corporate Affairs reported to an ADG. In accordance with internal control procedures in place, Directors can sign-off on expenditure of up to €250,000 with the co-signature of an ADG or the DG (as appropriate) or approval by the board of FÁS for higher levels of expenditure. As outlined in Chapter Two, Corporate Affairs had responsibility for expenditure of €50 million in the years from 2001 to 2007. The bulk of that expenditure related to advertising and media relations. In addition, the function had responsibility for the overseas employment fairs, Opportunities and for the Discover Science Programme. The area was headed up by a Director whose grade was similar to that of principal officer in the civil service.

DIRECT OVERSIGHT OF THE DIRECTOR

It is clear to the Committee that the Director of Corporate Affairs was given a free hand in managing the Corporate Affairs area. No effective oversight of his activities took place. The Committee was concerned that one individual could have a free hand in expenditure of €50 million over a seven year period. It was informed that changes have since been introduced whereby there is a cross functional group established to set parameters for major events. While the

establishment of this new control mechanism is welcome, the problem is that such controls should have been in existence so as to ensure proper controls of expenditure. The performance of the Director of Corporate Affairs was described in evidence as being innovative and it is clear that, as far as the senior management in FÁS was concerned, this individual was a high performer. In their evidence to the Committee, both his line managers stated that they made an assumption that services were being procured in accordance with procedures. In 2005, the Director's performance was such that it merited a bonus of €10,000. Although both the Director General and the Assistant Director General expressed dismay at the revelations contained in Inv 137, the Committee was nonetheless informed that neither the Director General nor the Assistant Director General had voiced concerns about procurement. The Committee finds this surprising in all of the circumstances in view of the issues that are outlined hereunder that arose prior to the Inv 137 investigation.

DIRECT OVERSIGHT FAILURES

It is apparent that there were obvious shortcomings in the oversight of Corporate Affairs when account is taken of the following:

- (i) In documentation supplied to the Committee by FÁS, there are speaking notes of the DG in preparation for a meeting with the audit committee on 12th October, 2006 where he stated that he had told the ADG, to whom he had entrusted direct supervisory responsibility for the area shortly after the DG had taken up appointment, to *"take line responsibility for X and to emphasise and re-emphasise to X, the need to observe public service norms..."*
- (ii) In 2003, the then head of Finance drew the attention of the ADG to issues of whether value was being achieved in respect of the large payments of €500,000 per month being made to one firm and also to the fact that the cost of printing the annual report had jumped significantly;
- (iii) The shut-down of the Jobs Ireland website: serious concerns were raised with the DG shortly after taking up his post about the existence of a duplicate website. These concerns were raised by the ADG of Finance and Administration and the Director of IT. Arising from this, and to the DG's credit, the process of shutting down the website commenced. In addition while FÁS management had no knowledge of a 36 month contract, alarm bells should have rang in the organisation when it received invoices to the value of €687,000 in July 2001 in respect of what turned out to be a verbal contract.

The instances highlighted above show that there was sufficient forewarning of what would emerge in Inv 137. However senior management in FÁS choose to ignore those signals. This may in part be due to the increasing importance the Corporate Affairs area had in their day to day work in FÁS.

THE DEVELOPMENT OF THE FUNCTIONS OF CORPORATE AFFAIRS

From the evidence taken by the Committee, it is clear that Corporate Affairs had in recent years developed an

extremely high profile within FÁS. With full employment, FÁS had re-positioned itself into new niche areas, such as securing workers overseas, getting involved in the science area and Opportunities where large crowds attended and its budget had also increased significantly, notwithstanding that the economy had reached full employment. Getting involved in these areas entailed increasing the public profile of the organisation. All of this required a dynamic way of operating and the Committee can only conclude that it suited the senior management in the organisation to have an individual of the capacity of the then Director of Corporate Affairs in charge of it. However, in allowing Corporate Affairs to develop in this way, a key weakness in the control framework was allowed to develop as the area now had complete control over a large budget.

What is also not clear is the extent to which FÁS put detailed strategies in place which would enhance and help manage the delivery of these new exciting areas and which would measure their effectiveness. For instance, even though FÁS had one of the highest levels of expenditure on media advertising in the State, such expenditure was not governed by a medium term (3 to 4 years) communications strategy and this is indicative of the way Corporate Affairs was driven. The evidence given to the Committee on the effectiveness of these programmes related more to the number of people who attended those fairs, whereas a properly scoped programme would have ensured that FÁS followed up with employers to establish the way the programme was impacting on addressing job shortages here. The fact that these events were being organised and driven by the Corporate Affairs directorate does give an indication that these were seen primarily in terms of PR and profile raising as it is clear is that senior management basked in the glow of this new role for FÁS which entailed frequent trips abroad and the provision of high quality entertainment to those who could help the organisation. It also made FÁS a very powerful player with the media and with those who supplied services that were needed. In that context, it may have proved difficult for senior management to stand back and to question more issues like the procurement of services, which were seen only as a means to an end. The Committee can only conclude that this contributed significantly to management's failure to prevent the events depicted in Inv 137.

CENTRAL CONTROLS WITHIN FÁS

Two areas within the FÁS structure also had pivotal control functions, namely the Finance and Procurement areas and yet neither area identified potential problems arising from the procurement of goods and services in Corporate Affairs. Evidence was supplied to the Committee of concerns raised by the Director of Finance in 2003, however it is clear that payments were processed in respect of the Jobs Ireland website when there was not a written contract. The evidence of Dr Lynch to the Committee in which he outlined the pivotal role of Finance in ensuring compliance with public service norms by the organisation is relevant and while the budget of FÁS had increased significantly in recent years, it is clear that

the Finance directorate was not vigilant enough in exerting a greater oversight of the expenditure of the Corporate Affairs area. This is an issue that FÁS urgently needs to address.

What is of greater concern to the Committee is the passive role played by the Procurement directorate in the procurement of goods and services by the Corporate Affairs directorate. Evidence made available to the Committee gave rise to concerns that this function was aware that procurement processes were being short circuited and it is not apparent that alarm bells were sounded. The Committee has asked the Comptroller and Auditor General to review the involvement of the Procurement Unit in securing goods and services for the Corporate Affairs directorate as it appears that certain firms, invited to place tenders directly by Corporate Affairs were also used by the Procurement Unit when it had control of the tendering process.

AUDIT CONTROL

One of the concerns that the Committee raised was that the matters uncovered in Inv 137 would not have come to light was it not for the anonymous letter. FÁS does have an active internal audit unit and it has an audit sub-committee of the Board. However as the organisation has a budget of €1 billion, the focus of the work of internal audit is primarily directed at ensuring controls are in place on the 56% of the overall funding which is in effect passing through the FÁS account mainly in payments to CE scheme participants and to apprentices. The Committee was also informed that systems based audit work was not developed in the internal audit unit. Aligned to this, there was no evidence of a comprehensive risk analysis strategy in FÁS and that is a weakness in helping the Internal Audit Unit to target its audit programme. The Committee recommends the implementation of a comprehensive risk management strategy. The Committee also recommends that FÁS, in the preparation of its annual accounts, report formally to the Comptroller and Auditor General prior to his audit on all contracts where the public sector procurement guidelines were not followed. This information will assist the Comptroller and Auditor General in targeting specific areas for further investigation as part of the audit. The Director General should direct that this information be collected on a quarterly basis and that the Board is kept informed of the analysis of the data collected on an ongoing basis.

