



DPE 022/002/2018

16th Dec 2019

To: Accounting Officers

DPER Circular: 25/2019

Minute of the Minister for Finance and Public Expenditure and Reform in response to the Committee of Public Accounts Periodic Report No. 6 Oct 2018- May 2019

A Dhuine Uasail,

I am directed by the Minister for Finance and Public Expenditure and Reform to circulate, for your attention, guidance and any necessary follow up actions a copy of the Minute of the Minister for Finance and Public Expenditure and Reform in response to the Committee of Public Accounts Periodic Meetings Report published in July 2019.

Issues raised

The PAC Report contains 36 recommendations relating to a wide range of Public Bodies and Departments including issues regarding the Department of Housing, Planning and Local Government; the Department of Communications, Climate Action and Environment; the Office of Government Procurement; the Department of Education and Skills; the Department of Justice and Equality and the Irish Prison Service; the Higher Education Authority; the University of Limerick; the Department of Health, the Health Service Executive and the National Paediatric Hospital Development Board; the Office of the Chief State Solicitor; and the Kildare and Wicklow Education and Training Board.

Enquiries

Enquiries in relation to this Circular can be addressed to Government Accounting Unit, Department of Public Expenditure and Reform, telephone: +353 1 6767571 or email: govacc@per.gov.ie.

Mise le Meas,

Robert Watt
Secretary General

Minute of the Minister for Finance and Public Expenditure and Reform in response to the Committee of Public Accounts Periodic Report No. 6, July 2019

The Minister for Finance and Public Expenditure and Reform has examined the Committee's Report and has taken account of its recommendations and conclusions.

The Committee's recommendations, which are outlined below, have been grouped with regard to the organisations the Committee met between October 2018 and May, 2019, following up on matters arising from previous meetings and examining issues emerging from financial statements audited and matters reported on, by the Office Of The Comptroller & Auditor General. The Minister's response is as follows:

Recommendation A.1.

The system for gathering information by the Department of Housing, Planning and Local Government in relation to housing provision is not satisfactory. The Committee recommends that the Department immediately improves the system to provide comprehensive information in respect of all housing provision and that this information is published on a monthly basis.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Housing, Planning and Local Government that it notes this recommendation.

It should be noted that the Department already collects and publishes, on a quarterly and annual basis, statistical data from local authorities, who are the statutory housing authorities. Under the Government's Rebuilding Ireland Action Plan, annual targets are set and published for each authority and, subsequently, on a quarterly basis, the actual social housing delivery achieved, broken down by local authority and by each social housing scheme, is published and made available on the Department's website.

This significant level of statistical reporting has been made possible because of the major work that the Department has undertaken over the past number of years, and particularly since the inception of Rebuilding Ireland in 2016, to enhance data collection, resulting in an expansion of the range and type of information and housing datasets that it collects and publishes, so that progress against targets can be visibly tracked at a national and local authority level. A dedicated Statistics and Data Analytics Unit (SDAU), staffed by professional statisticians, including statisticians on secondment from the Central Statistics Office, was established in the Department a number of years ago to lead and professionalise the work in this regard, working with a Unit established to co-ordinate local authority social housing data.

The Department works closely with local authorities in relation to data collection and publication, placing significant focus on data validation, verification and cross-checking. This process already

requires the deployment of significant resources in the Department and local authorities. Any move to monthly reporting needs to be considered in this context, while also taking into account the extent of benefits that may be realised from more frequent reporting. The current practice of quarterly data reporting also takes account of the fact that the CSO, in its work on wider housing-related data, such as in relation to planning permissions and new dwelling completions, collects and publishes its datasets quarterly, rather than monthly, and it also reflects the fact that the data published is part of a wider reporting exercise, on a quarterly basis, to the Joint Oireachtas Committee on Housing, Planning and Local Government, the comprehensiveness of which has been commented on favourably by the Committee.

Nevertheless, the matter will be kept under regular review in light of planned enhancements in housing ICT systems in the Department and in local authorities.

Recommendation A.2.

The spending of 27% of the housing budget in 2017 on housing supports such as HAP and RAS does not represent value for money. The Committee recommends that the Department reviews current policies to ensure that long-term value for the State is created in housing provision

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Housing, Planning and Local Government that it accepts that value for money for housing provision should be kept under regular review.

It should be clarified that the figure of 27% expenditure referred to in the recommendation includes the Housing Assistance Payment (HAP), the Rental Accommodation Scheme (RAS) and long term leasing supports. Over the course of Rebuilding Ireland, the Government is committed to meeting the housing needs of over 138,000 households. This will be achieved through blended delivery, with over 50,000 homes being delivered through Build, Acquisition and Leasing programmes, and some 88,000 further households being supported through HAP and RAS. After many years of decline, a very substantial social housing build programme has been re-established, with local authorities and Approved Housing Bodies significantly expanding their delivery of new build homes year on year.

At the end of 2018, the housing needs of some 90,500 households were being supported under current funded programmes, including HAP, RAS and Leasing. If all of the funding provided for these 90,500 households had been transferred to capital expenditure, to support building or buying homes, it would have delivered approximately 5,500 homes, leaving no resources available to support the other 85,000 households. Looked at another way, it would take almost €20 billion to provide a new build local authority home for the 90,500 households supported under current funded programmes at end 2018.

Strong delivery has been achieved under Rebuilding Ireland; indeed, in overall terms, the annual delivery targets are consistently exceeded. This has been achieved through a blended approach to delivery, the mix of which is evolving year-on-year, such that in 2021, the final year of Rebuilding Ireland, more households will be supported through Build/Acquisition/Leasing programmes than through HAP and RAS.

The actions, targets and resources available under Rebuilding Ireland provide a strong platform for the continued delivery of high quality, value-for money social housing supports for those on social housing waiting lists. The Department continually monitors the implementation of Government policy and objectives, as well as the costs associated with implementation, and works to ensure the best value for money for the level of resources available, taking account of the level of housing needs to be met. This is reflected in the Department's regular participation in Spending Reviews led by the Department of Public Expenditure and Reform, which in recent years have examined expenditure across a range of housing measures. These reviews demonstrate that, while in certain specific urban/rural scenarios it is arguable that one type of housing delivery may be more costly than another, in overall terms value for money is being achieved.

