



## **Dáil Éireann**

### **An Coiste um Chuntais Phoiblí**

**An Tríú Tuarascáil Eatramhach maidir le héisteachtaí an  
Choiste sa tréimhse Deireadh Fómhair 2003 go dtí Iúil 2004**

**An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe  
Dlí agus saincheisteanna gaolmhara**

*Meitheamh 2005*

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## **Dáil Éireann**

### **Committee of Public Accounts**

**Third Interim Report on hearings of the Committee in the  
period October 2003 to July 2004**

**Department of Justice, Equality and Law Reform and  
related issues**

*June 2005*

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## *Chairman's Preface*

This report, on the Department of Justice, Equality and Law Reform and related matters, is the third in a series of interim reports of the Committee of Public Accounts which detail the Committee's consideration of the Report of the Comptroller and Auditor General, 2002.

Within the last six weeks the Committee has published interim reports for 2002 on Transport and on the Department of Finance, the Office of the Revenue Commissioners and the National Treasury Management Agency. In the near future it will consider sectoral reports on:-

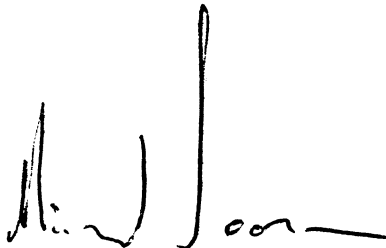
Departments of Communications, Marine and Natural Resources; Enterprise, Trade and Employment; Environment, Heritage and Local Government; and E.P.A.

Departments of Education and Science; Health and Children; and Social and Family Affairs.

Department of Arts, Sport and Tourism; and Sport.

As Chairman, I want to thank the Departments and various agencies for their co-operation in making the compilation of this report possible. I also want to compliment the members of the Committee for their diligent work throughout the year.

We recommend this report to the Houses of the Oireachtas.



Michael Noonan, T.D.,  
Chairman



## ***Members of the Committee of Public Accounts***

### ***FIANNA FÁIL***

Seán Ardagh T.D.	Dublin South-Central
John Curran T.D.	Dublin Mid-West
John Dennehy T.D.	Cork South-Central
Seán Fleming T.D.	Laois-Offaly
John McGuinness T.D. ( <i>Vice-Chairman</i> )	Carlow-Kilkenny
Michael Smith T.D. <sup>4</sup>	Tipperary North

### ***FINE GAEL***

John Deasy T.D. <sup>2</sup>	Waterford
Tom Hayes T.D. <sup>3</sup>	Tipperary South
Michael Noonan T.D. <sup>1</sup> ( <i>Chairman</i> )	Limerick East

### ***LABOUR***

Pat Rabbitte T.D.	Dublin South-West
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### ***GREEN PARTY***

Dan Boyle T.D.	Cork South-Central
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### ***SOCIALIST PARTY***

Joe Higgins T.D.	Dublin West
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**1** Deputy Michael Noonan replaced Deputy Padraic McCormack by order of the House on 18<sup>th</sup> June, 2003.

**2** Deputy John Deasy replaced Deputy Paul Connaughton by order of the House on 20<sup>th</sup> October, 2004.

**3** Deputy Tom Hayes replaced Deputy John Perry by order of the House on 20<sup>th</sup> October, 2004

Deputy Michael Noonan elected as new Chairman on 21<sup>st</sup> October 2004

**4** Deputy Michael Smith replaced Deputy Batt O’Keeffe by order of the House on 16<sup>th</sup> November, 2004.





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

- 156.** (1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee of Public Accounts, to examine and report to the Dáil upon—
- (a) the accounts showing the appropriation of the sums granted by the Dáil to meet the public expenditure and such other accounts as they see fit (not being accounts of persons included in the Second Schedule of the Comptroller and Auditor General (Amendment) Act, 1993) which are audited by the Comptroller and Auditor General and presented to the Dáil, together with any reports by the Comptroller and Auditor General thereon:  
  
Provided that in relation to accounts other than Appropriation Accounts, only accounts for a financial year beginning not earlier than 1 January, 1994, shall be examined by the Committee;
  - (b) the Comptroller and Auditor General's reports on his or her examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and
  - (c) other reports carried out by the Comptroller and Auditor General under the Act.
- (2) The Committee may suggest alterations and improvements in the form of the Estimates submitted to the Dáil.
- (3) The Committee may proceed with its examination of an account or a report of the Comptroller and Auditor General at any time after that account or report is presented to Dáil Éireann.
- (4) The Committee shall have the following powers:
- (a) power to send for persons, papers and records as defined in Standing Order 83;
  - (b) power to take oral and written evidence as defined in Standing Order 81(1);
  - (c) power to appoint sub-Committees as defined in Standing Order 81(3);
  - (d) power to engage consultants as defined in Standing Order 81(8); and
  - (e) power to travel as defined in Standing Order 81(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.

## **The Report**



## **1. Findings and Recommendations**

### **DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM – CHAPTER 4.1 – PROVISION OF ACCOMMODATION FOR ASYLUM SEEKERS**

#### **The Committee of Public Accounts finds and recommends**

##### **Specifically that:**

1. There was a serious loss of Value for Money in respect of the five locations. The loss included both capital and recurrent expenditure. A total of €19.6 million was spent without achieving the intended result. Capital losses on disposal of the Deveraux Hotel were €1.33 million. Ongoing security and maintenance costs for the other unoccupied properties was €1.65 million.
2. The five cases reflect a serious failure to consult local opinion or local planning authorities prior to the commitment of public money.
3. There was a lack of co-ordination with the health services and an external agency on Myshall.
4. Office of Public Works (O.P.W.) actions in respect of Leggetsrath were inefficient and triggered significant site and legal costs and ultimately a compensation payment of €2.53 million.
5. The overall losses reflect hasty short term actions to address a longer term policy issue. Had risk assessment and management practices been more developed, better decisions might have been made.
6. The delays in the finalisation of court actions had serious recurring cost implications.
7. Changed arrangements sanctioned by the Department of Finance whereby line departments may use the proceeds obtained from the sale of surplus property for approved projects within the department could prove beneficial to the provision of much needed facilities.

##### **And in general that**

1. A code of practice for consultation, with both the local communities and the planning authorities, in advance of major capital outlays should be developed.
2. The monitoring of the cost of accommodation services should be based on full costs, that is, including capital depreciation and ongoing insurance, security and maintenance costs.
3. More coherence and better coordination between all the State agencies involved is needed in the implementation of the strategy for providing accommodation for asylum seekers.

4. O.P.W. should review their resource base to ensure that they have the expertise necessary to undertake complex property transactions.
5. O.P.W. should adopt a more proactive approach to keeping properties in a manner that would maintain their full value.

## **DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM – CHAPTER 4.2 – SICK LEAVE IN THE PRISON SERVICE**

### **The Committee of Public Accounts finds and recommends**

#### **Specifically that:**

1. The incremental operational cost of sick leave can be measured in terms of the cost of overtime worked due to sick leave absences. In 2002, this was €8.6 million.
2. Available statistics point to some abuse by staff of sick leave privileges.
3. A determined effort has been made by the Department and the Prison Service to address the problem of sick leave.
4. The prison service does not have adequate information or research into the causes of sick leave and is working to resolve this.
5. Statistical information on sick leave is influenced by a small incidence of long term cases. These need to be adjusted as outliers in operational trend analysis.
6. There has been a significant investment in information technology which is expected to improve the quality of management information on sick leave and human resource management.
7. Migration to an annualised hours system would remove the incentive element of the link between sick leave and overtime.

#### **And in general that**

1. There should be more monitoring and evaluation of the causes of sick leave in the prison service.
2. The factors leading to high levels of sick leave in some locations should be tackled.

## **COURTS SERVICE – CHAPTER 5.1 – REFURBISHMENT OF CORK COURTHOUSE**

### **The Committee of Public Accounts finds and recommends**

#### **Specifically that:**

1. Cork City Council did not adequately consider the needs for courthouse accommodation in the original proposals for refurbishing Cork Courthouse.
2. The original lease for temporary court accommodation did not properly reflect the agreed analysis of payments to the landlord as it made no reference to the refurbishment of the building to make it suitable for court use.
3. There was a serious loss of taxpayers money in the negotiation of the lease at three times the original rent and without any recognition for the State investment in refurbishing the building. A further loss of value for money arises from the fifteen month vacant possession of the property before the break clause can be exercised.
4. The ultimate responsibility for the loss of value for money is shared by Cork City Council, the Courts Service and OPW due to poor co-ordination between them on the negotiation of the lease.

#### **And in general that**

1. O.P.W. needs to review its approach to the negotiation of property leases with a view to obtaining best value for money and, in particular, to ensure that expenditure undertaken in relation to the refurbishment of premises is taken into account.
2. Protocols governing the co-ordination of all State parties to significant property dealings should be drawn up.

## **OFFICE OF PUBLIC WORKS – CHAPTER 3.1 - PROVISION OF ACCOMMODATION FOR PROBATION AND WELFARE SERVICE**

### **The Committee of Public Accounts finds and recommends**

#### **Specifically that:**

1. The practice of entering a building without conclusion of formal lease contracts poses a potential threat to taxpayers' funds. Procedures in dealing with landlords need to be watertight.
2. The delays in entering properties A and B, following the agreements with landlords, cost the taxpayer significant moneys.

3. In the cases of properties A and B the cost of fitting out each building was more than ten times the original estimate. For property B work that was the responsibility of the landlord was not done.

**And in general that**

1. The full financial implications of choosing particular locations for the delivery of public services should be determined before final commitment to proceed is given.
2. O.P.W. should tighten up its procedures to better protect the taxpayer in its dealings with landlords.
3. Accurate information on the likely costs of fitting out properties should be available to decision makers before legal commitments are made.

**VALUE FOR MONEY REPORT 46 – PROBATION AND WELFARE SERVICE**

**The Committee of Public Accounts finds and recommends**

**Specifically that:**

1. The cost of community service orders is estimated to be one-third of the cost of implementing custodial sentences.
2. A significant investment has been made in information systems. It is reasonable to expect efficiency improvements, for example, in terms of a reduction in time spent on presenting reports to the courts, on foot of these investments.

**And in general that**

1. As part of MIF management reporting, the Probation and Welfare Service (P&WS) should monitor and analyse case load variations between community based teams. There is insufficient information on how staff are deployed and the outputs they produce.
2. There is some lack of clarity over the objectives of the Probation and Welfare Service P&WS and an insufficiency of performance indicators to adequately evaluate its performance. These should be addressed in the next round of strategic and business plans.
3. The staffing needs of the P&WS should be reviewed in light of the additional functions assigned to the service by legislation in recent years.