CONTROL BY THE BOARD

The board of a State Agency has specific responsibility, for ensuring accounts are prepared, for the annual review of effectiveness of internal controls, including financial, operational and compliance controls and risk management. Evidence given to the Committee indicates that the Board of FÁS was not made aware of the findings of Inv 137 until it was presented formally to it on 6th December, 2007, which was two years after those findings were given to senior management. A fault lies both with the Board for not pursuing the matter more vigorously and for the Senior management and the Head of the Audit Committee for keeping the Board in the dark about these issues. The ignorance of the Board is

all the more damning when account is taken of the Code of Practice for the Governance of State Bodies which provides specifically as follows “*Competitive tendering should be normal procedure in the procurement process of State bodies. It is the specific responsibility of the Board to ensure that this procedure is implemented and that it is fully conversant with the current value thresholds*”. The Committee can only conclude that the Board did not discharge its responsibility adequately and that there was a failure on the part of senior executives of FÁS to inform its board of developments uncovered in Inv 137. The Committee is strongly of the view that there is a lesson here for all State Boards in becoming proactively engaged in such issues so that they can discharge their public responsibilities and in order that the Chairman can sign off on the adequacy of internal controls in the annual report.

The Committee has stopped short of calling for the resignation of the FÁS Board. However it recommends that a review of the size and composition of the Board which will entail amendments to the Labour Services Act 1987. In particular, the Committee is of the view that

- a board of seventeen is too unwieldy and is out of line with many major State Agencies. A board of between seven and nine members would provide more coherent direction and greater oversight of a body such as FÁS;
- the unions and employers groups which make up eight members of the Board exert a significant influence on the policy making of FÁS while also being customers of FÁS. This issue will be looked at in more detail when the review of the Competency Development Programme is available;
- the practice by the Minister of appointing the Chairman of the Board by way of rotation between the employers and unions should cease. An organisation with a budget of €1 billion and over 2,000 employees requires strong leadership and therefore the capability and business acumen of the Chairperson is of key importance;
- The Joint Committee on Enterprise, Trade and Employment should have a formal input to appointments to the Board and the legislative provisions in respect of the Board should also deal with the number of women to be appointed to the Board.

CONTROL BY THE PARENT DEPARTMENT AND THE DEPARTMENT OF FINANCE

In the case of FÁS, overall labour force policy direction is determined by the Government and is communicated via the Minister for Enterprise Trade and Employment to the Chairperson of FÁS. The Minister approves the annual budget for FÁS, based on agreed performance and outputs. The Department also monitors the draw-down of funds from the Departments vote to FÁS on a weekly and monthly basis. In addition the Minister appoints certain Members to the Board, in accordance with the Labour Services Act, 1987. Under that Act, two Members of the board are civil servants of the parent Department and the Department of Finance respectively. A key control issues arises in this case relating to the role these latter two Board Members should play and the evidence given to the Committee indicates that the relevant

Ministers were not being kept apprised of developments in FÁS arising from Inv 137 and that action was only initiated after the Comptroller and Auditor General's report on this matter was published in April 2008. This failure of the Board to engage with Inv 137 inhibited the Ministerial representatives in fulfilling their role of keeping both the Minister for Finance and the Minister for Enterprise, Trade and Employment informed of serious breaches of procurement rules. The Committee can only speculate that, had this information flow worked, greater pressure could have been brought to bear on the Board and on senior management to tackle the issue more stringently.

The role of Ministerial representatives on the boards of State agencies is key to ensuring not only that Government policy is implemented by the agency, but also in keeping open a line of communications with the relevant Minister on corporate governance issues that arise. The fact that such a role may conflict with the fiduciary duties of such Ministerial representatives as board members of a State agency needs to be clarified. In that regard, it has long been a general common law principle that as directors are agents of an entity, they stand in a fiduciary relationship vis-à-vis that entity and, accordingly, owe certain duties to it. The duties of fiduciary import certain (sometimes imprecise) obligations of good faith, honesty, fair dealing, due care and skill and, indeed, confidentiality. The nature of these fiduciary obligations may, sometimes, in practice cause difficulty where a person is appointed by the Minister to act as a director of a semi-State entity or a statutory corporation. While the Minister has obviously appointed the person in question in order to represent the public interest, in strictness, such a director owes no obligation to the Minister but rather simply to the agency of which he is director alone. Indeed, in some instances, the fiduciary duty of confidentiality to the agency may impede or restrict the ability of such a director to report fully back to the Minister who appointed him or her.

It appears to the Committee that some of these difficulties were never far from the surface so far as FÁS was concerned. In the light of this, the Committee recommends that an opportunity be taken to have the governing legislation of State agencies amended so as to provide expressly that any director's fiduciary duties to the agency must not be understood in the case of a director duly appointed by the Minister to represent the public interest as preventing the director in question from reporting to the Minister when key issues such as cost control, expenditure, corporate governance and general organisational matters within the company duly arise. Another possibility here would be that any such director would be expressly obliged by law to report to the Minister on an annual basis in respect of certain topics including the appointment of staff and other directors, pay and bonuses, procurement issues and disciplinary issues.

ACCOUNTABILITY TO DÁIL ÉIREANN

The funding of FÁS is derived through subheads of the vote of the Department of Enterprise, Trade and Employment and the Minister is held responsible to the Dáil in respect of overall expenditure and in respect of employment and labour force

policy. Ministers are not generally held to account in respect of day to day matters for State Agencies. The Committee has a concern in relation to the accountability mechanism for expenditure and in particular the provision of an accounting officer. The Committee recommends that the holder of the post of Director General of FÁS will be an accountable person to the Dáil by the insertion of the following amendment to the Labour Services Act 1987:

The Director General shall be the accountable person in relation to the accounts of An Foras and shall, whenever he or she is so required by a Committee of Dáil Éireann established under Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on:

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any account subject to audit by the Comptroller and Auditor General which the Director General or An Foras is required by or under statute to prepare;*
- (b) the economy and efficiency of An Foras in the use of its resources;*
- (c) the systems, procedures and practices employed by An Foras for the purpose of evaluating the effectiveness of its operations; and*
- (d) any matter affecting An Foras referred to in a special report of the Comptroller and Auditor General under section 11 (2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Dáil Éireann.*

POWER OF THE COMMITTEE OF PUBLIC ACCOUNTS TO ACCESS DOCUMENTS

The Committee has serious concerns in regard to the way it can gain access to documents, having regard to difficulties encountered with FÁS which highlighted the ability of third parties to access information in respect of FÁS via the Freedom of Information Act which the Committee could not itself directly obtain upon request. While the Committee enjoys the power under Standing Order 85 to send for persons, papers and records, in practice such a request carries less weight than a request made under the Freedom of Information Act 1997. Indeed, this is also true as a matter of law in that a request made pursuant to Standing Order 85 does not have the force of law in the same way as a legal entitlement to information under the Freedom of Information Act. It is true, of course, that the Committee can be empowered via the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunity of Witnesses) Act 1997 to be vested with a legally enforceable right to obtain such information in a way roughly analogous to production orders or discovery orders made by the courts in civil litigation. But while such powers have been used by Committees of the Houses in some special instances (e.g. during a judicial impeachment hearing) in practice the procedure is too cumbersome for ordinary Committee work of this kind.