Recommendation A.3.

The Approved Housing Body Interim Regulatory Committee has increased the oversight of the sector that is within its remit. However, given that the code is voluntary and non-statutory, its powers are limited. The Committee recommends that statutory regulation for Approved Housing Bodies and their assets is established without delay to ensure standards, consistency and financial oversight of the State's investment in this sector.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Housing, Planning and Local Government that it accepts this recommendation.

The Department has been developing proposals for a new system of statutory regulation for some time and this has led to the publication of the Housing (Regulation of Approved Housing Bodies) Bill 2019 on 30 July 2019. Consideration of the Bill in the Dáil has already begun and, subject to time being provided in the Oireachtas schedule, it is hoped that the Bill will be enacted by end-2019.

Recommendation A.4.

Housing stock funded by the taxpayer should remain for use by the State. The Committee recommends that the Minister consider inserting legal provisions into Approved Housing Bodies' contracts to ensure that they cannot sell off property used for social housing after the capital loans have been repaid, even if the Approved Housing Body loses its charitable status.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Housing, Planning and Local Government that it accepts that housing supported by the

investment of public funds should be retained for public housing purposes, although it should be noted that, in relation to the social housing stock of local authorities, this is subject to Government policy in relation to tenant purchase.

In relation to social housing delivered through Approved Housing Bodies (AHBs), the Housing (Regulation of Approved Housing Bodies) Bill 2019 provides that an AHB must include in its constitution either or both of the following as its primary object or primary objects:

- the provision of dwellings for the purpose of the alleviation of housing need, and
- the management of dwellings provided for the purpose of the alleviation of housing need, whether or not it provides those dwellings,

Together with provisions:

- prohibiting the distribution of any surplus, profit, bonus or dividend to members or directors or other persons, and
- requiring the assets of the body be applied solely towards its objectives.

The Bill also sets out that if the Regulator considers it necessary for the protection of tenants of dwellings, the Regulator may by notice require the AHB to transfer such dwellings to another AHB. The vast majority of AHBs are registered charities and thereby also fall under the remit of the Charities Regulator. When the Housing (Regulation of Approved Housing Bodies) Bill 2019 is enacted, contracts will be reviewed accordingly.

Recommendation A.5.

The escalating need for and associated cost of providing emergency accommodation indicates the Department of Housing, Planning and Local Government's ineffectiveness in meeting housing needs. The Committee recommends that, where emergency accommodation is required, the Department ensures that it is suitable, of good quality and achieves the best value-for-money possible.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Housing, Planning and Local Government that it partly accepts this recommendation.

The importance of ensuring that emergency accommodation is suitable and of high quality, and also delivers value for money, is fully accepted. However, it should be noted that the increasing need for, and cost of, emergency accommodation reflect, not just the numbers of individuals and families requiring emergency accommodation, but also the effort being made to put in place additional emergency accommodation for rough sleepers as well as improved emergency accommodation, particularly in terms of replacing the reliance on hotels for emergency accommodation through the rolling out of a programme of family hubs.

Under this programme, 28 hubs, providing accommodation and a range of supporting services for some 660 families, are now in place. In terms of ensuring value for money in emergency accommodation capital projects funded by the Department, like all publicly funded construction projects these must comply with the Government's Capital Works Management Framework

(CWMF) and the Public Spending Code (PSC), the objectives of which are to ensure greater cost certainty, better value for money and financial accountability.

Insofar as quality is concerned, the Department, in conjunction with the Dublin Region Homeless Executive, has developed a National Quality Standards Framework (NQSF) for homeless services. The overarching aim of the Framework is to ensure that the services provided are well organised, coordinated, consistent, integrated and focused on moving people out of homelessness into sustainable housing solutions as quickly as possible. The Framework was implemented on a phased basis in the Dublin region and implementation across the rest of the country over a 12-month period commenced on 1 July 2019.

While the numbers in emergency accommodation remain unacceptably high and continue to be the focus of concerted attention, the Department's effectiveness in meeting housing needs generally must be judged on a much broader basis, by reference to the targets set under the Rebuilding Ireland Action Plan and the resources made available to deliver on those targets. In that regard, it should be noted that Rebuilding Ireland committed to meet the social housing needs of over 138,000 social households over the 6 years 2016 to 2021 and that, by the mid-way point (at end-2018), delivery was ahead of target, with some 72,000, or 52%, of these household supports already provided. In the first 6 months of 2019, a further 12,000 households were supported, maintaining the strong delivery momentum. Within this overall level of delivery is a very significant increase in new build social housing, with 2018 delivery in that regard reaching 8 times the level achieved in 2015, the year before Rebuilding Ireland was launched. The key measurement of the impact of the level of delivery achieved is the number of households on social housing waiting lists which, over the three years from mid-2016 to mid-2019, has reduced by 26%.

Recommendation A.6.

The continued underspend of budgets for Traveller Specific Accommodation programmes is a form of ineffective spending because it means the funds cannot be used for other housing programmes. The Committee recommends that the Department of Housing, Planning and Local Government investigates the reason for the continued underspend in this area and ensures that Local Authorities implement in full their Traveller Accommodation plans.

While the meaning of the first sentence of this recommendation is unclear, in terms of the remainder of the recommendation, the Department of Housing, Planning and Local Government accepts fully the importance of identifying the reasons behind underspends on traveller accommodation by local authorities in order to support the full implementation of Traveller Accommodation Programmes. In that regard, it should be noted that, in September 2018, an independent Expert Group was established to review the Traveller Accommodation Act 1998, and other legislation that impacts on the provision and delivery of accommodation for Travellers, and to examine national and international best practice in the provision of accommodation for

nomadic communities. The Expert Group have now completed their report, making 32 recommendations ranging from changes to procedures or policy to fundamental changes to legislation. Given the wide-ranging impact of the recommendations, consideration is now being given as to how these might be implemented in order to improve the delivery of Traveller accommodation nationally and help to ensure that full use is made of the increasing level of funding available for investment in Traveller accommodation.

Recommendation A.7.