## **2. Department of Justice, Equality and Law Reform - Chapter 4.1 - Provision of Accommodation for Asylum Seekers**

### **1 Proceedings of the Committee**

1.1. The Committee heard evidence from Mr. Tim Dalton, Secretary General of the Department of Justice Equality and Law Reform and his officials; from Mr. Seán Benton, Chairman of the Office of Public Works; from officials of the Department of Health and Children; and from officials of the Department of Finance, on 4 December 2003.

### **2 The Background**

2.1. The late 1990s saw a dramatic increase in the number of people arriving in Ireland seeking asylum. For the whole of 1999, 7,724 applications were received, an increase of 67% over the number who applied in 1998. In 2000 almost 11,000 applications were received. Under international conventions, the Government is obliged to provide them with shelter and other basic needs pending the determination of the status of their claim to asylum. By early 2000, the Government introduced a system of direct provision which meant that the State would provide accommodation, food, health care, education etc. but would reduce welfare payments. It decided that the provision of accommodation for asylum seekers should be delivered through a combination of permanent buildings, system built units and mobile homes and the renting of places in the commercial sector. On foot of this decision, OPW, acting on behalf of the Reception and Integration Agency (the Agency) embarked on a programme of property acquisitions to meet part of the demand.

2.2. A key instrument in bringing some acquired properties into use quickly was the making of ministerial orders to avoid the planning process on the grounds that providing sufficient accommodation for the growing numbers of asylum seekers arriving in the State in difficult market conditions constituted an emergency for the purpose of the governing Act. Another approach was to acquire property where it was considered that planning permission was unnecessary because no material change of use was involved. In all, more than 32,000 people were accommodated in a brief time in approximately 120 locations throughout the country with considerable success. The Reception and Integration Agency obtained legal advice on property acquisitions and rentals in all cases and followed advice received from the Attorney General's office each time. Problems surfaced at five locations. As a result of local opposition, backed up in some cases by legal action centering on planning issues, four properties purchased between March and October 2000 remained unoccupied. Similar factors came into play at the fifth location where a site was leased to accommodate system-built units.

2.3. The specific circumstances concerning the five locations up to December 2003, are summarised below:

- The Deveraux Hotel, Rosslare and a bungalow to the rear, was sold in line with a commitment given to local objectors - the premises were never occupied in the three years they were in State ownership. The initial decision to sell coincided with a dramatic fall in the number of asylum seekers arriving in Rosslare in 2001. The State incurred a loss of €1.33 million on the acquisition when account was taken of the depressed sale price and the security and other costs incurred.

- The second property, Broc House, Donnybrook, was acquired in June 2000 at a cost of €9.2 million. Soon afterwards solicitors acting for local residents objected to its proposed use as a reception centre for asylum seekers. The matter was listed for hearing in the High Court. The property has remained unused since it was bought and almost €432,000 in security and other costs have been incurred in the interim.
- The third property was Ionad Follain, Myshall, County Carlow which was purchased in July 2000 for €1.3 million. There was strong local opposition to its proposed use as there was a view locally that the premises were being earmarked as a residential facility for children with autism. The State agencies were unaware of this local dimension when they acquired the property. In 2002 the property was transferred free to the Department of Health and Children to make it available to the South Eastern Health Board for that purpose. The property is still unoccupied and security and other costs have accumulated to over €195,000 in the meantime.
- The fourth property was Lynch's Lodge Hotel, Macroom, Cork. It was bought for €3.5 million in October 2000. Just after the sale was agreed but prior to closure, a letter of objection was received from a solicitor acting for local residents. They were successful in their application for a judicial review. The premises remain unoccupied. Over €448,000 has been incurred on security and other costs.
- A problem also arose involving the leasing of a site at Leggetsrath, Kilkenny, in March 2002 for the construction of system-built accommodation to house about 250 asylum seekers. A tender for €6.56 million for the construction of the units was accepted just as objections to the proposed development were being made. The objectors have been successful in their application for a judicial review. In the circumstances no work on the site has been undertaken to date. As a result of terminating the construction contract a settlement in excess of €2 million was made with the contractor. Other costs, including ongoing rent payments for the site, have accumulated to over €509,000.

2.4. The Committee received information from OPW on the latest position in respect of the five locations, as at May 2005:

- The Deveraux Hotel, Rosslare: The property was sold at a loss in 2003 before a legal case was initiated.
- Broc House, Donnybrook: The legal action has been finalised and the State's position was fully vindicated. The property is available for sale or appropriate State use.
- Lynch's Hotel, Macroom: This property is still subject to judicial review and settlement talks are ongoing;
- Leggetsrath, Kilkenny: The lease on the land was terminated and the legal case settled.
- Myshall: The property was transferred to the South Eastern Health Board.

### **3 The Accountability Issues**

3.1. The accountability issues centre around whether the State agencies acted reasonably in acquiring these properties in the acknowledged difficult circumstances at the time and with due regard to the State's financial interests and how well they managed the situation since then from the viewpoint of minimising the cost to the State.

3.2. The accountability issues examined were:

- Context of the asylum issue
- Public versus private sector accommodation
- Overall Value for Money position
- Leggetsrath, Kilkenny
- Alternative uses for properties
- Disposal of properties

## **4 Examination of the Issues**

### **Context of the Asylum Issue**

4.1. The number of asylum seekers entering the country has increased from 3,883 in 1997 to a peak of 11,643 in 2002. At the end of 2003, there were significantly fewer asylum seekers or refugees, depending on their current status, than in the previous two years. The cumulative numbers are 32,000 since operations started in spring 2000. The annual support cost is not falling because while the numbers entering the State are declining, a substantial number of asylum seekers remain here. Approximately 10,000 people who entered the State as asylum seekers have a permanent right to remain because they have an Irish born child. Those who have been granted refugee status will also remain.

4.2. Under a change in legislation in June 2003, asylum seekers are no longer entitled to rent supplement. This means that if they want to be accommodated, they must stay in State provided facilities. This is not an absolute requirement as they may opt to stay with friends or relatives already living here. Prior to June when a person applying for asylum had a child born to him or her, the arrangements were that (s)he was no longer an asylum seeker and was entitled to rent supplement from the health board. As a result, a considerable number of such persons have left State accommodation in the past three years and moved into apartments or flats in every community in the State on foot of rent supplement.

### **Public versus private sector accommodation**

4.3. The numbers in State provided accommodation at the end of 2003 reached a peak of 6,000 persons. They are housed at 72 centres in 24 counties. The majority of the 72 centres are leased from the private sector. There are ten State-owned centres that accommodate 1,800 persons. The five locations that have not come on stream had close to 700 places representing almost one-third of state-owned capacity. The total general cost, including housing, for the 6,000 people in accommodation is €342 million per annum. This cost is borne by various Departments, including the Departments of Health and Children and Education and Science. The Department of Social and Family Affairs incurs the greatest costs. The Department of Justice Equality and Law Reform expenditure in 2003 was of the order of €71 million. The annual cost for people in State accommodation is about €1,000 per person.

4.4. The private sector option was used because there was a shortage of unused suitable property. The first choice was to go for State property where it was available. When considering State properties, the Department looked seriously at tents at one stage and at flotel but did not persist with either of those options. Leaving aside the capital costs of acquisition, the average cost in the private sector is approximately €27 per bed space-per-night. The cost in the State sector is approximately €17. The Committee noted that when the

capital costs are added, the differential would be quite meaningless. The overall capital costs involved were about €35 million.

### **Overall Value for Money position**

4.5. Some €19 million, plus the cost of security was spent on the provision of accommodation for asylum seekers in the five cases under consideration but not one person has been accommodated. A sum of €6.2 million is not recoverable. There is a net loss of €5 million if the site at Ionad Follain, which was given to the health board, is included. The loss includes €80,000 lost on the Deveraux Hotel, security and maintenance costs at all of the properties in excess of €2 million and €2.5 million lost at the Leggetsrath site. The final outcome from these investments now depends on decisions made by the courts. If the courts make unfavourable decisions, further losses will be suffered. The Department still has a shortage of accommodation for asylum seekers and is still seeking accommodation. Therefore there remains a use for the properties that had been purchased. They would be used if allowed by the courts to do so. The Department holds the view that the losses could not have been avoided in a situation where people exercised their constitutional right to go to the courts. It had anticipated difficulties in a number of cases and chose to take the risk, because asylum seekers were sleeping in parks, a number of whom had endured enormous suffering and difficulties to come to Ireland, and it was unsustainable to leave them on the streets.

4.6. In respect of Broc House, the Committee noted that it had been purchased for more than €9 million and that €500,000 had been spent on security up to early 2003. Thus, there are on-going security and legal costs. OPW bought Ionad Follain in Myshall for €1.3 million and that property has accumulated costs of €176,000 and €18,000, all of which relates to part of 2003. The property has lost value from being left vacant for some time. The Department noted that the costs in relation to properties before the courts, will be greatly reduced when court proceedings are concluded. The Department would not have continued with court proceedings without having received expert legal advice that the cases concerned were sustainable.

4.7. The Office of Public Works may redeem more than half of its investment if it sells the properties or moves them on. Lynch's Lodge Hotel and Broc House are the two properties capable of being sold because OPW has given the other property to the Department of Health and Children and has lost on Deveraux Hotel. The OPW has not carried out recent valuations on the properties.

4.8. The Committee noted that sums in the order of €452,000 and €448,000 were incurred on security costs for two of the five properties. The security costs are high because of the long period during which the properties were held. The security firms connected with each of the five properties are different. In one instance, the security firm was changed because at the time of contract renewal a better deal was obtained with another firm.

### **Leggetsrath, Kilkenny**

4.9. The Committee expressed its concern at the way in which OPW had managed the acquisition of a site at Leggetsrath in Kilkenny. It felt that OPW should have anticipated community opinion on its proposals. In the case of Leggetsrath, little or no effort was made to bring communities on board or ensure the acquisition of suitable and supported sites. OPW knew there was opposition to the site but continued to purchase properties without reflection.