The Committee would accordingly suggest, therefore, that the Freedom of Information Act be amended expressly so as to provide that a request pursuant to Standing Order 85 by an Oireachtas Committee would have the same status as a request under Freedom of Information Act and must be treated accordingly by the public body concerned. To this end, it would also be necessary to have a specific provision which provided that the release of information in such circumstances would be deemed to be pursuant to a statutory enactment, so that the public body concerned could not rely on the provisions of the Data Protection Acts 1988-2003 to withhold relevant information where it concerned individuals. In such circumstances the release would be regarded as being “pursuant to an enactment” and, hence, the public body producing the information would benefit from the exemption contained in section 8(e) of the Data Protection Act 1988. Such an exemption allows the public body to release personal and sensitive information when required to do so pursuant to statute.

A further consequential change should also be made to enable public bodies submitting documentation containing personal data pursuant to a request of this nature from an Oireachtas Committee to have the same protections of privilege as if they were producing the same documentation on foot of an actual compellability request. In this regard it may be noted that section 11(1) of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunity of Witnesses) Act 1997 provides for an express immunity where the information is disclosed pursuant to a compellability request. The Committee is of the view that the public body producing such personal data should be able to avail of this protection even though the Committee which requested it is not exercising power pursuant to the 1997 Compellability Act as such.

THE RESIGNATION OF THE DIRECTOR GENERAL OF FÁS

The Committee found it unsatisfactory and disruptive to its work that the Director General should resign in the middle of the examination of these issues by the Committee. As the law stands, once the Director General had resigned, he was no longer compellable to attend nor was he strictly accountable to them. In that regard, the Committee is of the opinion that consideration ought to be given to amend this legislation

which would oblige such office holders to appear before the Committee in relation to matters which happened while they were still office holders even though they have subsequently resigned.

The Committee also notes that a settlement package involving an enhanced gratuity and pension package may have been agreed with the Department of Finance prior to the Director General's resignation. Quite obviously the Director General was fully entitled to his duly earned pension entitlements as part of his ordinary remuneration package, but the Committee is concerned lest any enhanced financial arrangements were agreed by the Department prior to the resignation in question. The basis on which the Department could agree to such additional financial provision is, frankly, not clear. The Committee recommends that the making of any such enhanced arrangements for future cases should be governed by very clear guidelines.

CONCLUSION

There were inadequate arrangements for the supervision of the work of the Corporate Affairs directorate. Greater internal control would have been achieved if innovative solutions, developed by the division, were operationalised in other divisions. Risk management was inadequate to identify and mitigate exposures. Internal Audit focussed mainly on regional transactions and had not developed a risk driven strategy designed to identify audit topics on the basis of internal control weaknesses and financial exposures. The boards of State bodies, in order to fulfil their corporate obligations, have to engage on matters relating to internal controls and should seek positive assurances from the executive boards and should not await formal presentation of internal audit reports. In the case of FÁS, this did not happen and the Committee has recommended changes to the structure of the Board to address deficiencies. There is also a need to review the role of Ministerial appointees to the board of State agencies. The ability of the Committee to gain access to documents containing personal data is key to enhancing accountability of public bodies and those that are answerable to a Committee cannot, through resignation, dilute that accountability. Finally, the Director General of FÁS should be assigned the role of accountable person for the organisation. This chapter examined the control weaknesses in FÁS and the next chapter deals with the FÁS response to Inv 137.



Chapter Four: Response to the Findings in Inv 137

INTRODUCTION

As outlined in Chapter Two, the receipt of the anonymous letter in November 2004 set in train a chain of events that culminated in the publication of the C&AG's special report in April 2008. An indicative timetable of events is attached in Appendix 3. While disciplinary action is dealt with in Chapter Five of this Report and this was part of the response by FÁS, other issues relating to how the matter was handled by FÁS are the subject of this Chapter and these are:

- (i) the interaction between senior management and the Internal Audit Unit;
- (ii) the need to be able to address, without prejudice, issues that are the subject of an ongoing investigation;
- (iii) Action taken by the Board;
- (iv) implementation of the Recommendations contained in Inv 137;
- (v) specific action taken by FÁS since the presentation of the findings in Inv 137.

INTERACTION BETWEEN SENIOR MANAGEMENT AND INTERNAL AUDIT

Given the nature of the allegations contained in the anonymous letter, the investigation arising therefrom was conducted by the Head of the Internal Audit Unit. That investigation commenced in November 2004. By February 2005, the Investigative Team had concluded that it could not get sufficient evidence to substantiate the anonymous allegations, some of which were of a criminal nature, but it had found evidence relating to breaches of procurement rules which required to be followed up. This was reported on 28th February, 2005 to senior management who approved the continuation of the investigation which concluded in December 2005 and a draft report was given to senior management on 30th January, 2006.

The findings in Inv 137 were extremely serious. Senior management, while anxious to ensure that fair procedures were followed, took issue with the way some of the investigation had been conducted, in particular, the fact that the investigation team had contacted parties outside FÁS (in particular the Independent Newspaper Group) without first informing senior management. The Committee does not accept this criticism of the investigative team and commend the Internal Auditors for conducting their investigation in a thorough manner. Evidence seen by the Committee also shows that senior management gave certain assurances to the Director of Corporate Affairs during the course of the investigation to the effect that the matters being investigated by Internal Audit were procedural and, by implication, not of a serious nature; this should not have happened.

THE NEED TO ADDRESS ISSUES THAT ARE THE SUBJECT OF AN ON-GOING INVESTIGATION

The Director of Corporate Affairs remained in his post during the course of the investigation until he went on sick leave in

June 2008. As outlined to the Committee, an individual who is the subject of a disciplinary process is entitled to appropriate fair procedures in the investigation of any complaints. The Committee naturally accepts that this is and, indeed, must be so. However, where an allegation that an employee has undermined the integrity of the procurement processes in an organisation is being investigated, it should be possible, in order to protect public funds, for an employer to put interim controls in place or to give that employee different work, without prejudice, until the investigation is complete. The failure to move quickly and decisively in order to protect public funds, while allegations are being investigated, raises a broad issue for all public sector organisations and will form part of the recommendations of this Report.

IMPLEMENTATION OF RECOMMENDATIONS IN INV 137

The Committee reviewed the implementation of the nine recommendations contained in Inv 137. Whilst many of the recommendations had been accepted by management and were in the process of implementation, FÁS had initially been hesitant in relation to conducting an evaluation of its media spend over the previous three years as the value of such an evaluation was regarded as questionable. The Committee has now been informed that an audit to establish the position of the FÁS brand among key stakeholders had commenced and also that an internal cross-functional group dealing with communications and market strategy group, which is to meet quarterly, had been established. The Committee welcomes the movement by FÁS on this issue.

The Committee notes that the recommendation to split the Corporate Affairs portfolio was not accepted albeit new structures are now in place to ensure the implementation of controls. The Committee also noted that a value for money evaluation of the annual Opportunities event was not accepted but that customer surveys would continue. While the Committee now understands that the annual Opportunities event will not be run in 2009, FÁS should establish the value and appropriateness of such events, especially to the Irish labour force.