The failure of the Department of Communications, Climate Action and Environment to implement actions to reach agreed carbon emission targets by 2020 is unsatisfactory. While the potential cost to the State is unknown, current evidence indicates that costs could be substantial. The Committee recommends that the effectiveness of the implementation of current policies is reviewed and that further actions are considered to prevent the need to purchase credits for failing to reach agreed carbon emission targets.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it accepts this recommendation.

Ireland will comply with its legally binding climate change targets for the period 2013-2020 under the EU Effort Sharing Decision (ESD), through a combination of domestic measures to reduce greenhouse gas emissions, the carrying forward of unused allowances from years for which emissions were below annual ceilings, and the use of purchased carbon credits to meet compliance obligations for any remaining gaps to target during later years in the compliance period.

The Department currently estimates the additional costs of purchasing carbon credits for compliance with Ireland's emissions targets for the period 2013 to 2020 under the ESD to be in the region of €6m to €13m, depending on the price and final quantity of allowances required. This is in addition to over €120m that has already been spent as part of Ireland's strategy to meet its targets under the first commitment period of the Kyoto Protocol (2008-2012), arising from which approximately 5,500,000 carbon credits are currently held by the State which may be used for ESD compliance. This expenditure consisted of €89.6m spent through the purchase of carbon credits directly from the market, and €31.7m invested into three multilateral carbon funds.

With reference to the review of the effectiveness of current policies and consideration of further actions, the Climate Action Plan 2019, published on 17 June 2019, contains over 180 actions that Ireland needs to implement to meet its 2030 targets and achieve its longer-term low carbon transition objective. This Plan sets out an enhanced set of governance arrangements, which closely follow the recommendations of the report of the Special Joint Oireachtas Committee on Climate Action, published in March 2019. These arrangements include:

- the establishment of a Climate Action Delivery Board within the Department of the Taoiseach to oversee delivery of the Plan
- a five year Carbon Budget and sectoral targets with a detailed plan of actions to deliver them

- an independent Climate Action Council to recommend the Carbon Budget and evaluate policy
- strong accountability to an Oireachtas Climate Action Committee, and
- carbon proofing all Government decisions and major investments.

The role of the Climate Action Delivery Board will be to ensure coordinated, timely and effective implementation of the actions in the Plan and hold each Department and public body accountable for delivery. The Delivery Board will also discuss and review strategic projects and areas of work in the Plan. It will prepare quarterly reports on delivery for the Government which will be published. It will also contribute to development of an annual update of the Plan, starting in early 2020. This will ensure that this Plan is a living document, with new actions being added each year. The first meeting of the Board was held on 16th July 2019 and the second meeting was held on 18th September 2019.

Recommendation A.8.

The failure of the Department of Communications, Climate Action and Environment to implement actions to reach agreed renewable energy targets by 2020 is unsatisfactory. While the potential cost to the State is unknown, current evidence indicates that costs could be substantial. The Committee recommends that the effectiveness of the implementation of current policies is reviewed and that further actions are considered to prevent the need to obtain credits through the statistical transfer mechanism for failing to reach renewable energy targets

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it accepts this recommendation.

In May of this year, the SEAI published the National Energy Projections 2019. A number of scenarios are set out that estimate the level of renewable energy in Ireland in 2020 to range from 12.3% to 14.3%. Ireland therefore faces a projected shortfall of circa 3% on its binding target of meeting 16% of its energy demand from renewable sources by 2020.

Any requirement for the purchase of statistical transfers to meet compliance, within the framework of the Renewable Energy Directive 2009, will be undertaken against a background of discussions by the Irish authorities with the EU Commission and relevant Member States. To date, Ireland has not purchased statistical transfers from another EU Member State. 2017 trades between Luxembourg, Lithuania and Estonia suggest costs of the order of €22.5m per percentage point.

However, no assumption can be made that if Ireland entered into a trading arrangement with these countries, a similar price level would apply. Prices would obviously be subject to negotiation and terms agreed and cannot be predicted at this stage.

The recently launched Climate Action Plan includes a suite of actions to increase the level of renewable energy in the electricity, heat and transport sectors, the effective implementation of which will be monitored by the Climate Action Delivery Board.

In the electricity sector, the REFIT support schemes are helping to deliver a significant increase in the level of renewable electricity – predominantly through the development of onshore wind projects. In addition, the Department is developing the Renewable Electricity Support Scheme (RESS).

The RESS is being designed within a competitive auction-based, cost effective framework and the scheme will support future growth in renewable electricity in light of the national target of 70% by 2030. The Government has approved the high level design of the scheme and the Department is actively engaged with the European Commission in order to secure the necessary State Aid approval.

In the heat sector, the Support Scheme for Renewable Heat (SSRH) was approved by Government, has received full State Aid approval and, since June of this year, is open for applications. This scheme targets an increase of three percentage points in the level of renewable energy used in the heat sector. In addition, the SEAI supports the adoption of renewable energy through a range of schemes supporting home owners, businesses and communities.

In the transport sector, the use of renewable energy has increased in recent years and is set to increase in 2019 and again in 2020. This is due to increases in the obligation on fuel suppliers to include a portion of biofuels in fuel supplied in road transport. The obligation rate under the Biofuels Obligation Scheme increased from 6% by volume to 8% by volume in 2018, to 10% by volume in 2019 and will increase again to 11% by volume in 2020. In addition, there are a wide range of supports in place to support the uptake of electric vehicles in the transport sector with almost 12,000 on the roads in Ireland at the end of June, 2019.

Recommendation A.9.

The underspending of the Energy Efficiency National Fund represents ineffective expenditure by the Department of Communications, Climate Action and Environment, especially as the State is failing to reach its targets for improved energy efficiency. The Committee recommends that, in relation to initiatives such as the Energy Efficiency National Fund, the Department works with the relevant stakeholders to increase awareness of available funding and promote take-up of such initiatives.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it accepts this recommendation.

The Department of Communications, Climate Action and Environment is fully committed to active engagement, consultation and communication with stakeholders and the public to promote, and encourage participation in initiatives and schemes across all sectoral policy areas of the Department.

The Energy Efficiency Fund (EEF) was established in 2014 as a new initiative to provide specialist financial expertise and appropriately structured funding for large scale energy efficiency projects. Compliance with both General Government Balance Sheet obligations and State Aid requirements necessarily required that the State have no control over the selection of projects, the pace of their advance or their management, which became a matter for the Board of the Fund and the Fund Manager (which typically applies in the case of such structures). As the EEF model and structure did not secure the anticipated level of investment, the Government approved the State's withdrawal from further funding support in 2018.