The Committee asked what plans did OPW have if planning applications were stalled or there were judicial reviews of property purchased. The Department acknowledged it was unfortunate that at the time it did not go through consultation processes but argued that this approach would have led to an unsustainable humanitarian problem. On the local consultation process, the role of the OPW was to advise the directorate and the agency on all property issues. The consultation with local communities nationally was handled by the directorate and the agency in less than ideal situations. It was not always possible to have prior consultation. The matter was urgent. The Committee argued that in Kilkenny there was no communication with the local community, no understanding of what went on and the local community felt abandoned by the State.

4.10. The leasing arrangements were put in place on 8 March 2002. There were a number of sites in adjacent counties also examined in addition to the one that was eventually decided on. This was an ongoing process that had started about 18 months beforehand. There was no specific expense incurred on the Kilkenny site until the lease was signed on 8 March 2002. Three days later, on 11 March, the Minister moved to exempt the site from planning permission by way of order. The Department had used the ministerial order in respect of 11 other properties where no difficulties arose. It had also constructed similar type facilities to those envisaged for Kilkenny without any legal difficulty. On 14 March, the OPW commissioner accepted a tender for contract. This is part of a drawdown contract arrangement for temporary buildings which had been in place for some time and used in the similar cases in Limerick and Cork based projects. OPW was in a position to execute the contract for the Kilkenny site once it had received clearance to go ahead. The main contract element was the cost of buildings which had been tendered for and were available. They arrived flatpacked and were assembled. In each case the site works could vary a little. There was a series of agreed rates. The contract was time based and has now expired.

4.11. The Committee reviewed what had happened after the contract was accepted. Five days later, on 19 March, OPW got the letter from a local solicitor and was from then on involved in a legal process. Between 8 and 21 March, the OPW went through a process whereby it had committed to spend €6.56 million. A letter from the Chief State Solicitor's office stated it had been agreed to defer commencing site work until 27 May. The OPW gave a commitment to the solicitor for the objectors that the work would not commence until that date. They hoped to achieve a compromise as on previous occasions. The original plan was to place 250 people. The idea was to use the period before construction started to see if a smaller number might be more acceptable to the community.

4.12. While the Agency was in discussions with local people, there was a discussion with the contractor about whether there would be a period of suspension. After 27 May it became obvious that there would be a court case and the contract was suspended indefinitely. Negotiations on a settlement for disruption and profits did not take place until it had become apparent that the date of 27 May was not going to hold. OPW was anxious to avoid a large claim for loss of profits and disruption, as can happen with such contracts. It did not know how long the suspension would be and would have cost more if the settlement negotiation had been delayed. OPW decided, at that time, that if circumstances determine that it no longer needs the property, it will cancel the contract. The contractor will not be entitled to further compensation. However, if OPW agreed to return to the site, it is possible that there would be an issue as to whether the contract was still valid.

4.13. For Leggetsrath, a figure of €2.536 million was settled on with the builder. The contract with the builder was not terminated but suspended and the builder was entitled to disruption costs and loss of profits. The reason the settlements generally are so high is that there were five buildings. They were part of a draw-down contract. One has been used for alternative purposes and the others are available if needed. The buildings are demountable buildings that come flat packed. The end result is that OPW is paying €184,000 per year on a greenfield site, a piece of farmland behind a housing estate.

4.14. The quantity surveyor fees formed part of the negotiations. Fees were paid to the quantity surveyors because they had been employed to keep an eye on the rates for the ground works. This was a fee for work done. Between the time the contract was placed and the time it was settled, work was being done on deciding how the ground works would be done on the site. OPW had asked the quantity surveyors to estimate the total costs involved. That meant checking what would be involved with regard to the rates for ground works and the actual make-up of the buildings which are demountable, come in packages and of are a particular size. Although it was agreed to defer commencement of site work until after 27 May, the quantity surveyors were kept at work as OPW expected to get onto the site.

### **Alternative Uses for properties**

4.15. The Committee asked whether the Department was working to secure alternative or temporary uses for the properties where the immediate use of accommodation for asylum seekers could for some reason not be secured. It noted that:

- Lynch's Hotel is a fine facility and an asset, although there are difficulties because the current matter is in court. It could be used as a step-down facility for the health services, particularly as it is so well appointed. It is an asset that is not being used.
- St. Vincent's Hospital wanted to use Broc House for nurses' accommodation and other uses. Some work may have to be done in order to bring it up to the required standard – but it is lying idle.
- The Deveraux Hotel was offered to the Garda Síochána, the health board and one of the area partnerships but there was no point in taking it on for a short lease. There would have been no point in refurbishing it to meet their needs as a commitment had been made to the local community to sell it.

4.16. OPW has sought alternative uses for the properties but as in the case of the Deveraux Hotel it was very hard to know how long the case would be before the courts. Even though the property concerned was in very good condition and operating as a hotel, when an alternative use is identified, an extra investment is always required to adapt the building for that purpose. It was difficult to get people to consider an alternative use where there was no guarantee about the time the premises would be available.

4.17. The Committee noted that the fixed costs associated with the empty properties represented a loss of value for money. The fact that properties like Lynch's Lodge remained vacant suggested a lack of co-ordination at departmental level. Likewise, the Department of Health and Children originally identified one of the properties for use by the autism services. Either the properties should be put to alternative use or they should be sold so the capital can be released for other purposes.

4.18. The Committee sought the opinion of the Department of Finance on the constant leakage of money to security firms and maintenance firms on unused properties in a situation where communities are demanding space, and on the losses incurred on the property transactions to date. The Department of Finance replied that there was no indication that anyone could reasonably have been aware when the project began that either the OPW or the Department of Justice, Equality and Law Reform could have performed better to secure value for money for the State. With the benefit of hindsight one can see how it could have been done better. In many cases they were successful in putting accommodation to use. However, in the case of Myshall, that property was acquired even though it had been identified for services to autistic children. Ultimately the property was put to an intended use but it has cost more and there has been a delay in putting it to that use. The building has been there for more than three years during which time it has not been used. This does not represent good value for money.

### **Disposal of Properties**

4.19. The Committee appreciated the pressure the Department and the OPW were under and the reasons that they had to move rapidly and acquire the accommodation. Now that the crisis has eased the intention is to sell them on. Property will be held only as long as it is needed. The Agency would indicate it no longer had an interest and the OPW would handle the disposal from thereon. There are arrangements in place with draw-down contracts on a regional basis for estate agents to be hired, where needed. However, depending on the particular property OPW might handle it itself. The proceeds are returned to the Exchequer.

4.20. The Committee has a perception that there is reluctance to dispose of property or assets which are in the hands of the Department because it is of no benefit to the Department to do so. There was a change in the arrangements in 2003. Where a Department disposed of properties and had alternative investment plans for the money, the Department of Finance sanctioned the expenditure in those areas. It is no longer simply a question of surrendering the money. This has proved useful to the OPW to address a range of programmes in education and Garda accommodation with money which was otherwise not available. For example, the money from the disposal of Shanganagh Castle will be available for capital expenditure in the Department of Justice, Equality and Law Reform.

## **5. Adoption of Reports**

5.1. The Committee disposed of Chapter 4.1 of the 2002 Report on 26 May 2005.

### **Findings and recommendations**

#### **The Committee of Public Accounts finds and recommends**

##### **Specifically that:**

1. There was a serious loss of Value for Money in respect of the five locations. The loss included both capital and recurrent expenditure. A total of €19.6 million was spent without achieving the intended result. Capital losses on disposal of the Deveraux Hotel were €1.33 million. Ongoing security and maintenance costs for the other unoccupied properties was €1.65 million.

2. The five cases reflect a serious failure to consult local opinion or local planning authorities prior to the commitment of public money.
3. There was a lack of co-ordination with the health services and an external agency on Myshall.
4. OPW actions in respect of Leggetsrath were inefficient and triggered significant site and legal costs and ultimately a compensation payment of €2.53 million.
5. The overall losses reflect hasty short term actions to address a longer term policy issue. Had risk assessment and management practices been more developed, better decisions might have been made.
6. The delays in the finalisation of court actions had serious recurring cost implications.
7. Changed arrangements sanctioned by the Department of Finance whereby line departments may use the proceeds obtained from the sale of surplus property for approved projects within the department could prove beneficial to the provision of much needed facilities.

**And in general that**

1. A code of practice for consultation, with both the local communities and the planning authorities, in advance of major capital outlays should be developed.
2. The monitoring of the cost of accommodation services should be based on full costs, that is, including capital depreciation and ongoing insurance, security and maintenance costs.
3. More coherence and better coordination between all the State agencies involved is needed in the implementation of the strategy for providing accommodation for asylum seekers.
4. O.P.W. should review their resource base to ensure that they have the expertise necessary to undertake complex property transactions.
5. O.P.W. should adopt a more proactive approach to keeping properties in a manner that would maintain their full value.



### **3. Department of Justice, Equality and Law Reform - Chapter 4.2 - Sick leave in the Prison Service**

#### **1 Proceedings of the Committee**

1.1. The Committee heard evidence from Mr. Tim Dalton, Secretary General of the Department of Justice Equality and Law Reform and his officials; from Mr. Seán Aylward, Director General of the Irish Prison Service; and from officials of the Department of Finance, on 5 February 2004.

#### **2 The Background**

2.1. The management of sick leave is an integral part of a successful human resources policy. Apart from the aim of reducing the incidence of sickness absences, proactive management will typically identify the root causes of levels of sickness absences and devise and implement counter-measures and keep their effectiveness under review. Good practice can involve such measures as the application of equitable and humane attendance policies, staff welfare and counselling services and financial and other incentives for good attendance. In most organisations, sickness absences result in reductions in overall productivity or delays in providing services. The impact in prisons is different because of the nature of the work and the need to provide around the clock cover. The incidence of sick leave in prisons is not factored into rostering arrangements. This means that staff absences have to be met by way of overtime. The Prison Service has estimated that approximately 15% of all overtime is attributable to the cost of replacing officers on sick leave. Taking the 2002 figure for prison overtime, which was €9.4 million, this would give an additional annual cost of almost €9 million arising directly from sickness absences.

2.2. There is a distinction between sick leave and absenteeism. Sick leave refers to the situation where somebody is granted paid or unpaid leave because (s)he is unfit for work, due to illness. Absenteeism is where somebody is on paid or unpaid leave, who claims to be ill - or believes (s)he is ill but who is in reality, fit for work. The distinction is important because 22 people who were genuinely ill on long-term sick leave last year accounted for 10% of all prison officer overtime. More research is needed into the whole question of sick leave in prisons to find out how much is genuine sick leave and how much is due to absenteeism.