SPECIFIC ACTION TAKEN BY FÁS SINCE THE PUBLICATION OF INV 137

In addition to the implementation of the recommendations in Inv 137, the Committee heard evidence that FÁS took the following steps to strengthen internal controls in the Corporate Affairs area:

1. the appointment in March 2008 of a financial controller to Corporate Affairs directorate;
2. the decisions to undertake audits of the Discover Science Programme and to bring forward the audits of the Opportunities event and advertising;
3. the allocation of extra resources to the Internal Audit area to undertake work at 2 above;
4. a new "belt and braces" procurement policy being

finalised for roll-out in early 2009;

5. the undertaking of a further audit of Corporate Affairs, covering the period from 2006 to early 2008. The Committee understands that, arising from this audit, that a decision was taken by the HR Manager in FÁS to suspend from duty the Director of Corporate Affairs.

CONCLUSION

The audit investigation that led to Inv 137 was comprehensive but lengthy. FÁS senior management were wrong to take

issue with the way the audit investigation was conducted. Where serious procedural irregularities arise during audit investigations, some early warning signals need to be put in place where there is a prima facie risk of loss to the organisation. Senior managers should, without prejudice, remove individuals who may be implicated in the findings of investigations. Finally, FÁS has informed the Committee that it has commenced a process that will ensure that stronger controls are in place and this will minimise the risk of a repeat of the irregularities identified in Inv 137.

Chapter Five: Disciplinary Action arising from Inv 137

INTRODUCTION

The Committee was made aware that disciplinary action was taken arising from the undermining of the integrity of procurement processes in FÁS. The Committee was not informed, for data protection reasons, of the nature of the disciplinary action. However it did hear evidence relating to the process which it considers relevant and these issues are outlined below.

CONDUCT OF THE DISCIPLINARY PROCESS

Following publication of Inv 137, disciplinary action was taken against the Director of Corporate Affairs in June 2007. As part of the process leading up to the initiation of disciplinary action, the Audit Committee of the Board had extensive consultation with the senior executives in FÁS in relation the matters to be covered in any disciplinary process. It is clear that the Head of the Audit Committee was unhappy with the approach being adopted by the executive and at one stage threatened to bring the matter to the full board of FÁS. In the event, the FÁS executive reached agreement with the Audit Committee and this allowed the process to go ahead. The Committee questioned the Head of the Audit Committee about this related correspondence as it appeared to the Committee that FÁS was not treating the matter in a serious enough manner. The Committee was informed of the limited role that Internal Audit and the Audit Committee can play in disciplinary matters and that once there is agreement on what matters will be covered by the disciplinary process (in other words the "charge sheet"), the matter is entirely one for HR. While the Committee could not get information on the nature of the sanctions imposed, it has a number of concerns, based not alone on this case but on others examples within the public service that have come before the Committee, about restrictions that apply to the civil and public service in the context of disciplinary action. By a process of deduction, the Committee is aware that the individual at the centre of the allegations was subject to a disciplinary process that (a) did not lead to his dismissal, (b) did not lead to him being moved to another area, (c) did not lead to him being demoted, (d) did not lead to him being placed on a lower level of remuneration and (e) did not lead

to his suspension. The Committee is also aware that, after the disciplinary process, this individual was short-listed for promotion. While it is not the function of the Committee to judge the adequacy of the disciplinary action taken in this case nor indeed to express any comment whatsoever on the merits, nevertheless these events highlight the need for a review of the adequacy of disciplinary process in the context of loss or waste, as has arisen in FÁS. Finally, the Committee recommends that disciplinary processes be invoked quickly when they have to deal with the aftermath of a problem caused by procurement processes.

DISCIPLINARY CODE WITHIN FÁS

The Committee was given sight of the FÁS disciplinary code which is a procedural agreement between the management and unions in FÁS. The Committee noted that the code lacks comprehensiveness and, while it provides for dismissal, it does not spell out other disciplinary measures, such as demotion and reduction in pay. The policy in FÁS contrasts with the comprehensive civil service policy and the Committee recommends that FÁS updates its policy to bring it into line with the policy that applies to the civil service.

ACCOUNTABILITY FOR LOSS OR WASTE

It is imperative that there be accountability for loss, waste and extra contractual payments. Primary responsibility for these instances rests with boards and senior management. However individual managers have a duty to act in accordance with the norms for the conduct of public business. In instances where, prima facie, they do not, it is important that robust disciplinary procedures be instituted. There is a risk that public managements by virtue of the pattern of control and supervision, which gave rise to the breaches under investigation, may lack the moral authority to pursue individual cases.

CONCLUSION

In future, any disciplinary action that is taken in cases of this nature should reflect the seriousness of the issue. The current approach, as highlighted by the FÁS case, does not appear to reflect these concerns.

Chapter Six: Foreign Travel

INTRODUCTION

While FÁS is a national agency and most of its work does not have a European or international dimension, the Committee has concerns about the extent of foreign travel and raised these at meetings with the Director General and with FÁS representatives. In particular, and contrary to the policy of the public service, first class travel costs were charged to the FÁS account; in addition, people not directly associated with FÁS had travel costs covered; and finally, foreign travel and subsistence led to a large amount being charged to credit cards. FÁS spent on average €400,000 per annum on flights and €200,000 per annum on subsistence. The Committee accepts that, with labour market shortages in recent years, there was a need for executives in FÁS to arrange labour fairs in foreign destinations and also the development of the Discover Science Programme in NASA necessitated a degree of foreign travel. However the extent of such travel by executives indicates that keeping foreign travel to a minimum was not a priority in FÁS and this most likely led to increased costs being levied on the Exchequer and on the taxpayer. The Committee requests that the level of foreign travel be reviewed in future so as to keep costs to a minimum.

FIRST CLASS TRAVEL

It was a practice in FÁS that senior executives, board members and those who accompanied executives on trips could travel first class. This policy enabled senior executives on a number of occasions to trade down their first class ticket for two business class tickets which then enabled the spouses of the senior executive to travel free of charge on the airline. The Committee has established that there is no entitlement to first class travel and that any downgrading of a ticket should result in the saving being returned to the State. This is clear policy dating back to 1992. FÁS now accept that this practice was inappropriate. The explanation given by the senior executives in FÁS that they presumed that first class travel was in order is at variance with the evidence given by the previous Director General (Dr. Lynch) who stated that there was no entitlement to first class travel. What is also of concern to the Committee is the fact that even though first class tickets were purchased, there are no airlines offering first class travel out of Ireland. Therefore, the Committee will recommend that the Comptroller and Auditor General review all foreign travel to determine the instances where first class tickets were charged to FÁS and to determine whether in fact those officials were able to avail of first class travel. Finally the data supplied to the Committee shows large variations on the amounts charged for flights where two officials were on the same trip and this matter should also be the subject of further investigation.