The Climate Action Plan includes a commitment to put in a place a new delivery model to underpin energy efficiency retrofitting of the building stock, which will group retrofits together

to achieve economies of scale, leverage private sector finance, and ensure easy pay back models. The Department fully accepts the need to work with relevant stakeholders and the Annex of Actions to the Plan sets out a range of measures to mobilise the supply chain, optimise public and private finance, enhance delivery skills and provide a supporting regulatory environment to achieve 500,000 residential retrofits by 2030.

Recommendation A.10.

There is a need for greater clarity in relation to the finances of the National Cyber Security Centre which is funded directly by the Department of Communications, Climate Action and Environment. The Committee recommends that costs associated with the National Cyber Security Centre are recorded separately in the Department of Communications, Climate Action and Environment’s estimates and accounts by end 2020, at the latest, and as indicated by the Department.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it accepts this recommendation.

Expenditure relating to the National Cyber Security Centre, which is a functional unit of the Department, is reported under the Communications Programme in the Department’s Revised Estimates Volume and Appropriation Account. With effect from the 2018 Appropriation Account, a separate note relating to Cyber Security appears in the Account which provides summary details of the administrative and operational costs relating to the National Cyber Security Centre.

Recommendation A.11.

The increase in the number of contracts entered into by the Department of Communications, Climate Action and Environment between 2016 and 2017 that did not comply with procurement rules is unacceptable. The Committee recommends that in future all steps are taken to ensure that all Departmental contracts meet procurement requirements and that appropriate and timely tender planning takes place for the retendering of contracts that are due to expire.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it accepts this recommendation.

The award of contracts without competitive procurement is permitted in certain circumstances, subject to the provisions of [Circular 40/2002](#) – Public Procurement Guidelines of the Department of Public Expenditure and Reform. This Circular recognises that there can be legitimate reasons for awarding contracts without the use of a competitive process, which do not constitute breaches of procurement rules. The Department has procedures in place for the review, approval and reporting of all non-competitive contracts, which are awarded in accordance with the provisions of Circular 40/2002.

The Department’s suite of internal procurement procedures, policies and templates is currently being updated and will further strengthen monitoring and review of all active contracts within the Department. In addition, a new Corporate Procurement Plan will be developed and implemented, which will assist in identifying the Department’s future procurement needs.

Recommendation A.12.

In order to strengthen the oversight of the operation of the Metropolitan Area Networks, there should be no further delay to the implementation of the 2 outstanding recommendations from the Analysys Mason Review of Pricing and Access arrangements for the MANs. These relate to enet’s external communications and the development of discounting arrangements where uptake of MANs services is low. The Committee recommends that the 2 outstanding recommendations of the Analysys Mason report be implemented by the Department of Communications, Climate Action and Environment, in consultation with ComReg, as specified by the end of Quarter 3, 2019.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it accepts this recommendation in respect of enet’s external communications and fully agrees with the need to implement steps to encourage the uptake of MANs services.

The Department has requested ComReg to provide confirmation that the recommendations in the Analysys Mason report have been implemented and to make any necessary recommendations to the Minister. The outcome of this review is expected by the end of November 2019.

Recommendation A.13.

The Analysys Mason Review of Pricing and Access arrangements for the operation of the MANs recommended that the 4 options it presented in 2017 should be reconsidered after a period of 2 years following reassessment of the MANs. The Committee recommends that the Department of Communications, Climate Action and Environment reassesses the operation of the MANs and reconsiders each of the options presented in the Analysys Mason review by the end of 2019.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it notes this recommendation.

The Department of Communications, Climate Action and Environment has requested ComReg to provide confirmation that the recommendations in the Analysys Mason report have been implemented and to make any necessary recommendations to the Minister.

ComReg’s report will provide an opportunity for the Department to reassess the operation of the MANs and to address any residual concerns.

Recommendation A.14.

There was a lack of transparency regarding the decision to extend the concessionary contracts for the operation of the Metropolitan Area Networks. The Committee recommends that during future concessionary contract discussions, the Department of Communications, Climate Action and Environment keeps all stakeholders informed in an appropriate manner to ensure a competitive situation exists in the interest of value for money for citizens, and releases details of the new arrangements as soon as is practical after the decision is made.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it accepts this recommendation.

Stakeholders will be kept informed of decisions taken with regard to concession contract award processes undertaken by the Department, including where such contracts are being extended in accordance with the contract's provisions, subject to public procurement requirements. Details of such decisions will be published by the Department.

Recommendation A.15. It is unacceptable that significant changes resulting in a major escalation of estimated costs for the National Broadband Plan were made without a new Cost-Benefit Analysis being carried out. The Committee recommends that a new Cost-Benefit Analysis is performed before the final contract is signed to ensure that the full costs, including implementation, are known.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it notes this recommendation. The Department of Communications, Climate Action and Environment wishes to clarify that it updated the Cost Benefit Analysis for the National Broadband Plan, in line with the Public Spending Code, throughout the procurement process, including after receipt of the final tender in September 2018 (5 occasions in total).

The final Cost Benefit Analysis dated April 2019 is available on the Department's website at the following link: - [NBP Cost Benefit Analysis April 2019](#).

Recommendation A.16. The procurement process for the National Broadband Plan may have partly deterred parties interested in tendering for the project from doing so. The Committee recommends that a review of the procurement process for the National Broadband Plan is undertaken by the Department of Public Expenditure and Reform to inform future procurement processes and ensure maximum competition.

The Minister for Finance & Public Expenditure and Reform notes this recommendation. The Office of Government Procurement (OGP), as part of the Department of Public Expenditure and Reform, has responsibility for developing and setting out the overarching policy framework for public procurement in Ireland. However, the OGP has no direct involvement in works procurement, with the exception of the framework arrangements for rapid-build social housing. Rather, capital works are procured directly by the many public bodies tasked with delivery of the public capital programme. It is the responsibility of each contracting authority to ensure they adhere to the OGP framework.