2.3. The audit found that the level of sickness absence in the Irish Prison Service has been an annual average of approximately 18 days per officer in recent years. It has remained at that level despite initiatives taken by the Department to address the issue. The incidence of sick leave in three prisons - Cork, Limerick and Portlaoise - between 2000 to 2002 was consistently in excess of the average during that period, although there was some improvement in the early part of 2003. The Cork figures suggest a particular problem, with an average high of 40 days in 2001. Part of the problem is the disproportionate effect a small number of officers with long periods of sick leave has on the total in those prisons which can be caused by security issues which create difficulties for staff in Portlaoise, the older age profile of prison officers in Cork and Portlaoise and greater stress levels on staff in Limerick arising from intimidation from criminal elements. There is research underway into the reasons for the significant variation in the incidence of sick leave between one institution and another. As matters stand, the Department does not know whether this has to do with management shortcomings, physical conditions in particular institutions, age profile of

officers or the presence, in particular institutions, of higher numbers of dangerous offenders. The research will be of considerable benefit in terms of addressing the problem of sick leave in the future.

2.4. While sick leave in prisons is high by comparison to other public sector employment, this accords with the general experience in other jurisdictions. There are realities about working in prisons such as the impact of working unsocial hours which render it difficult to make valid comparisons to the general Civil Service. A 24 hour shift worker generally tends to call in sick more often than those working in normal working hours.

2.5. The Department's approach to the problem over the years and the Prison Service's approach now, follow two broad strategies - the caring approach and the disciplinary approach. Under the caring approach, a genuine effort is made to determine the cause of the problem and whether any help can be offered in the case of individuals with high levels of sick absence, especially in cases where a high level of absence is combined with a frequent incidence of absence. The Prison Service has put greater effort into this area over the past few years than before and this is a positive development. The second approach is where officers are routinely deprived of various sick leave privileges such as uncertified sick leave or paid leave, leading, in some cases, to dismissal from the service. The Prison Service has made considerable efforts in this regard in recent years and while the disciplinary strategy was stopped in its tracks for the past few years due to litigation, it had begun to show results prior to that and is beginning to do so again now that the litigation has been settled. One example is that the very high levels of sick absence in Cork, Limerick and Portlaoise have all fallen by 20% recently.

2.6. While acknowledging the particular factors that can influence the level of sick leave in different institutions, more research needs to be done into the general causes of high sick leave among staff in penal institutions. The management of sick leave among prison staff has been examined on a number of occasions on behalf of the Department over the years as part of overall reviews of the operations of prisons. A report on the most recent such review was submitted to the Minister in February 2001. Some of the review group's recommendations could not be implemented without legislative change and other measures to combat persistent absenteeism had to be put on hold pending the outcome of a High Court challenge sponsored by the Prison Officers Association (POA) on management's right to withdraw the privilege of paid sick leave in a particular case.

2.7. The role of the POA is vital in securing improvements because the Prison Service would find it difficult to introduce any schemes that would not be standard or acceptable practice in the wider Civil Service. A draft attendance policy drawn up in November 2001 has not been agreed by the POA and, therefore, has not been implemented. Proposals now under discussion are for a move to an annualised hours system, which would have a positive impact on the incidence of sick leave, as it would introduce a greater degree of regularity and uniformity into the working hours of prison officers.

### **3. The Accountability Issues**

3.1. The accountability issues examined were:

- Disciplinary Approach to Sick Leave
- Duty of Care

- Cost Comparisons
- Linkage between Sick Leave and Overtime
- Sick Leave in Specific Prisons

#### **4. Examination of the Issues**

##### **Disciplinary Approach to Sick Leave**

4.1 The Prison Service applies a series of sanctions that would not be applied in any other Government Department or to any other set of civil servants. The main difference between the civil service and the prison service is that in the Civil Service sick leave has implications for efficiency, but in the Prison Service absences by staff have immediate and significant cash implications. They also have implications for the safe operation of the prison. As the implications run to millions of euro annually, it cannot be ignored. The policy on sick leave has been subjected to the most searching judicial scrutiny, and the courts found in favour of the Department's approach. No more than one sick day can be taken without a doctor's certificate. Sick leave terms in cases of serious illness is 12 months with full pay and six months with half pay.

4.2 The overall approach is not limited to sanctions. There is also an employee assistance programme and a lot of counselling assistance to people who are experiencing illnesses due to lifestyle and other factors. There is more intensive activity in that respect than one might find in most other areas of the Civil Service. The Department was stopped from following a rigid disciplinary approach in 1998 because the POA challenged the fact that prison officers were being treated more harshly than elsewhere in the public service when it came to sick absences. The justification in the view of the Department and of the Prison Service was that the problem was very acute by comparison to other parts of the public service. It is recognised that the disciplinary approach on its own will not work. In the past there was insufficient attention to the reasons why people were on sick leave.

4.3 Dismissal procedures are in train for a number of established officers and probationers. Four officers resigned in 2003 at the point of dismissal. They accepted that they had a case against them that they could not overturn. They were fully supported by their staff representatives who were facilitated by the Prison Service. The removal of a prison officer is unique as it has to be decided by the Government. While it is a tortuous procedure to follow, it offers safeguards to serving officers. Procedures are in train for seven officers who have a persistent level of sick absence which cannot be attributed to workplace injuries or natural explanation. There were 14 retirements on genuine ill-health grounds during 2003 and a further two have taken place in January 2004. There are a number of staff who are suffering from long-term illnesses, such as cancer, who are on the books but not in the psychological state where they can voluntarily resign. They contribute significantly to the statistics - 22 people and 10% of the sick leave. They are on pension rates of pay but, statistically, they make the picture look worse than it is. It is hoped that most issues will be resolved in discussions between the POA and the Prison Service, facilitated by the LRC. There may be arbitration on some issues.

##### **Duty of Care**

4.4 Prison officers are governed by the same regulations and code of practice as the rest of the public service. They are civil servants. One of the complaints made by the POA is that in

comparison to other civil servants, they are treated harshly. The right to sick absences or pay during sick leave are rarely withdrawn in other situations unless they are very severe. Some 24% of the prison officer sick leave was due to injuries. In the Prison Service some 140 people do not have an automatic right to take paid sick leave. They have the same rights technically but they are applied rigidly in the Prison Service because that was one of the methods adopted to correct the sick leave situation.

4.5 Under the duty of care requirement, the employer must provide a safe place of work. An in-depth investigation into why so many people are injured is needed. When the subject of illness arises in the Prison Service, the staff representatives tend to emphasise injuries on duty but those are a minute proportion of the absences in the service. The Prison Service does not penalise workers who are injured on duty and, on occasion, provides premium payments in sickness pay. If someone sustains an injury while on duty, (s)he will not be left at a financial loss. The Prison Service is not immune from a claim culture. Officers who sustain a very minor injury on duty can sometimes be advised or encouraged by friends or associates to prolong their absences in the belief that the longer a person is off duty, the more money he will get in compensation.

4.6 Ireland has the highest proportion of staff to prisoners in the world and numbers make a difference in safety terms. The measures proposed for automation and the increased use of technology will make the prisons even safer by reducing the exposure of officers to injury. Instead of standing at gates, prison officers will be working more closely with prisoners. There are also proposals for a new type of prison transport arrangement which would reduce the exposure of prison officers to potential injury. The prisoners who would be transported would not have to be handcuffed during the journey. However, the prison staff could not be persuaded to use the new transport arrangements as they wanted this to be part of the overall negotiations. The vista of officers being chained to prisoners will be ended for all time by agreement with the prison officers. It will make the service safer and more efficient. Injuries resulting from headbutting or breaking the wrists of prison officers have been solved by use of the "long chain". This measure was introduced a number of years ago and has greatly reduced the level of such incidents.

4.7 Part of the problem has been that the Prison Service could not supply a definitive breakdown of sick leave over a three year period. The 2001 C&AG report recommended much more careful monitoring of the situation. A greater effort has been made since then but a High Court action stalled many of the actions that were planned. Record keeping has improved and the dialogue with the staff who are out persistently has also improved. The difficulty is not with people who are injured in the workplace but with levels of absenteeism in persistent taking of uncertified single days. Before a sanction is applied to any staff member, the situation is checked out with his or her local governor and the staff member is given a period within which he or she can appeal the proposed sanction and set out and furnish doctor's certificates or anything else to support their case. Management is not punitive in dealing with people who sustain injuries.

4.8 The Committee considered whether it was fair to benchmark prison officer sick leave against the rest of the public service. Prison officer work is high risk employment, operating 24 hours a day, seven days a week. It is shift work and different from traditional Civil Service work. The comparison is not entirely valid. The disciplinary measures that are in place produced significant results. The figure for absenteeism had fallen to an average of 15

days because of these firm disciplinary measures. It later increased back to 19 days but that was due to the High Court action. Most prison officers are not involved in this.

### **Cost Comparisons**

4.9 The cost of sick leave, in terms of extra overtime, was €8.6 million in 2002, which is a substantial figure. In 2002, the average number of days lost per staff member in the Irish Prison Service was 20.28, which was reduced to 19.4 in 2003. In England and Wales, the average number of working days lost by prison officers in 2002 was 14.7. The comparable figure in Scotland was 12.8 days. The cost per prisoner in custody is approximately half in England and Wales. However, that system derives benefits from the size of some of the penal institutions in the UK. Many of the prisons in England and Wales have more than 1,000 prisoners and there are benefits of scale to be gained from such numbers. The system there has a much more renewed prisons estate and benefits from increased technology.

4.10 Averages can be very misleading because a very high proportion of officers take almost no sick leave. There are also some people who are suffering from cancer and could not possibly work in a prison. Over a two-week period a civil servant is supposed to be at work for ten days, whereas a prison officer is supposed to be at work for seven or eight days. Thus, the amount of actual work time lost is less in the case of a prison officer. The method of counting tends to exaggerate the gravity of fault in the case of prison officers.

### **Linkage between Sick Leave and Overtime**

4.11 One of the phenomena in prisons is that if someone is out on sick leave from the Prison Service, someone else is called in on overtime. The effect of this is that there is no incentive to be well, because it is theoretically possible to arrange things in such a way that one is financially better off from sick leave. This could happen where an overtime system is used to cover from sick days lost. One of the expected results of a system of annualised hours is that any such incentive would be eliminated because if one does not work the annualised hours, someone else has to carry them. Instead of having a situation where it could benefit people to take sick leave, the opposite will be the case.