TRAVEL ASSOCIATED WITH THE DISCOVER SCIENCE PROGRAMME

While the annual budget for the Discover Science Programme was in the region of €1.3 million, it did give rise to

an inordinate amount of foreign travel which was a major ancillary cost to the programme, as was the cost of the time devoted to the programme by senior management. The Committee accepts that, in developing the programme in 2003, senior executives from FÁS would have had to travel to the USA. However it appears to the Committee that the programme was used to justify extensive foreign travel that is unsustainable. In addition to FÁS executives, spouses of senior executives, board members, former board members, journalists and ministerial delegations were brought to Florida. The flight costs for the years from 2003 to 2007 amounted to €379,587. In addition FÁS paid flight costs of €128,000 to bring groups associated with the project to Ireland. Significant additional costs were associated with both the outward and incoming visits, including accommodation, subsistence and entertainment. The Director of Corporate Affairs travelled to Florida on thirteen occasions in the three years commencing July 2003, while one Deputy Director in Corporate Affairs travelled on fifteen occasions between 2003 and 2007. The fact that responsibility for this programme rested in Corporate Affairs is indicative of a policy that equated the programme with creating an image/brand for FÁS rather than an educational issue. The Committee can only conclude that the extent to which senior executives availed of foreign travel to Florida and the extent to which they promoted the programme by bringing others (see below) with them at State expense undermined the value that this programme undoubtedly had in promoting the advancement of science in Ireland.

TRAVEL BY "OTHERS"

The Committee, having reviewed the data supplied by FÁS on the instances of foreign travel, questioned the need to cover the travel costs of those who had no direct connection with FÁS. Those that fall into this category include former board members, journalists and spouses of executives who were brought to Florida (NASA) and other foreign destinations. The Committee does not accept the rationale provided by FÁS for this type of expenditure. Also where Ministerial delegations travelled with FÁS executives, the travel and subsistence costs associated with Ministers and their civil servants should be borne by the vote of the Department as it is not appropriate to treat such expenditure as appropriate to FÁS.

USE OF CREDIT CARDS

A number of executives in FÁS had a company credit card which had a substantial credit limit including one which had a limit of €76,000. These cards were primarily used by Corporate Affairs directors when abroad to cover entertainment and other costs associated with travel and subsistence, including flight bookings. The throughput on the card used by the Director of Corporate Affairs was €223,838 in the period from 2003 to 2007. FÁS has now lowered the expenditure limits on credit card to €7,000. While the

Committee accepts that there are circumstances where payment by credit cards is necessary, these should be kept to a minimum. The Committee also finds that limits available to senior executives were excessive and can only conclude that it is indicative of a culture where due regard was not being paid to minimising costs.

CONCLUSION

The Committee concludes as follows:

1. that public funds were wasted through excessive foreign travel;
2. inappropriate charges were made to the FÁS account

- through the payment of first class travel tickets;
3. FÁS should not have paid for flight tickets for former board members, journalists and spouses of executives and costs in respect of Ministers and civil servants should have been borne by the Department;
4. credit card limits were inappropriate and not conducive to ensuring that costs were kept to a minimum.

The Committee has recommended that the Comptroller and Auditor General carry out a full review of the purchase of first class tickets by FÁS and will examine this issue again when his examination is complete.

Chapter Seven: Conclusions and Recommendations

CONCLUSIONS

1. The issues that were the subject matter of Inv 137 and reported to Dáil Éireann by the Comptroller and Auditor General came to light purely by chance when an anonymous letter from a whistleblower in October 2004 led to the initiation of an audit investigation.
2. FÁS spent €35 million in advertising from 2003 to 2007 and much of this was expended in an unorthodox fashion from a procurement perspective.
3. Non-effective expenditure of at least €1.8 million was incurred by FÁS in a four year period.
4. The Committee found no evidence that contracts to the value of €7million were awarded under competitive tendering and this has resulted in FÁS being exposed to the risk that services were not procured at the most economically advantageous cost.
5. The shut down of the Jobs Ireland Website has cost the taxpayer at least €1.2 million.
6. The control systems in respect of the areas that were within the remit of Corporate Affairs were weak and inadequate having particular regard to the annual budget of that directorate and this enabled those controls to be bypassed.
7. Adequate control structures in the Corporate Affairs area were not put in place until March 2008. At that stage, a lot of public money had been put at risk of being wasted and a lot of damage had been done which has tarnished the name and image of FÁS.
8. It took three years before the very serious matter of the undermining of procurement processes was formally brought before the Board of FÁS.
9. The Chairman of FÁS signed a statement on the system of internal financial controls in respect of 2006 and 2007 even though the Board might not have given such a certificate had it got an operational early warning mechanism to signal the material control deficiencies that were highlighted in the findings of Inv 137.
10. FÁS has assured the Committee that it has taken the necessary action, since March 2008, to strengthen its procedures, especially in the Corporate Affairs area.

11. The FÁS disciplinary code is not comprehensive and requires to be updated.
12. FÁS executives were not entitled to purchase first class airline tickets or to downgrade such tickets in order to cover the flight costs of their spouses.
13. FÁS should not have paid for airline tickets for journalists, former board members, Ministers and civil servants or the spouses of executives of FÁS.
14. One senior executive in FÁS had a company credit card with a limit of €76,000 which was excessive in the extreme.

RECOMMENDATIONS

1. All staff involved in procurement of goods and services should be familiar with the risks that arise where public service guidelines are ignored. In particular, chief executive officers of State agencies should take steps to ensure that access to expert advice is available, whether through outsourcing or developing in-house that advisory capacity.
2. Major items of expenditure, such as advertising and ICT investments in the case of FÁS, should be based on medium to long term strategies so as to ensure that such expenditure is focused on clearly defined objectives and outcomes. In addition a performance measurement system should be put in place to assess the effectiveness/outcome of such expenditure and this should be reported to the Board.
3. The capacity of the audit function in FÁS needs to be enhanced so that it incorporates both investigation and risk based audit approach. Combined with this, FÁS needs to undertake a comprehensive analysis of risk which can be used to target its internal audit programme. Finally, FÁS should collect data on procurement in respect of all contracts awarded without competitive tendering and report these to the Comptroller and Auditor General when signing off the annual accounts.
4. In cases where an audit investigation is initiated and where there is prima facie evidence of a material breach of procedures and a risk of further loss, the need to adhere to fair procedures in investigating wrongdoing

can still be achieved whilst removing the individual implicated in any wrongdoing to another area or by putting additional controls in place. Such steps should be taken without prejudice and in the interest of protecting both the individual that the allegation is made against and the organisation which must be protected from the risk of further loss.