It is a requirement of the Public Spending Code that a post project review be carried out for all major projects - which would include the National Broadband Plan. The Public Spending Code makes it clear that it is the responsibility of the Sponsoring Agency to carry out the post project review.

A post project review aims to draw lessons for the future and, therefore, as required under the Public Spending Code, any significant lessons learned from the review should be translated into

changes in the Sponsoring Agency's project practices and communicated for future reference to the Sanctioning Authority so that it can apply any general lessons to its project approval procedures. If there are any significant findings in the review which have wider implications for other projects or sectors, and/or for broader policy considerations, these should also be reported to DPER for wider dissemination. It is also now a requirement that all Post Project Reviews be published so that lessons learned are publicised.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it will conduct its own 'lessons learned' exercise, given the significance, scale and complexity of the National Broadband Plan project, in compliance with the Public Spending code and in line with the Committee's recommendation.

As the National Broadband Plan is the responsibility of the Department of Communications, Climate Action and Environment, the Minister for Finance and Public Expenditure and Reform considers this to be the appropriate response to the Committee's recommendation. The Department of Communications Climate Change and Environment has agreed to share any lessons learned from the review with the Department of Public Expenditure and Reform and the Office of Government Procurement, so that these can help inform future procurement policy, as appropriate.

Recommendation A.17.

The changes in the National Broadband Plan requirements between the start of 2015 and when the project actively went out to tender meant the original cost projections became irrelevant. A new Cost-Benefit Analysis should have been completed to reflect these changes. The Committee recommends that in future, if significant changes are made to the project's objectives, the Department of Communications, Climate Action and Environment produces a fully revised project plan including a new Cost-Benefit Analysis and that this be submitted to the Department of Public Expenditure and Reform.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it notes this recommendation.

The Department wishes to clarify that, in keeping with the Public Spending Code, a Cost Benefit Analysis (CBA) was undertaken for the National Broadband Plan. The Department has consistently stated that the nature and cost of the solution required to deliver the State intervention network would only become known through extensive engagement with bidders during the procurement process. Therefore, the initial CBA was updated a number of times throughout the procurement process, informed by this detailed engagement with the market and to reflect material changes, including revisions to the number of premises in the Intervention Area, at milestones where the project budget estimate was revised and when a comprehensive project reappraisal was undertaken, in line with the Public Spending Code.

It was further updated following receipt of the final tender, and the final CBA is published on the Department's website at the following link: - [NBP Cost Benefit Analysis April 2019](#).

Feedback from the Department of Public Expenditure and Reform was taken into account throughout the iterative development of the CBA.

Recommendation A.18.

The potential for a further reduction in the number of premises in the *intervention zone* of the National Broadband Plan still exists. The Committee recommends that the Department of Communications, Climate Action and Environment seeks confirmation that the current plan meets and will continue to meet EU State-Aid rules and makes any changes necessary to avoid future increases in cost.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it accepts this recommendation.

The Department has maintained regular contact with the European Commission in terms of satisfying both procurement and State Aid requirements for the National Broadband Plan project. A consultation to conclude the mapping exercise which has been ongoing since 2013, and confirm the scope of the Intervention Area for the purposes of deployment is currently underway, and any submissions received will be assessed in finalising the map which will be notified to the European Commission as part of the final State Aid notification in advance of contract award.

Recommendation A.19.

It is not clear how much of the broadband network in the National Broadband Plan will be owned by the successful bidder. The Committee recommends that the Department of Communications, Climate Action and Environment clarifies what portion of the network developed for the National Broadband Plan will be owned by the successful bidder when the contract has expired. The Committee also recommends that the Department ensures that the company awarded the contract is registered and tax compliant in an EU member state.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Communications, Climate Action and Environment that it accepts this recommendation.

The NBP company will rent an extensive amount of existing infrastructure from eir, the MANs and possibly the ESB. This has been identified by the procurement process as being the optimum and most cost effective option in terms of the delivery of the NBP and is consistent with State Aid and environmental requirements with regard to the re-use of existing infrastructure. Building the network will also involve the creation of new assets that will be owned by the NBP company from the outset, including:

- approximately 100,000km of fibre on poles and ducts
- new poles, ducts and fibre to connect premises
- electronic equipment in exchanges.

With regard to the status of National Broadband Ireland, this company has been registered in Ireland and throughout the NBP contract period is required to be resident in Ireland for tax purposes.

Recommendation A.20.

The absence of a service agreement between the Department of Education and Skills and Bus Éireann from 1975 to 2017 in relation to the provision of the school transport scheme was a significant oversight failure. The Committee of Public Accounts recommends that the Department of Education and Skills ensures that:

- **The ongoing review of the service agreement, in place from July 2017, for the provision of school transport by Bus Éireann is finalised without delay;**
- **The findings of the review of the service agreement are given due consideration and acted on accordingly; and**
- **A review of the service agreement and financial arrangements between the Department and Bus Éireann is carried out at least once every five years.**

The Minister for Finance and Public Expenditure and Reform is informed that the Department of Education and Skills accepts this recommendation.

In September 2017, and within the continuing context of the 1975 Arrangements, a Service Level Agreement (SLA) was put in place to cover the period September 2017 to August 2018. The current SLA is in place for the period September 2018 to June 2020.

The current SLA sets out the key responsibilities of Bus Éireann and the Department while also establishing a formal methodology for monitoring the Key Performance Indicators. The current SLA sets out the roles and responsibilities of both the Department and Bus Éireann, the reporting arrangements and the performance criteria which are identified as Key Performance Indicators (KPI's). These KPI's are monitored at the monthly operations and quarterly strategic meetings.

A review of the current SLA is underway and it is intended that the SLA will be replaced by an Oversight Agreement and a Performance Delivery Agreement. These agreements will incorporate best practice as per the Code of Practice for the Governance of State Bodies.

The Oversight Agreement which is required under the Code of Practice for the Governance of State Bodies (which came into effect on the 1st September 2016) requires effective procedures for the definition of responsibility and accountability, allocation of budgets, defining expected outputs and outcomes and clear procedures for monitoring performance. The Oversight Agreement will be a written statement between the Department of Education and Skills (the Department) and Bus Éireann (BÉ) to define the respective roles and responsibilities of the Department and BÉ. The Oversight Agreement is designed to complement the 1975 Summary of Accounting Arrangements.