4.12 The Committee noted that while the overall number of sick days (60,000) is almost 10% of the total days worked the overtime cost resulting from this was €8.6 million or 15% of the overtime bill or 4% of payroll costs. The implication is that the Prison Service did not get the full cover from the other officers because it should have cost 15% of payroll costs. If insufficient staff report for duty on a morning and there are unpredicted absences, this often leads to a curtailment of facilities for prisoners on the day. Ultimately, prisoners suffer for that kind of unpredictable absence. Equally staff can be put at risk if insufficient numbers of staff turn up. There is more than cash costs at work. An organisation that is a security service of the State, requires, for safe working, the maximum possible turnout of people every day.

4.13 The rostering arrangements have a big impact on the incidence of overtime. Annual leave is not factored into rosters and this creates an overtime demand. If there are known absences which are not factored into rostering arrangements, it creates a demand for overtime. There is an absence of research in this particular area and a need for it. There is much greater awareness of how the management of sick leave is an integral part of a successful human resources policy. In addition, there is now a greater awareness of the

concept of carrying out research on absenteeism in the Prison Service and in other areas of the public service. The Prison Service is not unique in this respect.

4.14 The Committee considered whether addressing the overtime issues would reduce absenteeism. This is the experience elsewhere. The annualised hours system would eliminate overtime as an option in the Prison Service and the job would be done in fewer hours. The experience elsewhere with such a system is that sick leave levels fall, which suggests that while a certain amount of sick leave among prison staff is genuinely illness-related, and is associated with the nature of the job and other elements, some of it is not genuinely related to illness. It is that latter element that is being dealt with.

4.15 The Prison Service operating review group noted in 1997 that since 1992 a vigorous policy had been pursued with a view to reducing absences. It then states that "the group observed, however, that while initially large gains were made as a result of this approach in 1995 and 1996, this progress has since been reversed". The prison population has increased by more than 47% since 1996. The number of committals has remained relatively static in recent years, but the use of temporary release, has been greatly reduced. Instead of having about 500 or more people out of a population of 2,200 on temporary release every day in 2003, there are about 300 or 350 out of a population of 3,200 to 3,400. Half of the temporary releases ordered in the mid-1990s period were unstructured, with prisoners simply sent away because the prisons were full. There was public demand for this to be corrected, so that people sentenced to prison actually went there for a while. It is now corrected and the percentage has fallen from 19% on temporary release to about 8% or 9%, which is the correction that was necessary in law and order terms.

4.16 Officers with 30 years' service may retire at 50 years of age. A variation has been made for the new pension arrangements which reflects the improved health profile of the general population. The retirement age has been raised to 55. Officers can also continue to serve to the age of 65 under the new arrangements, whereas hitherto they had to go at 60. Staff can be referred to the Chief Medical Officer for the Civil Service for consideration of ill-health retirement. It must be voluntary and some people are gravely ill but not in a psychological state where they can accept the offer and retire. However, some officers have satisfied the Chief Medical Officer that their ill-health retirement is mandated and appropriate. There were 14 such retirements in 2003 and two in the first month of 2004.

### **Sick Leave in Specific Prisons**

4.17 There is a variation between prisons in the number of average sick days and the numbers of individuals with large numbers of sick leave absences. As a tough place to work, Mountjoy contains a considerable mix of people, some of whom are serious offenders. There could be cultural or management reasons for the high incidence of sick leave in some prisons. The figures have dropped very significantly in Cork, Limerick and Portlaoise. The reasons the figures are high in Portlaoise are clearer than in most places. The most challenging prisoners in the system are in Portlaoise, including paramilitaries, the number of whom has increased again to 71 in recent years. They tend to be more challenging prisoners, and those involved in organised crime, also serious offenders, are also housed in Portlaoise. It is not surprising that the figures for absenteeism would tend to be higher there.

4.18 In the smaller prisons a very small number of people who are out with a genuinely serious illness can contribute hugely to the figures. In a comparison between Cork and

Mountjoy, the number of officers taking more than 183 days in the period, was 41 in Cork, some with long-term, debilitating illnesses, against 21 out of a much bigger pool of officers in Mountjoy. Conditions are difficult in both Cork and Mountjoy prisons. While Cork is the more overcrowded, the level of difficulty between prisoners and staff there is very low.

## **5. Adoption of Reports**

5.1. The Committee disposed of Chapter 4.2 of the 2002 Report.

## **Findings and recommendations**

### **The Committee of Public Accounts finds and recommends**

#### **Specifically that:**

1. The incremental operational cost of sick leave can be measured in terms of the cost of overtime worked due to sick leave absences. In 2002, this was €8.6 million.
2. Available statistics point to some abuse by staff of sick leave privileges.
3. A determined effort has been made by the Department and the Prison Service to address the problem of sick leave.
4. The prison service does not have adequate information or research into the causes of sick leave and is working to resolve this.
5. Statistical information on sick leave is influenced by a small incidence of long term cases. These need to be adjusted as outliers in operational trend analysis.
6. There has been a significant investment in information technology which is expected to improve the quality of management information on sick leave and human resource management.
7. Migration to an annualised hours system would remove the incentive element of the link between sick leave and overtime.

#### **And in general that**

1. There should be more monitoring and evaluation of the causes of sick leave in the prison service.
2. The factors leading to high levels of sick leave in some locations should be tackled.





## **4. Courts Service - Chapter 5.1 - Refurbishment of Cork Courthouse**

### **1 Proceedings of the Committee**

1.1. The Committee heard evidence from Mr P.J. Fitzpatrick, CEO of the Courts Service, and officials from the Department of Justice, Equality and Law Reform; and from officials of the Department of Finance, on 11 March 2004.

### **2 The Background**

2.1. In 1995 the Department of Justice, Equality and Law Reform authorised phase one of the refurbishment of the Cork Courthouse project, which was the refurbishment of the exterior stonework of the building. Cork City Council placed a contract for the work which was completed in 1999 at a cost of €3.8 million. The normal work of the court continued in the building during the course of this contract. The internal fabric of the building also required extensive refurbishment and the council submitted plans for this work to the Department, tentatively estimated at €6.3 million.

2.2. Statutory responsibility for the provision and maintenance of court buildings and facilities was transferred to the newly formed Courts Service, with effect from 9 November 1999. The Courts Service was not satisfied that the design proposed by the council met the existing and future needs of the users of the court. After extensive consultation and a needs assessment, a substantially revised plan for the internal refurbishment was drawn up. The Courts Service also arranged for the Office of Public Works to appoint a project manager to ensure timely delivery of the work within budget. The refurbishment contract was eventually awarded to the lowest bidder on 29 April 2003. It was expected that the project would be completed by the end of 2004 at a total cost of €26.5 million, which included professional fees, furniture and equipment costs and so on. After much deliberation it was decided to fund the project through a loan taken out by the council. It would then lease the building to the Courts Service over a 20 year period at a rent estimated at €2 million per annum.

2.3. In 1998, the Department of Justice, Equality and Law Reform sought and obtained the approval of the Department of Finance to contribute to the cost of renting and adapting alternative accommodation for the Courts Service while the courthouse was being refurbished. This work was expected to take up to two years. The council leased premises at Camden Quay in the city for court facilities with effect from 1 May 1999 for a two year period at a cost of £600,000 (€761,842) per annum. In retrospect, the initial lease of two years was too short and should have been much longer and included with appropriate break clauses. The cost was to cover both rental and necessary adaptation costs. The rent element was approximately £200,000 (€254,000) per annum. Soon after moving in, additional work to the value of €65,000 was commissioned to meet shortcomings in the rented accommodation. As work had not started on Cork courthouse when the two year lease of the rented premises had expired, the OPW was asked to negotiate a new lease on behalf of the Courts Service from May 2001. The landlord was not prepared to grant a short lease and the minimum lease period that could be negotiated was nine years and 11 months. The yearly rental was agreed at €761,842 which was equivalent to three times the rental element of the lease agreed two years earlier. Although the Courts Service was obliged to take the lease for nine years, it included a break clause after five years. The owners are on notice that the lease will be terminated in April 2006. The building will be vacant for up to 15 months. If the

Courts Service, OPW or the city council can find another tenant, the accommodation can be used. The cost per square foot of the temporary accommodation incurred by the city council, the Department and the Courts Service calculates at about €23 per square foot whereas office rental rates in Cork are currently about €25 to €30 per square foot.

2.4. Cork Courthouse is an important and prestigious building on Washington Street in the centre of the city. It is a building of particular architectural and historical significance. On any day, four Circuit Courts and two High Courts sit in the city. Cork courthouse is second in size only to the Four Courts. It is well over twice the size of a typical county town courthouse. The plans which existed at the outset would not have met existing or future needs. In addition, there was no provision in the plans for IT and a major upgrade in all courts in regard to computerisation, information technology, video conferencing and video links with prisons was underway. For these reasons, the plans which went to tender had been substantially revised and bore no resemblance to the original plans when the Courts Service became involved. The original estimate was a guesstimate of €6.3 million made in 1995 and the plans bore no resemblance to that figure. Even taking the original figure, construction inflation between 1995 and 2003 was approximately 60%. In addition, there was some €6 million or more for furniture, fittings, technology, equipment and design team fees.

2.5. The new building is state of the art and will meet the court requirements of Cork well into the future. It would not have been possible to progress it without the assistance of the city council in regard to the funding mechanism because no funding was available. The city council has not imposed any administrative charge. The rental repayment arrangements are simply the cost to the city council of borrowing which was achieved at a very competitive rate.

### **3. The Accountability Issues**

3.1. There are a number of areas of concern with the overall management of the project. First, premises were rented and adapted to facilitate the operation of the court four years before the contract for the refurbishment of the courthouse was signed. Second, a two year lease was entered into for temporary accommodation, incurring the cost of fit-out works to a value of almost €1.6 million without any apparent attempt to secure future credit for this investment. Third, the temporary premises, which was upgraded with public money, was then leased to the Courts Service for a further nine years and 11 months at an annual rental three times the previous rent. The rental agreed in 2001 was significantly higher than the market rate at the time.

3.2. The Accountability issues examined by the Committee were:

- Phase Two – Refurbishment of Cork Courthouse
- Project Funding Arrangements
- The Temporary Court accommodation
- Renegotiation of the Lease

## **4 Examination of the Issues**

### **Delay in commencement of Phase Two – Refurbishment of Cork Courthouse**

4.1 The contract started in summer 2003 and was completed towards the end of 2004. The Courthouse was scheduled to re-open on 1 January 2005. There was an excellent project manager provided by the OPW and the contractor was very reputable.