5. The disciplinary code in FÁS is not comprehensive and requires to be reviewed. The comprehensive code that applies to civil servants should be used by FÁS and, where necessary, by all State agencies.
6. Inv 137 should be referred by FÁS to the Director of Corporate Enforcement and to any other relevant regulatory authority for investigation and follow up action against third parties identified in that Report.
7. There is a need to review the practices and procedures so as to build in early warning mechanisms in order that non-executive boards of State Companies are kept fully informed on developments relating to audits where there is a risk of material loss or where issues that fall within the responsibility of the board, as outlined in the Code of Corporate Governance for State Bodies, arise.
8. Boards of State companies must engage actively where issues such as the violation of internal controls arise in order that they can satisfy themselves as to the adequacy of control structures when signing off on the statement on the systems of internal financial control in the annual reports.
9. The Labour Services Act 1987 should be amended to make the Director General the accountable person and so as to enable the board of FÁS to be restructured.
10. Governing legislation should be amended so as to provide expressly that any director's fiduciary duties to a State agency must not be understood, in the case of a director duly appointed by the Minister to represent the public interest, as preventing the director in question from reporting to the Minister when key issues of governance regularity, probity, financial performance and general organisational matters within the agency arise.
11. The Freedom of Information Acts should be amended expressly so as to provide that a request pursuant to Dáil Standing Order 85 by an Oireachtas Committee would have the same status as a request under The Freedom of Information Act and must be treated accordingly by the public body concerned. To this end, it would also be necessary to have a specific provision which provided that the release of information in such circumstances would be deemed to be pursuant to a statutory enactment, so that the public body concerned could not rely on the provisions of the Data Protection Acts 1988-2003 to withhold relevant information where it concerned individuals. In such circumstances the release would be regarded as being "pursuant to an enactment" and, hence, the public body producing the information would benefit from the exemption contained in section 8(e) of the Data Protection Act 1988.
12. Public bodies submitting documentation containing personal data pursuant to a request under Dáil Standing Order 85 by an Oireachtas Committee should be given the same protections of privilege as if they were producing the same documentation on foot of an actual compellability request.
13. Legislation providing for the appointment of designated officer holders in State agencies as accountable persons in relation to the accounts of that agency should make it an obligation on such office holders to appear before the Committee of Public Accounts in relation to matters which happened while they were still office holders even though they have subsequently resigned.
14. The Department of Finance should have clear guidelines on the way any enhanced financial arrangements are made in respect of civil and public servants who resign their positions.
15. All Government Departments should now ensure that the travel policy of the Department of Finance is adhered to by bodies under the aegis of their Departments and should request a positive statement of compliance from the Chairperson of each such agency within three months. The Department of Finance should examine whether the policy can be strengthened by incorporating this requirement into the annual report of the chairperson of each agency under the Code of Practice for the Governance of State Bodies.
16. The Committee has already recommended to the Comptroller and Auditor General that the comprehensive audit that his office is now undertaking, into internal controls, governance arrangements and oversight management include:
 - a. The decision to move the Opportunities Fair to Croke Park from the RDS;
 - b. The extent to which FÁS was charged for first class flight tickets and the number of occasions where a business class flight was taken when a first class ticket was purchased;
 - c. A review of advertising expenditure;
 - d. A review of foreign travel and subsistence and entertainment expenditure;
 - e. A review of the Competency Development Programme;
 - f. A review of the Discover Science Programme;
 - g. A review of capital expenditure, with specific regard to whether value for money was obtained on the lease of office space;
 - h. Procurement processes for the period since 2000 that were undertaken by the Procurement directorate in FÁS.

Orders of Reference of the Committee of Public Accounts¹

- (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 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 twelve members, none of whom shall be a member of the Government or a Minister of State, and four 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.

¹The Orders of Reference of the Committee of Public Accounts are set out in Standing Order 158 of Dáil Éireann

Appendix One

Comptroller and Auditor General Special Report

General Matters arising on Audits

- Non-Commercial State Sponsored Bodies
- Health Sector Bodies
- Vocational Educational Committees

CHAPTER 2: FÁS

BACKGROUND

- 2.1** As part of its communications strategy, FÁS engages individuals and companies on a contract basis to provide media, public relations and advertising services. In 2006, it spent almost €9.0 million on these services.
- 2.2** FÁS organises events to bring potential employees and job seekers in contact with prospective employers. These events may be annual, such as 'FÁS Opportunities' or occasional, such as 'Science Challenge'. In the past there have been other once-off initiatives such as 'Jobs Ireland', involving recruitment fairs abroad and an associated website.
- 2.3** Two functions in FÁS contribute to the procurement of marketing and related services, Corporate Affairs Division and the Procurement Department.
- 2.4** Corporate Affairs Division seeks to ensure that the corporate image of FÁS is consistent with the organisation's statement of strategy. It establishes and maintains communications with key stakeholders to ensure they are fully informed of the services and products available. It also liaises with media representatives. It has a high degree of autonomy within FÁS to procure advertising, media and related services.
- 2.5** The Procurement Department organises tender competitions and advises line divisions on best practice in procurement. It also assists in evaluation of tenders and the administration of the procurement process.

GOOD PROCUREMENT PRACTICE

- 2.6** Procurement in the public sector must be discharged honestly, fairly and in a manner that secures best value for money. Good practice includes:
- Using procurement procedures that provide open and transparent competition
 - Applying clear and objective criteria, notified to all interested parties, in selecting tenders and awarding contracts
 - Using broadly based non-discriminatory technical specifications
 - Allowing sufficient time for submission of expressions of interest and tenders.
- 2.7** Procurement Guidelines, issued by the Department of Finance in 2006, are intended to help agencies such as FÁS to engage external support through procedures that are competitive, compliant with national and EU policy and legislation, properly managed and capable of

achieving value for money.

- 2.8** While the Guidelines deal largely with process issues, it is also important that contracting authorities carry out procurement activities in an ethical manner.

INTERNAL AUDIT REPORT

- 2.9** In November 2004, internal audit commenced an investigation into allegations of impropriety in procurement activities undertaken by or under the authority of the Corporate Affairs Division. The report of the investigations, which covered the period 2002 – 2005 was presented to the Audit Committee in May 2006.
- 2.10** The report raised concerns which could be broadly summarised as
- Breaches of FÁS procurement rules that effectively undermined the process
 - Instances where FÁS did not appear to have achieved value for money
 - Possible interventions in the staff appointment process of a supplier of services to FÁS by a FÁS employee involved in the procurement process.

BREACHES OF PROCUREMENT RULES

- 2.11** The breaches described suggested that the procurement process was undermined on a number of occasions. For example,
- a contract worth €30,000 plus VAT was awarded to a company which invoiced FÁS's advertising agency for a payment relating to Science Challenge work two weeks before the outcome of the tender evaluation process was communicated to it; the successful tenderer had also suggested the names of two other parties who should be invited to tender notwithstanding the fact that a proposal and specification in respect of the work had already been completed by the successful tenderer at the request of FÁS
 - an official in FÁS awarded a contract with a value of €53,000 plus VAT for work on Opportunities 2003 to a firm with which he had been in communication before FÁS Procurement had issued tenders for that work; this firm did not submit a tender to FÁS Procurement.
- 2.12** I asked the Director General of FÁS what remedial measures had been taken following the Internal Audit report in relation to procurement. He told me that, in preparing and revising its procurement procedures, FÁS took account of EU procurement directives and national procurement policy. He said that, in a number of areas, FÁS procurement thresholds were set at a lower level

than that required and therefore ensured a greater level of control. The Director General said that Corporate Affairs Division had been instructed to follow normal FÁS procedures and that an analysis of expenditure for 2003, 2005 and 2007 demonstrated an increase in the value and amount of expenditure incurred by Corporate Affairs Division through the procurement system. Furthermore, if Corporate Affairs Division required any items of an emergency nature, such expenditure required his approval prior to costs being incurred. The Director General stated that this derogation had not been required to date.