The Performance Delivery Agreement (PDA) will set out the management and accountability framework between the Department of Education and Skills (referred to as 'the Department') and Bus Éireann (referred to as 'BÉ'). The Agreement will operate within the parameters of the Oversight Agreement. The PDA will specify the level of service to be delivered during the year between the Department and BÉ. This is to ensure that resources are utilised to provide a safe, efficient and cost-effective school transport service. In doing so, the PDA will support the specific high level goals and objectives of the Department and BÉ and will set out a number of targets. It will also define the outcome indicators on which the performance of BÉ will be measured and will set out how the Department will support BÉ in the delivery of outcomes and will specify the

means by which the DES shall provide the necessary resources to BÉ to enable them achieve their targets as set out in the 1975 summary of accounting arrangements.

The purpose of the PDA will be:

1. To support the 1975 summary of accounting arrangements.
2. To set out Key inputs, outputs and expected outcomes of STS.
3. To set out the expectation of the Department in relation to BÉ.
4. To set out the expectation of BÉ in relation to the Department.

As mentioned at the outset, the current SLA is due to expire at the end of June 2020. Discussions are ongoing between the Department and Bus Éireann to finalise the Oversight Agreement and the PDA with a view to having the revised agreements in place to cover the period from June 2020. It is intended that the agreements will be reviewed annually.

Recommendation A.21.

The rise in the number of contracts issued by the Irish Prison Service that did not comply with procurement guidelines between 2012 and 2017, and the rise in value from €1m in 2012 to €8.8m in 2017, highlights a serious governance failure. The Committee recommends that in future all necessary steps, including determining lead times with the Office of Government Procurement, are taken by the Irish Prison Service to ensure that incidences of non-compliant procurement are minimised.

The Minister for Finance and Public Expenditure and Reform is informed by the Irish Prison Service that the recommendation is accepted.

The Minister is informed by the Irish Prison Service that briefing sessions have taken place for senior managers and budget managers on the procurement process, associated roles and responsibilities and the need for improving compliance. The most recent session, in Q2 2019, was attended by the Irish Prison Service's Key Account Manager from the Office of Government Procurement and included an overview of OGP estimated timelines.

The Minister is further informed that, in discussions with the Office of Government Procurement, the Irish Prison Service have introduced processes to assist in managing the end of contracts, namely categorisation of procurement exercises by complexity (Low/Medium/High) along with related, indicative timelines for completing tasks and milestones. Further improvements are being advanced with the development of a procurement booking/management system that will give greater visibility for procurement planning and resource allocation, providing 'real time' progress reporting on tender competitions and contracts. It is planned to have this system operational before the end of the year.

It is of note that, the Irish Prison Service face particular difficulties that challenge the principles of open competition. Namely, in respect of where there are security and/or operational implications that demand either urgency or consistency of supply for, for instance, specialist security equipment or replacement and servicing of prison locks. Supplies of this nature feature each year on the report for the Irish Prison Service of contracts that 'did not comply with procurement guidelines'.

Recommendation A.22.

There is a lack of clarity in relation to the operation of Voluntary Mess Committees in prison facilities. The Committee recommends that the Irish Prison Service (IPS) reviews the operation of Voluntary Mess Committees in prisons to ensure they meet the needs of staff that require canteen facilities and provide training opportunities for prisoners. It is also recommended that the IPS satisfies itself that its oversight of Voluntary Mess Committees is appropriate to managing such operations.

The Minister for Finance and Public Expenditure and Reform is informed by the Irish Prison Service that the recommendation is accepted.

The Minister is informed by the Irish Prison Service that training kitchens are operated in 8 prisons, providing a canteen/mess service to staff and visitors. Work and Training Officers manage the running of the kitchens and oversee the prisoner trainees. As is typical for all work and training activities, the Irish Prison Service provides the location, staff and overheads to run the facilities. Users of the service pay a fee that is set to cover the cost of the food purchased. Voluntary Mess Committees exist in each of the 8 prisons to oversee the administration of the training kitchens.

The Minister is further informed that the legal responsibility for the Voluntary Mess Committees is being addressed initially by the Irish Prison Service from a taxation perspective and external professional advisors have been engaged. The Irish Prison Service have corresponded with the Revenue Commissioners and an initial meeting has taken place with further submissions and correspondence scheduled to follow. Once the position of the Revenue Commissioners has been firmly established, the Irish Prison Service will be better placed to determine the future arrangements for the provision of canteen facilities for staff and the appropriate oversight requirements.

Recommendation A.23.

The process surrounding protected disclosures within the Irish Prison Service lacks clarity, with some protected disclosures submitted to the Department of Justice and Equality and others being handled by the Irish Prison Service's Director of Internal Audit. The Committee recommends that the Irish Prison Service works the Department of Justice and Equality to ensure that the process for the submission of protected disclosures is clear and communicated carefully to all staff in the Irish Prison Service.

The Minister for Finance and Public Expenditure and Reform is informed that the Irish Prison Service accepts this recommendation.

The Protected Disclosures Act 2014 provides statutory protections for workers in the public and private sectors against retaliation for speaking up about wrongdoing in the workplace. Workers can make disclosures either internally to their employer, under section 6 of the Act, or externally to a prescribed person, under section 7 of the Act, or, subject to certain conditions set out in Section 10 of the Act, make a public disclosure. In addition, workers in a public body, such as the Irish Prison Service, can make a disclosure to the relevant Minister under Section 8 of the Act. The Minister is informed that the Irish Prison Service Protected Disclosure Policy has been in place since 1 July 2018.

The Protected Disclosure Policy of the Irish Prison Service encourages employees to report internally, any allegation of wrongdoing to its confidential email address speakup@irishprisons.ie which is managed by the dedicated Irish Prison Service Protected Disclosures Manager. On receipt of a disclosure of wrongdoing under the Irish Prison Service Protected Disclosures Policy an external independent assessor assesses each allegation of wrongdoing to assess the relevant criteria to ascertain whether the disclosure should be treated as a Protected Disclosure within the meaning of the Act.

Where the external independent assessor determines that the wrongdoing requires investigation, the Irish Prison Service will appoint an external independent investigator to carry out that investigation.