4.2 The Committee inquired of the reasons for the delay of phase two of the contract. Phase two was to follow phase one in 1999 but it did not start until May 2003. It was clear to the Courts Service that the existing plans would not have met the requirements of Cork by the time the building was completed and it seemed fruitless to proceed with plans that were inadequate. For that reason a needs assessment was made. This identified a requirement for six courtrooms - not the number provided for in the original plans. Cork has a very busy court. There are four Circuit Courts there most days and two High Courts regularly. The Court of Criminal Appeal may sit there in future. The coroner sits there. The county registrar's court is there. The Courts Service re-considered the plans. Two issues affected the timing of commencement. One was the length of time it took to revise the plans. If they had gone ahead with the original plans, a site for a second court building in Cork would have been needed, which would have cost much more. All the benefits of having everything on the one site would have been lost. Another issue was accommodation for prisoners so that they could go in and out without being photographed in handcuffs.

### **Project Funding Arrangements**

4.3 At the outset, the project was the biggest capital project on which the Courts Service had ever embarked. It did not have project funding in its own budget. If the Courts Service had funded it many other projects that were ongoing at the time or that were about to start would have stopped because the Cork project would have taken up the whole budget for a couple of years. Accordingly, funding was an issue and discussions were held with the new City Manager.

4.4 The cost is almost € million below the tender price. The quantity surveyor had estimated the cost of the plans that went to tender at €8.39 million. That was reduced to €6.5 million, including fit-out, when the tenders were received. The construction cost included in the overall amount was about €20 million.

4.5 The National Development Finance Agency advised the city council on tendering for the loans. €13 million was borrowed from the European Investment Bank over 23 years at a fixed rate of 4.74%. The remaining funds of €12 million was borrowed from an investment bank over 23 years at 4.512%, also on a fixed rate basis. The city council geared the project over a 23 year period. Under the Act, the buildings should be vested in the Courts Service. The annual repayments are estimated at € million per annum.

### **Temporary Court accommodation**

4.6 The Committee considered the value for money of the temporary court accommodation. The rent was tripled and the Courts Service had to spend a significant amount of money on the upgrade of the rented property. The Courts Service currently has a long-term lease which was signed for nine years when it was well known that the completion

date for the permanent accommodation would be 2004 or 2005. The State's bargaining position was not strong. It was the only building available that was in any way suitable. The OPW sought to negotiate, on instruction, a lease for the shortest possible period, and a break clause was secured. The excess on the lease beyond the requirements is a year and three months because the break clause in the new lease will be exercised.

4.7 The Committee noted that the break clause will involve stacked-up costs. Funding will also be needed for the work that has been deemed necessary for health and safety. The Courts Service has sought to spend very little money on the existing building apart from the initial work that Cork City Council did when the building was prepared as a temporary venue in the first place. The fact that the permanent building was going ahead was a major factor in judges, staff, lawyers and other users of the court accepting that there was not much point in spending money on a building that would be vacated in a couple of years' time. However, the Committee noted a newspaper article dated Thursday, 16 January 2003, quoting the views of a high court judge that the temporary building was unworthy for the administration of justice.

4.8 Cork City Council acquired the temporary accommodation in Camden Quay before the Courts Service was established in anticipation of having to relocate the courts out of Washington Street for two years while the phase two work was being undertaken. Phase two was delayed. In 1999 the management administration of the courts was transferred to the Courts Service from the Department of Justice, Equality and Law Reform whilst the management and provision of court buildings was transferred from the local authorities. The lease was for a term of two years. It was a standard lease. The most important items were that the term was for two years, definite from the date possession was given; and the rent was £600,000 per annum payable quarterly in advance. At the time it was taken over, it was a warehouse. The actual rent was £200,000 and the fit-out was almost €1 million in total. There was a contribution of one third each initially from Cork City Council, Cork County Council and the Department of Justice, Equality and Law Reform. The owners of the building did not contribute to the adaptation of the building. The best way to look at the arrangement is in terms of £200,000 in rent each year and a total fit-out at a cost of £800,000.

### **Renegotiation of the Lease**

4.9 Until the Courts Service came into operation in November 1999, the local authorities were responsible for the provision of courthouse accommodation under the 1935 Act. The refurbishment of Cork courthouse was led by Cork City Council which was the body responsible for providing the accommodation. Towards the end of 1998, Cork City Council felt it would be in a position, in the near future, to seek tenders for the refurbishment of the courthouse on the basis of the plans as they were at that stage. It sought alternative accommodation. After a considerable period and with great difficulty, it found the premises on Camden Quay and negotiated the lease of those premises on the basis that the Department would contribute, together with Cork County Council, towards the cost of the lease. The Department was not involved in negotiating that lease with the landlord, nor was the OPW. Cork County Council came with the terms which have been negotiated which were a rental of £200,000 per annum and an overall fit-out cost of £800,000. The lease referred to was not in existence at that stage and did not come into existence for some considerable time later. It is unclear why the figure for the rental was expressed as £600,000. The memorandum of agreement of the two year lease did not refer to refurbishment. It merely referred to £600,000 rent per annum. What confused the Courts Service at the time was that this did not equate with other correspondence between the Department of Justice, Equality and Law Reform and

the Department of Finance which referred to a rent of £200,000 and the rest being the refurbishment cost.

4.10 When the OPW was negotiating to renew the lease, it was under the impression that the rent was already £600,000, when in reality it was only £200,000. The Courts Service believed this also and the initial reply from the Accounting Officer to the C&AG was to the effect that they renewed it for the same rent. The audit has now established that the real position was that the rent was £200,000 and that the rest was to meet the refurbishment costs. The Courts Service, through the OPW, went into the negotiations for renewal of the lease in the mistaken belief that it was only paying the same rent, even though that would be a highly inflated rent for an empty warehouse premises.

4.11 The Committee sought to establish how the OPW operated on the misunderstanding that the rent was £600,000 when the file in the Courts Service, which came from the Department of Justice, Equality and Law Reform, showed that the rent was £200,000. When the Courts Service requested the OPW to renegotiate, they took the starting point as the existing lease, which was very straightforward. As a result, the owners of the building, who had been getting a rent of £200,000 a year got an increased rent of £600,000 a year and no allowance was made for the State's refurbishment of the premises.

4.12 At the point of renewal, the temporary accommodation was still necessary because the work on Washington Street had not started. Even though the State organisations between them had put up £800,000 for refurbishing a warehouse, when the OPW negotiated on behalf of the Courts Service, it did so on the basis of renting office accommodation. It was State money that turned the warehouse into office accommodation. The Value for Money issue is that a property not in State ownership was converted to accommodate courts which had particular requirements without this investment being properly acknowledged or protected in the lease. The renewal options were either to seek alternative temporary accommodation or to renew the existing lease. The initial rental was of a warehouse cum garden centre which was then upgraded to a court facility at the taxpayer's expense. The rent was renewed at £600,000, which was thought to be the rent per the original lease. Through the renewal, the taxpayer ended up paying three times the rent two years later.

## **5 Adoption of Reports**

1.1. The Committee disposed of Chapter 5.1 of the 2002 Report on 26 May 2005.

### **Findings and recommendations**

#### **The Committee of Public Accounts finds and recommends**

##### **Specifically that:**

1. Cork City Council did not adequately consider the needs for courthouse accommodation in the original proposals for refurbishing Cork Courthouse.
2. The original lease for temporary court accommodation did not properly reflect the agreed analysis of payments to the landlord as it made no reference to the refurbishment of the building to make it suitable for court use.

3. There was a serious loss of taxpayers money in the negotiation of the lease at three times the original rent and without any recognition for the State investment in refurbishing the building. A further loss of value for money arises from the fifteen month vacant possession of the property before the break clause can be exercised.
4. The ultimate responsibility for the loss of value for money is shared by Cork City Council, the Courts Service and OPW due to poor co-ordination between them on the negotiation of the lease.

**And in general that**

1. O.P.W. needs to review its approach to the negotiation of property leases with a view to obtaining best value for money and, in particular, to ensure that expenditure undertaken in relation to the refurbishment of premises is taken into account.
2. Protocols governing the co-ordination of all State parties to significant property dealings should be drawn up.

## **5. Office of Public Works - Chapter 3.1 - Provision of Accommodation for Probation and Welfare Service**

### **1 Proceedings of the Committee**

1.1. The Committee heard evidence from Mr. Sean Benton, Chairman, Office of Public Works and his officials; and from officials of the Department of Finance, on 27 May 2004.

### **2 The Background**

2.1. Following a major review of its operation, completed in 1999, the Probation and Welfare Service (P&WS) localised some of its work, including the management of offenders in their communities. This created a need for office accommodation in the immediate localities and the OPW, as part of the property service it provides to departments, undertook the task of sourcing premises and making them suitable for the purpose intended.

2.2. Five properties were leased by the OPW in 2000 to meet the needs of the P&WS. In all five cases no lease had been signed at the date of the report three years later and this raised a concern that the State's interests, including the expenditure incurred in fitting out the premises, were not adequately protected.

2.3. The audit also noted a lack of progress in occupying the premises in two cases - Property A, which is in the Donaghmede shopping centre and Property B in Parnell Street in Dublin city centre. In both cases, more than three years had elapsed before the premises came into use. In the interim, rental and service charges amounting to approximately €500,000 were incurred. The most expensive property was the Donaghmede office, which cost more than €1.5 million to fit out and incurs annual rental and service charges totalling €200,000. Both the fit-out and rental costs are far in excess of what was originally envisaged but are considered by OPW to be in line with current cost norms.

2.4. The audit emphasised the importance of bringing properties into productive use more quickly, the need for clear guidance as to what constitutes the State's obligations in the fitting out of leased premises and the need for a mechanism to protect the State's interests where finalising of the lease arrangements is unduly delayed.

### **3 The Accountability Issues**

3.1. The accountability issues examined by the Committee were:

- Delay in signing leases
- Property A - Donaghmede
- Cost of fitting out Properties A and B
- Holding of unoccupied property
- Decentralisation

## **4 Examination of the Issues**

### **Delay in signing leases**

4.1. The Committee noted that rent was paid although there were no leases for properties A and B. The OPW placed considerable confidence in "a letter of agreement" to allow access. The letter gave OPW the comfort needed and gave the landlord the security he wanted. It did not provide an option for OPW to walk away from the deal unless the general conditions changed radically. From 1 June 2001 the OPW was tied in. The principal elements of the lease, like the rent, service charges etc. were agreed in outline but it is likely there was not the full protection for both sides that would exist with a legally signed lease. Incurring that kind of expenditure without having legal security is the main issue involved in these cases. OPW acknowledged to the Committee that it would have been preferable to have a lease signed before payments began. New OPW procedures prohibit the payment of rent and service charges until all the legal formalities have been carried out.