- 2.13** The Director General also stated that the FÁS Finance Department continued to emphasise the involvement of the Procurement Department in contract approval, as required by FÁS procedures. He said this was evidenced by the increase in the number of purchase orders processed by the Procurement Department which had increased by 25% in the period 2003 to 2006. In addition, FÁS had conducted a number of briefing sessions for its management on tendering procedures including EU legislation in order to reinforce procurement procedures.
- 2.14** The Director General also informed me that in delivering the FÁS Strategic Plan 2002-2005, the management structures in Corporate Affairs Division and the Procurement Department had been strengthened through the appointment of a Procurement Manager and two Directors and that many other changes had been effected throughout the organisation.

VALUE FOR MONEY ISSUES

- 2.15** In the period covered by the internal audit investigation, FÁS or the advertising agency contracted by it, engaged in transactions which did not appear to be conducive to the attainment of value for money. These included:
- One contract in relation to Opportunities 2002 was awarded at a cost of approximately €250,000, which was at least twice as much as was paid previously, or since, for such work.
 - A company engaged by the advertising agency from January 2002 to late 2004 added an additional percentage to contractor charges. These charges were included on invoices passed to FÁS by its advertising agency and were paid in due course. The internal audit report estimated the direct financial loss to the organisation arising from incorrect invoicing/overcharging at €160,000.
 - A major sales contract for Opportunities 2005, signed after the event, contained an incentive-based plan rather than the fixed fee originally envisaged. The incentive-based plan cost FÁS a further €27,400.
 - FÁS made a commitment to advertising worth €100,000 with one specific local newspaper when all other printed advertising business was done with national titles.
 - The advertising agency told Internal Audit that there appeared to be an unusually high level of outdoor media usage when considered as a percentage of total media spend; the spend on outdoor media should

be below 10% for an average media campaign, whereas in 2004, for example, the FÁS spend on outdoor media represented between 25% and 30% of the total.

- 2.16** In responding to my enquiries as to the measures that had been taken to ensure that value for money in advertising spend was achieved, the Director General informed me that a Communications and Marketing Strategy Group was being established. FÁS had initiated tenders for an independent marketing and communications audit to establish the position of the FÁS brand among key stakeholders. This audit would allow an assessment of value for money in relation to FÁS's advertising spend and would assist the Group in developing the strategy for the organisation.
- 2.17** In the case of the contract for Opportunities 2002, the Director General stated that there were many imponderables involved in trying to develop precise estimates of what would constitute an appropriate fee for work of this nature. However, he acknowledged that the fee paid to the contractor was greater than that paid in previous or subsequent years for similar contracts.

JOBS IRELAND

- 2.18** At the time Jobs Ireland was launched, FÁS already had web-based and other systems available which allowed interaction by employers and jobseekers. For example, it had its own corporate website and Job Bank, a jobs information exchange database formally launched in May 2000. However, during 2000, Corporate Affairs Division took the decision that a website separate to these systems should be developed specifically for Jobs Ireland. The objective of this website was to allow employers to add vacancies and for registrants to place their details on the Jobs Ireland database. However, the Internal Audit report suggested that the existing systems already provided the functionality provided by the Jobs Ireland system.
- 2.19** The value FÁS obtained for its expenditure on the Jobs Ireland site appeared questionable on a number of fronts
- the database was not available to FÁS staff or clients using the FÁS Employment Services offices other than through the Internet
 - many overseas clients did not register online on the Jobs Ireland website. Instead, their manual forms were brought back to Ireland and then keyed into the Jobs Ireland system at additional cost to FÁS
 - after the demise of the Jobs Ireland campaign in 2001, vacancy and client details were never integrated into the mainstream FÁS systems and any residual value of the investment was lost.
- 2.20** Internal Audit estimated that the total cost of developing, maintaining and hosting the Jobs Ireland website was €1.7 million. Internal Audit suggested that FÁS probably paid at least €1 million more than should have been the case. In addition, it found that FÁS spent a large proportion of its advertising budget promoting the website between 2000-2003.
- 2.21** I asked the Director General how the creation of the

Jobs Ireland website had conformed to FÁS IT strategy at the time. In response, the Director General said that at the time it had been standard practice for all IT developments to involve the IT Department. A number of senior IT managers had been responsible for liaison with specific business units to deal with IT issues and to respond to requests for data and system design/upgrade. He said that this approach ensured that development was coordinated at the business unit level. The Jobs Ireland website was not developed using this approach.

- 2.22** He also informed me that, arising from an IT review conducted by an external consultant in 2002, an IT strategy had been developed for the organisation. As part of the strategy an IT Steering Committee had been established in 2003. All proposals for development must now be approved by this Committee.
- 2.23** Commenting on the figures in the internal audit report, the Director General stated that precise estimates of the appropriate cost of work of this nature was difficult to calculate, particularly so in the case of a major project such as Jobs Ireland which had to be undertaken very urgently and which had to satisfy the needs of international clients.

CONFLICTS OF INTEREST

- 2.24** Internal Audit found some evidence that one FÁS employee involved in procurement may have intervened on occasions to recommend certain individuals for employment by a supplier. Interventions of this kind are not appropriate. They are open to abuse and, at the very least, may create the perception that FÁS's future dealings with the supplier may be influenced by whether or not the recommendations of the FÁS employee are acted upon. I asked the Director General whether changes were needed to the FÁS Employee Code of Ethics or whether any additional guidance was advisable, in the light of concerns raised in the internal audit report.
- 2.25** The Director General stated that the Code of Ethics had been launched in July 2003. The Code had been developed through the Partnership process and outlined the ethics that underpin FÁS core values and principles. He stated that the specific issue of a staff member

making personal interventions in the employment by suppliers of certain individuals had been discussed with the FÁS Human Resources Department. This Department was of the opinion that the Code in its current format was sufficiently robust to deal with such an instance and therefore did not need to be amended.

CONCLUSIONS

- 2.26** Good procurement practice requires State entities to act in a fair and transparent manner in acquiring services. It is the responsibility of those charged with governance to see that this occurs. The FÁS control environment included formal internal procurement guidelines. However, it is clear that, over a prolonged period, those guidelines were not observed in Corporate Affairs Division.
- 2.27** Public procurement rules permit departures from the normal process of competitive tendering. However, such departures should only occur on an exceptional basis. Procurement procedures should state the general circumstances in which a departure from the normal standards would be appropriate (e.g. urgent needs); the reasons for the departure should be documented in advance and the departure from the norm should be approved at a more senior level than the person requesting that departure.
- 2.28** There was a failure to achieve value for money in the way in which FÁS managed its relationship with its principal advertising agency and in the way it conducted business with contractors for major events. Instances of direct financial loss include €160,000 by way of inappropriate charges on advertising fees and a contract of €250,000 for work which normally would have cost less than half that amount.
- 2.29** Significant expenditure on new organisational developments should be underpinned by a clear strategic plan. In the case of the Jobs Ireland website, a viable case for development had not been made and the subsequent application of FÁS resources to the website project did not produce value for the agency. The absence of an IT strategy at the time facilitated the misdirection of FÁS resources towards this end.

Appendix Two

Correspondence from Mr. Michael Duffy, CEO, RDS



Mr Bernard Allen TD
Chairman,
Public Accounts Committee
Leinster House
Dublin 2

8 December 2008

Dear Deputy Allen,

I write with reference to the comments of the former Director General of FÁS, Mr. Rody Molloy, to the Public Accounts Committee on Thursday 4th December in respect of RDS as a venue for the FÁS Opportunities Fair.