The process for submitting Protected Disclosures has developed so that currently the Irish Prison Service is managing 8 protected disclosures that have been received in 2019. Some of these were received by the Department of Justice and Equality. Where appropriate the Department of Justice and Equality transfers the management of disclosures to the Irish Prison Service. The Department of Justice and Equality are managing 1 protected disclosure investigation received in 2019 in relation to allegations of wrongdoing in the Irish Prison Service as provided under Section 8 of the Act.

The Irish Prison Service continues to work with the Department of Justice and Equality to ensure that the process for the submission of protected disclosures is clear and communicated carefully to all employees of the Irish Prison Service.

The Irish Prison Service rolled out an information campaign to raise staff awareness of its Protected Disclosures Policy and procedures. A bespoke Protected Disclosures Portal was created on its intranet which provides access to the Policy and support information including a comprehensive Frequently Asked Questions document. Information notices regarding the Protected Disclosures Policy are displayed on electronic noticeboards which are available in staff areas in prisons. Posters with information highlighting the confidential phone line have been circulated to all prisons for display in staff areas. The Irish Prison Service will be rolling a renewed awareness campaign to staff regarding Protected Disclosures in quarter 3 2019.

The Minister is further informed that the Irish Prison Service will also continue to increase awareness among staff that Transparency International Ireland which is an independent, non-profit and non-partisan organisation, is available to them to provide advice and guidance to employees in relation to protected disclosures.

The Irish Prison Service has worked closely with Transparency International Ireland to develop its Protected Disclosure Policy which was launched in July 2018 accompanied by the Integrity at Work Pledge which outlines the commitment of the Irish Prison Service to implement a whistleblowers policy and procedures, to develop an ethical workplace and to value and protect those who raise issues of wrongdoing in the workplace.

Transparency International Ireland also provides a confidential phonenumber called the Speak Up helpline (1800 844 866) which operates from 10am to 6pm Monday to Friday, an email service helpline@transparency.ie as well as a website www.speakup.ie.

Transparency International Ireland also provide free legal advice to anyone who wishes to disclose a wrongdoing, particularly under the Protected Disclosures Act 2014. The services provided by Transparency International Ireland are in conjunction with the support services available to employees such as the Staff Support Officers, the Irish Prison Service Employee

Assistance Service and the Inspire Workplaces confidential counselling service which provides employees support on a range of personal and work related issues.

- The Irish Prison Service is committed to ensuring that the Protected Disclosures Policy and Procedures are reviewed regularly to ensure that they reflect best practices and feedback from staff.
- The Policy and Procedures were reviewed in July 2019. Following feedback, an external recipient is now in the process of being designated to independently receive allegations of protected disclosures. This enhances independence, confidentiality and transparency. It provides workers with a completely external and independent avenue to raise concerns about relevant wrongdoings which come to their attention in connection with their employment without fear of penalisation.
- The Protected Disclosures Manager will also continue to receive protected disclosures to the speakup email address and/or Post Box number.
- The protected disclosures process will now provide for all aspects of the disclosure to be handled externally by an external independent recipient, and provides for independent external assessment and investigation.
- It is intended to roll out the revised changes regarding the Protected Disclosures policy and an awareness programme to all staff in conjunction with Transparency International Ireland shortly.

Recommendation A.24.

The low overall number of doctors available in the Irish Prison Service to provide necessary medical treatment is a cause for concern. The Committee recommends that the Irish Prison Service reviews, as part of its healthcare assessment, the overall adequacy of provision for doctor services by the end of 2019.

The Minister for Finance and Public Expenditure and Reform is informed by the Irish Prison Service that the recommendation is accepted.

At present, all persons in custody are provided with a range of healthcare services based on an equivalence of care to that provided under the General Medical Scheme in the community. Those services are based on a primary care model which includes general practitioner services made available to all persons in custody.

The total number of sessions delivered across the Service on a weekly basis is 95. These sessions are delivered by a mix of directly employed doctors, locum general practitioners and through contracts for service. The Irish Prison Service currently employs four permanent prison doctors. The Irish Prison Service also delivers general practitioner sessions through the services of locum doctors who are engaged by way of an existing contract agreement. A panel of 30 suitably qualified general practitioners are available to the Irish Prison Service. This equates to approximately 12 whole-time equivalent locum doctors delivering general practitioner sessions across the prison estate.

Following an evaluation process under the aegis of the Office for Government Procurement, the Health Needs Assessment has been awarded to Crowe Ireland. The Irish Prison service has met with Crowe Ireland to review the parameters relating to the project including the timelines involved. Crowe Ireland will meet with the Interdepartmental Steering Group in the coming weeks. It is anticipated that the HNA will be completed in Q4 2020.

Recommendation A.25.

The awards made of professional added years for pension purposes in 51 cases at the University of Limerick between 2012 and 2016 were excessive in comparison with averages from other universities in comparable situations. The Committee recommends that the Department of Education and Skills completes its review of the awards of professional added years for pension purposes without delay, and takes appropriate action following consideration of the findings.

The Minister for Finance and Public Expenditure and Reform is informed by Department of Education & Skills that it accepts this recommendation

The Department of Education and Skills continues to actively liaise with both the HEA and UL on the review of the awards of professional added years for pension purposes. Further progress was made on individual cases at a meeting with UL and separately the HEA on the 25th and 26th July respectively.

It is expected the review will be concluded before the end of the year and subsequently the University will be advised to take the appropriate action.

Recommendation A.26.

The admission of staff from a subsidiary company to the University of Limerick pension scheme without a clear rationale or documentation to substantiate the claim that they had been offered such benefits is a governance failure that could have cost the State €1.2m. The Committee recommends that the Higher Education Authority completes its review related to the admission of staff from a subsidiary company to the University of Limerick pension scheme without delay, and works with the University of Limerick to ensure that the recommendations are acted on appropriately.

The Minister for Finance and Public Expenditure and Reform is informed by Department of Education & Skills that it accepts this recommendation.

The Department of Education and Skills continues to actively liaise with both the HEA and UL on the review related to the admission of staff from a subsidiary company to the UL pension scheme. Further progress was made at a meeting with UL and separately the HEA on the 25th and 26th July respectively.

It is expected the review will be concluded before the end of the year and subsequently the University will be advised to take the appropriate action.