### **Property A - Donaghmede**

4.2. OPW indicated that the delays in occupying the rented building at Donaghmede were caused by the changes required by the P&WS. The original request to the OPW was for accommodation of approximately 2,800 square feet. As the requirement was examined in more detail, that increased to 7,500 square feet. Initially it was being dealt with as a minor project in the OPW but as the client's requirements increased it was realised there would be significantly more expenditure in fitting out the office to the required standard. It was reclassified as a major project, which requires different procedures.

4.3. The work done, at a cost of €1.2 million, included the installation of air-conditioning and improving wall partitions. Once the decision was taken to expand the project, OPW was committed to undertake such work to ensure the space was suitable for use. No work had been done to the fabric of the building *per se* - only structural works to support the air-conditioning and to make the internal rooms suitable were completed.

4.4. For operational reasons the P&WS was insistent on a shopping centre location to deliver its services. The architectural team had some site-specific requirements and €1.5 million was invested in the building. The improvements carried out by OPW were specifically excluded from any consideration for rent review.

4.5. Initially OPW entered the premises on the basis of an exchange of letters. The formalities for concluding a lease can take an excessively long time and it is not always the fault of civil servants. For example, one can wait up to nine months for responses between the Chief State Solicitor's office and private solicitors. OPW makes judgments based on its experience and revised procedures are now in place. Ideally OPW will not enter premises in future unless all the legalities are formalised and will always satisfy itself that the State has security of tenure.

4.6. The Committee asserted that procedures for dealing with property owners and landlords must be watertight to protect taxpayers' funds and that OPW and its clients should have a clear understanding of requirements so that from the initial effort to obtain a property they know what they are looking for and do not have add-ons afterwards.



4.7. The Committee considered the way in which OPW handled the need for planning permission in respect of Properties A and B. Payment of rent for property A commenced on 1 June 2001 and on 1 May 2000 for property B. Property A was a retail outlet which was being transposed into a centre for the probation service. The consultant architect initially raised the question as to whether the planning status was suitable. The context was that OPW had planning permission for office use. The issue was whether using it as a public office would have contravened that planning use. There were differing opinions and to eliminate any doubt in that respect OPW applied for a Part 9 planning permission for the works it proposed to carry out. Part 9 is the provision which relates to the properties of the Department of Justice, Equality and Law Reform. The conditions of Part 9 are that the OPW notifies the relevant people and issues a public notice to the effect that work is being carried out. There is then a six week period within which people may object. The Commissioners of Public Works then make a decision, having considered the objections.

4.8. The Part 9 planning process was initiated around August or September 2002, almost a year and a half after payments began. Local opposition resulted in a delay of approximately nine months in advancing the project. The P&WS was anxious to resolve the local issues before OPW advanced the project. The Committee noted that if the local opposition had been successful, there would have been a significant loss of value for money. The planning issue should have been addressed at the start of the project before entering a binding agreement.

#### **Cost of fitting out Properties A and B**

4.9. The refurbishment of property A was originally estimated at €153,000 but it ended up costing €1.53 million. The property was rented with effect from 1 June 2001 and was finally occupied in October 2003. The landlord received €200,000 per annum in rent and also received a capital allowance on investment in his property. The original estimate for fitting out property B was approximately €50,000. The OPW reports state that this was based on a walk-through inspection. The fitting out eventually cost €360,000. When an inspection was carried out on property B, massive inadequacies were discovered. The block work, sewerage and drainage systems were found to be inadequate. It was the responsibility of the landlord to carry out this work yet during all of this time the OPW paid rent on a property which the landlord had not made good for more than a year. Property B was finally occupied in August 2003.

4.10. OPW acknowledged that mistakes had been made in these cases. First, the cost estimates grossly understated what was required and should have been more detailed. Once a more detailed estimate was made, the projects were carried out within budget. There were significant omissions in the original estimate. OPW accepted that there are valid criticisms of the way these two projects were managed.

#### **Holding of unoccupied property**

4.11. The Committee asked if it was usual for rented buildings to be vacant for a long period. It was concerned that there may be substantial properties currently lying idle for considerable periods in the country as a whole, and particularly in Dublin. OPW stated that the unoccupied period in these cases was exceptional. While there may be properties that are vacant from time to time because of the movement of people, in general, there is little or no vacant space in Dublin. The management of a very large property portfolio is efficient when there is some vacant space in the portfolio. When there is an absence of surplus space, one is at the mercy

of the market when urgent demands are made. Where a government decision is announced, the fact that the State is a single purchaser with a specific requirement makes negotiations more difficult than if one had several sites and could organise better competition. This aspect is factored into valuations.

## **Decentralisation**

4.12. The Committee noted the announcement of a major programme of decentralisation of the Civil Service throughout the country and that the Government is pushing forward with this task. The OPW has the central role in the acquisition of buildings and sites to facilitate the roll-out of the decentralisation programme. A national implementation committee is overseeing the whole project. Site acquisition and project development is the OPW's responsibility which has been very active since the Government's announcement. Immediately following the Government's decision, there was extensive advertising in the national press for offers of suitable sites at the 53 locations identified in the Government decentralisation decision. That resulted in almost 700 offers of property, ranging from three or four in one or two areas to generally a dozen or more properties in each of the 53 specified locations. When these were assessed, some locations turned out to be more suitable than others. The intention at that stage was to identify initially the best three or four options in each case. This is progressing satisfactorily. OPW has already agreed in principle on two sites. Another 22 sites are at a very advanced stage and the remainder are in the pipeline. Given the rate of progress to date, it was expected that by the summer of 2004 more than half the total number of sites would be agreed, with the balance coming on stream before the end of the year.

4.13. All solutions to the property requirements for decentralisation (acquisition, lease, rent) have been considered. OPW examined existing buildings that matched its requirements. They favoured buildings under construction, with the appropriate planning permission, for the purposes of speed. In other cases, sites that had the appropriate planning zoning were identified. The reality was that there were very few suitable buildings that matched the requirements. By and large, the acquisition of sites for the purposes of procuring accommodation will depend on design, build, finance and maintenance.

4.14. The Committee emphasised that the OPW must ensure that the type of profiteering seen in the housing market in recent years is not repeated in the decentralisation programme. The OPW process is transparent. The criteria for the type of buildings required have been published and a generic contract with generic specifications has been drafted. The OPW team of valuers is supplemented by an outside firm of valuers to guide them on what the market rate in the particular area should be. It can vary greatly from one part of the country to another. The market rate prior to the announcement of decentralisation will be an important factor in any deals that are concluded.

## **5 Adoption of Reports**

5.1. The Committee disposed of Chapter 3.1 of the 2002 Report.

## **Findings and recommendations**

### **The Committee of Public Accounts finds and recommends**

#### **Specifically that:**

1. The practice of entering a building without conclusion of formal lease contracts poses a potential threat to taxpayers' funds. Procedures in dealing with landlords need to be watertight.
2. The delays in entering properties A and B, following the agreements with landlords, cost the taxpayer significant moneys.
3. In the cases of properties A and B the cost of fitting out each building was more than ten times the original estimate. For property B work that was the responsibility of the landlord was not done.

#### **And in general that**

1. The full financial implications of choosing particular locations for the delivery of public services should be determined before final commitment to proceed is given.
2. OPW should tighten up its procedures to better protect the taxpayer in its dealings with landlords.
3. Accurate information on the likely costs of fitting out properties should be available to decision makers before legal commitments are made.



## **6. Value for Money Report 46 - Probation and Welfare Service**

### **1 Proceedings of the Committee**

1.1. The Committee heard evidence from Mr. T. Dalton, Secretary General of the Department of Justice Equality and Law Reform and his officials; from Mr. Sean Benton, Chairman of the Office of Public Works; from officials of the Department of Health and Children; and from officials of the Department of Finance, on 1 July, 2004.

### **2 The Background**

2.1. The effective functioning of the Probation and Welfare Service (P&WS) is based on the premise that rehabilitation and community based sanctions have the potential in the right circumstances to be more effective and less costly than imprisonment.

2.2. The P&WS was established in the early 1960s originally to consider the issue of vandalism. The service was initially confined to the Dublin metropolitan courts and the prisons, but expanded following a departmental review in 1969 and restructured to its present form following a further review in 1979. There has been a considerable increase in the funding of the service since 1995, rising from €13 million to €40 million in 2003. The P&WS has a staff of approximately 340, working mainly in community based teams or prisons. It also employs contract staff to oversee community service work and funds a large number of schemes and programmes under which education, accommodation, treatment and counselling services are provided for offenders under supervision in the community.

2.3. The main activities of the P&WS are preparing reports for the courts in criminal cases; supervising offenders placed on probation or similar community based orders by the courts or supervised temporary release from prison; implementing the Criminal Justice (Community Service) Act 1983; assisting offenders in custody; and developing and funding projects in local communities to buttress and support the process of court ordered supervision. The service has been drawn into other areas of work. Under the Family Law Act 1995, it was drawn away from the task of supporting and supervising offenders, in a completely new direction, the provision of reports for the courts in family law cases. It has not been able to discharge this function due to lack of resources. Under more recent legislation, it has been drawn into further areas, like the implementation and supervision of various orders provided for in the Children Act 2001 and the Sex Offenders Act 2001.

2.4. An expert group was established in the late 1990s to look at the service and make recommendations on its future development. The Government decided in 2001 to defer any decision pending receipt of the VFM report of the C&AG. One of the central recommendations of the expert group was that the service should be set up as a stand-alone agency on a statutory basis. Views are divided as to whether the right course is to set up a stand-alone agency having regard to what has been happening elsewhere in Europe where the trend is towards single offender management agencies which deal with all offenders, whether in custody serving sentences or under supervision in the community. The basic idea is that responsibility for the management of offenders, whether they are minor or serious offenders or at pre-custodial or post-custodial stage, should rest with a single body.