Mr. Molloy's comments with regard to the RDS are inaccurate and do not reflect reality. With a footfall of almost 2 million people in 2008 and a record 430 events, it is incredulous that FÁS seeks to substantiate the move of Opportunities to Croke Park on the basis of inadequacies in catering and car movements.

I understand catering facilities at RDS have been described as 'unacceptable' in terms of standard and price. The RDS absolutely refutes this statement. In 2004, when Opportunities moved to Croke Park, RDS staff met with FÁS officials to seek to reverse the decision and catering was neither identified as a problem nor advanced as a reason for moving the Fair. Mr. Molloy's inaccurate and unsubstantiated comments are an unacceptable slur on the reputation of the RDS.

The RDS offers a quality catering service, via Hospitality Options. Since 2005 we have invested over €3 million in dedicated catering units, extensive back-of-house modernisation and the introduction of concept café bars and units. We work to the highest catering standards and rigorously benchmark our products and pricing against peer venues. Copies of the 2008 RDS-commissioned Venue Catering Survey, outlining our success on product offering and price relative to peer venues, are available on request.

Another factor identified in the move of Opportunities to Croke Park was reference to children 'ducking and diving' cars. The RDS is sited on a spacious 40 acre campus offering facilities for bus drops-off and collection and proximity to public transport. All adjacent roads are well serviced with pedestrian crossings, wide footpaths and several venue entry points. The RDS successfully hosts a significant number of major schools-orientated events annually. Events such as BT Young Scientist and Technology Exhibition, The Irish Times Higher Options Conference, The Young Social Innovators, The Hallelujah Chorus, The Credit Union Schools Quiz, as well as Leinster Schools Rugby Cup Final are resident events at this venue.

In addition, a very large number of young people attend the RDS for a wide variety of events such as Funderland, Concerts, Science Live Lectures as well as Examinations.

The RDS has a strong tradition and in-house expertise in hosting events involving young people and a track record of safety in this regard. The suggestion that the FÁS Opportunities Fair was relocated for traffic reasons is simply not credible.

In the light of the above, I trust that the RDS will receive proper and fair consideration in a transparent manner as the location for future FÁS Opportunities Fairs.

I respectfully request that the RDS response to Mr. Molly's comments be placed on the record of the Public Accounts Committee.

Yours sincerely

A handwritten signature in black ink that reads 'Michael Duffy'.

Michael Duffy
Chief Executive

Appendix Three

SCHEDULE 2

FAS CORPORATE AFFAIRS INVESTIGATION

- The Chairman received an anonymous letter from the office of the Minister for Enterprise, Trade & Employment in October 2004.
- This letter was passed to the Director General who instructed Internal Audit to conduct an investigation into the alleged allegations and submit a report. The investigation commenced in November 2004.
- The investigation was extensive in its scope and covered the period 2000 to 2004. Due to the seriousness of the allegations made, the investigation was conducted by the Head of Internal Audit and an Audit Manager.
- Audit work commenced in November 2004 and was completed in December 2005.
- The Director of Corporate Affairs, amongst others, received a special merit bonus in June 2005.
- Arising from work conducted by Internal Audit, information was passed to the Gardai on 15th June 2005. The Gardai investigation is on-going.
- A draft final report was issued to the ADG Corporate Services, copied to the Director General on 30th January 2006.
- The Director General and the Assistant Director General Corporate Services met with Internal Audit on 9th February 2006 and 16th February 2006.
- As a result of a legal issue raised by the Assistant Director General, Corporate Services, FAS was advised that the individuals named in the report should be given an opportunity to comment on the sections of the report that were relevant to him/her. This consultation process took place from February to May 2006.
- A final report was issued to the ADG Corporate Services, copied to the Director General on 19th May 2006.
- The Director General and the Chair of the Audit Committee met on 5th July 2006 to discuss the format of the report and the conduct of Internal Audit during the investigation.
- The Chairman of the Audit Committee briefed the Head of Internal Audit as to the Director General's concerns about the structure of the report. There was no issue however as to the content of the report.
- On 14th July 2006, the Head of Internal Audit wrote to the Director General explaining his position.
- In accordance with normal procedure, the Audit Committee received a summary of the report which was considered at their meeting on 12th October 2006.
- The Director General also attended this meeting to discuss the report with the Audit Committee. At this meeting the Audit Committee requested a copy of the full audit report.
- On 17th October 2006 the Audit Committee received a full copy of the report.
- Following the receipt of the report, the Chairman of the Audit Committee sought and obtained independent professional advice (legal and audit) on behalf of the committee regarding the report. Arising from this advice, the report was agreed and finalised.
- The Director General issued an initial response to the Audit Committee on 6th February 2007.
- The Head of Internal Audit responded to the Director General on 20th February 2007.
- The final report was issued to the C & AG on 13th February 2007. While the C & AG expressed their concerns with matters arising in the report, the C & AG signed off on the 2006 Financial Statements without qualification.
- The Director General and the Chairman of the Audit Committee corresponded on the report, the Executive's response and the disciplinary investigation over the period 6th February to 4th April 2007.
- The Director General directed Human Resources to conduct a disciplinary investigation into matters arising from the report. The investigation commenced on February 2007 and was completed on June 2007. Disciplinary action was taken against the staff member involved.
- FAS are awaiting the outcome of the Gardai investigation and depending on the outcome, further action may be taken.
- In October 2007, the C & AG contacted FAS with a view to conducting an investigation of issues raised in the report. The Director General met the C & AG and instructed Internal Audit to supply the C & AG with any data they required.
- The Board was advised of the Audit Committee's concerns around compliance with public procurement processes, by the chairman of the Audit Committee at their meeting on 6th December 2007.
- The C & AG completed their work from October 2007 to March 2008. The C & AG issued their report; "Matters arising on Audits Non - Commercial State Sponsored Bodies, Health Sector Bodies & Vocational Education Committees on 9th May 2008.
- The Audit Committee requested that Finance provide the Committee with a concrete plan on the issue of controls on procurement and observance of the requirements of Procurement Policy, which will ensure that all staff engaged in procurement are fully aware of their responsibilities in the area of procurement, and are aware of the sanctions for non-compliance with those requirements, and also, how that compliance will be monitored by FAS. A plan was submitted to Internal Audit on 3rd July 2008.
- A major element of the plan involved a full review of the current Financial Authority Levels and Procurement Procedures, including a consultation process with key staff involved with procurement, Finance Managers and Internal Audit.
- On 11th September 2008, Finance presented a revised set of Financial Authority Levels and Procurement Procedures to the Audit Committee. The Audit Committee requested that additional data be presented to support the proposal. The Audit Committee will review this data at the next Audit Committee meeting on 4th December.

Committee of Public Accounts 30th Dáil



Allen, Bernard
(FG)
(Chairman)



Broughan, Thomas
(Lab)



Clune, Deirdre
(FG)



Collins, Niall
(FF)



Fleming, Seán
(FF)



Kenneally, Brendan
(FF)



McCormack, Padraic
(FG)



McGrath, Michael
(FG)



O'Brien, Darragh
(FF)
(Vice-Chairman)



O'Keeffe, Edward
(FF)



O'Keeffe, Jim
(FG)



Shortall, Róisín
(Lab)