2.5. The value for money report set out to establish the extent to which the service had met the demands for its outputs, the efficiency of its operations and how it evaluated its effectiveness. The quantum of demand for probation and welfare services is largely dictated by the courts, mainly in responding to requests for reports on offenders and supervising offenders subject to court imposed community based sanctions. Demand has increased since 1995, particularly as a result of judges using the option of deferring custodial sentences pending a period of supervision. This increase was partly offset by a relative decline in use by judges of community service orders in the same period. The net additional demand was not matched by extra staff until about 2001. This meant that the practical measure of limiting the case-load of community based teams of probation and welfare officers had to be taken. As a result, the number of requests and referrals to the service dropped slightly in 2000 and 2001. Even though the trend has been reversed, reflecting increased staffing levels, the service struggles to fulfil its normal mandate and meet new demand created, for example, by the use of post-release supervision orders for sex offenders. A by-product of this mountain of work has been the service's inability to discharge its statutory functions in the family law area because of the demands of the criminal justice system.

2.6. The report suggests areas where there is scope for improving the efficiency of the service, for example, by analysing significant case-load variations between community based teams with a view to optimising the deployment of staff or by looking at options to reduce the time spent by professional staff attending court hearings. In 2004 this absorbed an estimated 13% of available professional line staff time. Use of community based sanctions has remained low, relative to the use of custodial sanctions, despite its increase having been recommended by the expert group. The cost of community service orders is estimated to be one third of that of implementing the custodial sentences that might otherwise be imposed. The service also has a presence in prisons and other places of detention to assist in the rehabilitation of offenders in custody but the absence of a formal tracking system hinders meaningful evaluation of this aspect of its work.

2.7. There is a lack of clarity about the purpose of the service and how it should best be used. There is also an insufficiency of information on which to measure its performance which means there is no solid base to assess if the work being done by the service is having the desired effect. There have been a number of developments to address these issues. A major project is under way to computerise the operations of the service, with the development of a modern case tracking system, both of which will be rolled out by the end of the year. Other significant developments include the drawing up of a service level agreement between the service and the Prison Service. The service to prisoners is substantially under-resourced. Steps are also being taken to develop a service level agreement with the Courts Service. Discussions are taking place with other agencies to provide relevant information for the probation and welfare service at an earlier stage in order that appropriate services can be provided for prisoners much earlier than is now possible.

2.8. A working group has been established to draw up proposals on how to proceed in the light of the VFM report and developments which have taken place since the reports of the expert group were issued. Given the increased responsibilities of the service, it will be necessary to provide more resources if the gap between service demand and supply is to be closed and so generally improve the quality of service provided for the courts, prisons, the general public and offenders.

### **3 The Accountability Issues**

3.1. The accountability issues examined by the Committee were:

- The Community Service System
- Staff Resources for family law cases
- Prison sentences for non-payment of fines
- Information to evaluate effectiveness
- Investment in IT
- Cost Comparisons

### **4 Examination of the Issues**

#### **The Community Service System**

4.1. The Committee considered the community service system. In broad terms, orders are made by the courts and people are sentenced to do a certain amount of community work. Probation and welfare officers prepare assessment reports on the suitability of offenders. When a person is considered suitable, he or she is referred to a work project which will have been negotiated between the P&WS and an organisation in the local community. The probation and welfare officer is accountable to the court for the work done on the scheme. The supervision of the work undertaken by offenders on community service is organised by the 75 community service supervisors. They have DIY and a range of other skills.

4.2. As most of those subject to community service orders are relatively unskilled, the scheme tries to engage them in a range of activities of which they are capable. They tend not to be FÁS schemes but schemes which allow for manual work to be done such as the restoration or decoration of community centres on behalf of community groups, landscaping or cleaning up an old graveyard. Community service orders are implemented in every District Court area and reported on to the court. There are approximately 1,000 offenders implementing community service orders at any given time throughout the State.

4.3. There are about 60 prisoners under the supervision of the P&WS in the community. The record has been very good. The Minister has directed the law reform division of the Department to include a provision in the upcoming Criminal Justice Act that may enable the State to apply electronic tagging in appropriate cases.

#### **Staff resources for family law cases**

4.4. When the family law legislation was introduced in 1995, the P&WS was faced with the prospect of being flooded with referrals from the family law courts when it did not have the staff to provide that service. There was an increase of more than 60% in the number of family law cases in court, from 19,000 in 1996 to 30,700 in 2001, coinciding with new legislation on the Statute Book that provided for the procurement of reports on children and family circumstances. A decision was taken that until resources were provided, it could not undertake to provide a service for the family law courts. At the time there was a waiting period of nine months from the time a judge asked for an assessment or intervention in a family law case and the capacity of the service to provide it.

4.5. The expert group recommended the development of a separate division in the service to deal with family law cases. The P&WS has undertaken to provide on a one year pilot basis an agreed small number of reports for the Circuit Court in cases where the custody of children is in dispute. It will be three to four years before the family law courts are geared up to avail of the provisions of the Family Law Act. In the region of 100 staff, 70 professional staff and 30 support staff, will be required to provide the service as a separate section of the P&WS. Those dealing with such cases require special training. One of the benefits of the policy of the service to recruit as probation and welfare officers people who have undergone professional social work training is that they have the basic training required to work with young people, teenagers, adults, families and groups.

4.6. The Committee noted that resource shortages meant that relevant provisions of the Child Abduction and Enforcement of Custody Orders Act 1991 which deal with children involved in such cases under The Hague Convention, the Family Law Act 1995, the Family Law (Divorce) Act 1996 and the Children Act 1997, were not capable of implementation. It is standard procedure when legislative proposals or proposals in memoranda to Government are introduced, that there is a requirement to provide cost estimates.

4.7. The restriction on staff numbers is based on a Government decision of December 2002 that there can be no further increases in staff numbers; and in many instances staff numbers are to be reduced over a number of years. There has been a 14% year-on-year increase since 1995. Staffing levels increased by one third between 2001 and 2003. Accordingly, while there has been significant increases in both staffing and resources, they are not enough. There was very little information on how staff resources were deployed in its various activities such as supervision reports, compilation work in prison and so on. For the VFM examination, the P&WS staff co-operated in carrying out surveys of how they spent their time. There are a number of exercises under way to identify areas in which the service could do more or do things differently but the expected position is that 100 additional staff are required. The Committee felt that it would be disappointing if there was no immediate action on the various reports.

### **Prison sentences for non-payment of fines**

4.8. The Committee noted that more than 1,000 people are sent to jail annually for non-payment of fines or some other civil debt of that kind. It costs approximately €80,000 per annum to keep a prisoner in jail which is not good value for money or the most appropriate way to deal with the matter. Other reports suggest that the community service option is the best way to deal with those concerned. Many people threatened with imprisonment pay up and this is the argument for having an option of imprisonment. The number in prison at any one time for non-payment of fines is approximately ten and they are usually there for a short period. One goes to prison for non-payment of a fine only as a last resort. The Minister is currently considering whether there is another way of dealing with this issue.

4.9. On further enquiry, the Committee was informed that in 2004 there were 1,119 committals to prison for non-payment of fines. This compares with 1,204 committals in 2001 and 2,173 committals in 1994. On 17 May 2005, there were four persons in custody on debtors offences.



## **Information to evaluate effectiveness**

4.10. An evaluation system is not in place that could provide conclusive proof that an offender serving his or her sentence in the community under a community service order was more or less likely to reoffend. During the years there has been a debate in the service and the legal profession which has centred on the question whether the handing down of a custodial sentence encourages people to reoffend more so than a non-custodial sentence. The Department acknowledged that there is a dearth of statistics but it is not the case that there is no information available. There is a specialised UCD study of recidivism rates but the time spent on research is limited. The Committee observed that in the absence of figures, it is difficult to draw a conclusion on whether greater emphasis should be placed on the community based approach or if we should have more custodial sentences.

## **Investment in IT**

4.11. The Committee noted that the vision report of 1994 had not been implemented. Some €1 million was sanctioned for IT development, yet there is still no system in place. The Department advised that computer equipment was purchased with a view to modernising the service. The Department did not get sanction for the staff required to do so and therefore the project took off much later than expected. It has proceeded very quickly. Dublin is already computerised, as are some other parts of the country, and everyone was expected to have access to IT at the end of 2004. The implemented total cost of the IT programme is €2.3 million.

4.12. Some 30% of resources are used on staff from the office attending the court presenting reports or being told to arrange for their presentation. The investment in IT will help on a number of fronts including the production of reports and accessing information quickly. There are court presenters in the probation service, therefore, it is not the case that every probation officer who does a report needs to be present in person to present it. They are presented by court duty officers. The judge is entitled to ask that the person who prepared a report would attend in court. Some 13% of officers' time is spent in court, that is an inevitable consequence of preparing evidence for a court.

## **Cost Comparisons**

4.13. The 1999 report made 12 far-reaching recommendations which, if implemented, would have an enormous impact on the service. The C&AG's report refers to the cost comparisons of community based as against prison based services. The cost of a community service order, the average of which lasts 22 weeks, is approximately €3,400. However, the matter is not one of cost but of best management practices within the service. There did not appear to be compatibility between the P&WS, the Courts Service, the Garda Síochána and the Prison Service. The Committee noted that the costs of the service (€6,100 for a probation order, €1,500 for a community service orders and €750 for supervision during imprisonment) in dealing with prisoners are far lower to the Department than the cost of the Prison Service, €79,000 in 2001, of maintaining a prisoner in prison. The greater involvement of the P&WS is a cheaper option for the Department. Prison officers welcome rather than resent the opportunity to work alongside probation and welfare officers. The Department agrees that there is a coterie of offenders who will need all the help they can get when they are released from prison in the long-term interests of society. Resources must be diverted to this area

because such persons require help for the benefit of both themselves and society in keeping crime levels down.

## **5 Adoption of Reports**

5.1 The Committee disposed of Value for Money Report 46 on 16 June, 2005.

### **Findings and recommendations**

#### **The Committee of Public Accounts finds and recommends**

##### **Specifically that:**

1. The cost of community service orders is estimated to be one-third of the cost of implementing custodial sentences.
2. A significant investment has been made in information systems. It is reasonable to expect efficiency improvements, for example, in terms of a reduction in time spent on presenting reports to the courts, on foot of these investments.

##### **And in general that**

1. As part of MIF management reporting, the P&WS should monitor and analyse case load variations between community based teams. There is insufficient information on how staff are deployed and the outputs they produce.
2. There is some lack of clarity over the objectives of the P&WS and an insufficiency of performance indicators to adequately evaluate its performance. These should be addressed in the next round of strategic and business plans.
3. The staffing needs of the P&WS should be reviewed in light of the additional functions assigned to the service by legislation in recent years.