Recommendation A.27.

The Committee finds it absolutely unacceptable that nobody can give a reasonably accurate estimate of the expected final costs for the completion and fitting out of the National Children’s Hospital. The Committee recommends that in future no contract is signed for a significant capital project without a fully detailed design supported by a proper cost estimate.

The Minister for Finance & Public Expenditure and Reform notes this recommendation.

The Public Spending Code is the value for money guidelines for the public service and imposes obligations at all stages of the project lifecycle on organisations that spend public money. As part of the ongoing reform of Ireland’s capital management systems, the Department of Public Expenditure and Reform is updating the Public Spending Code. The purpose of this update is to strengthen the existing guidance to better align with the realities of project delivery and with a particular focus on improved appraisal, cost estimation and management.

The updated Public Spending Code will require that issues of deliverability, design and risk are set out much earlier in the process. The Code reiterates the key decision points for Approving Authorities at various points in the project lifecycle. As under the current arrangements, proposed projects must be continuously reappraised as additional information becomes available, including from the design and tendering processes. The new arrangements will strengthen this practice. All projects will be required to undergo full business case update following the design and tendering processes. Any decision to award a contract must be underpinned by a final business case which must reflect the most up to date position and include additional financial contingency for any remaining risk and hence much greater clarity on likely costs.

The updated guidance will be published in O4 2019.

Recommendation A.28.

The two phase tender process was a very significant contributing factor in the overall cost escalation of the National Children’s Hospital. The decision to bring the main contractor onto the site to complete Phase A before the detailed design for Phase B had been submitted was also a significant contributing factor to the cost escalation of the project. The Committee recommends that the two phase tender process is not used in future for any major capital expenditure projects unless both phases of the project are fully designed in advance.

The Minister for Finance & Public Expenditure and Reform notes this recommendation.

The procurement approach taken in the New Children’s Hospital is bespoke to that project but there are lessons that can be applied across the NDP. In this regard, there are reviews currently underway of the Public Spending Code (PSC) and the Capital Works Management Framework (CWMF), which are critical to the NDP’s successful delivery.

The Public Spending Code sets out the rules, procedures, and guidance to ensure that the best possible value-for-money is obtained whenever public money is being spent or invested. The revised central elements of the Public Spending Code relating to the appraisal and management of public capital projects will be published shortly. Further technical guidance building upon these central elements will follow later this year and in 2020.

A review of the Capital Works Management Framework (CWMF), which represents the procedures and conditions of contract that must be used in the engagement of consultants and contractors on public works projects, is currently being undertaken by the Office of Government Procurement. A set of objectives has been developed to manage the review process. This will permit a progressive refinement of the CWMF rather than awaiting the completion of the entire work programme prior to implementation. Enhanced risk management throughout a project's lifecycle and quality of information will inform all aspects of the work programme. Consultation has commenced with industry and the public bodies charged with the delivery of public works projects on a broad range of issues that are impacting on the successful and timely delivery of projects.

It is accepted that proceeding with substantial building works in advance of finalising the overall design of the project contributed to the cost increases associated with the New Children's Hospital and that the mitigation measures put in place to manage the risk of cost increases in the process to determine the final price did not deliver the intended result. The standard requirement for the vast majority of public works projects is that they are fully designed prior to tender and this position will not change. The strategy adopted in the case of the NCH was unique and will be avoided in the future but it should not be ruled out entirely as circumstances may arise that warrant its consideration. In this event the contracting authority in question will be required to incorporate robust measures to mitigate the risk of cost increases and a substantial risk premium will be applied to the project as part of the Cost Benefit Analysis or Cost Effectiveness Analysis that is undertaken as part of the sanctioning process.

It is important to note that there will be projects undertaken by the State where the early input of a building contractor can deliver significant benefits to the project. It can be particularly useful in the design stage to test and augment the design proposals on complex or challenging projects. There are also likely to be projects in the future that have a degree of urgency associated with their completion. In both instances it may be necessary to go to tender for the building contractor with incomplete design. Early Contractor Involvement is widely used internationally to develop projects of this nature and usually requires the use of a two stage contract award. The first stage involves the contractor contributing to the design of the project and undertaking investigation works. The contractor is paid for their work in the first stage but the second (construction) stage, does not proceed unless the two parties can agree on the scope and the costs. The challenge with this approach is to maintain the commercial tension whilst giving the project team the space to develop the best solution at an affordable price.

There are also projects such as conservation and urban flood management schemes where the design can often not be finalised prior to tender since it is only when the works commence that you can get a full understanding of the scope of work. Where these types of projects are concerned exploratory works should be undertaken in advance of the main works commencing but this is not always possible or indeed cost effective. Particular solutions need to be developed to cater for such projects and to ensure adequate provision for the cost uncertainty associated with incomplete design is properly recognised.

What will assist in mitigating the risk associated with incomplete design generally is robust project budgets with in-built risk contingencies which will be included in the revisions to the PSC and the CWMF.

Recommendation A.29.

The sudden increase in costs for the on-going construction of the National Children's Hospital is extremely worrying and indicates that the tendering process for the project was totally inadequate. The Committee recommends that mitigation strategies are developed to ensure that costs associated with the National Children's Hospital do not continue to rise during Phase B of construction.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Health that it agrees there is a need to ensure mitigation strategies are in place to ensure that costs associated with the new children's hospital do not rise where this is avoidable and are kept to an absolute minimum.

The report that resulted from the PwC independent review into the escalation in cost of the new children's hospital made a number of recommendations in relation to the Children's Hospital Project as well as several in relation to the management of Capital Projects in general. An implementation plan, which will include actions taken to date and the action proposed based on these recommendations is expected to be brought to Government when the Dáil resumes after the Summer recess by both the Minister for Public Expenditure and Reform and the Minister for Health.

It should, however, be noted that the review recognised that a programme of work of this complexity can never be fully de-risked. For example, costs arising in changes in design or scope. The report makes clear that the Guaranteed Maximum Price established through the two-stage tender process does not provide a contractual ceiling on cost and significant residual risks remain of further cost escalation.

A primary focus of the NPHDB is on having the mechanisms and processes in place to manage this risk where possible and prevent further cost increases.

The NPHDB has previously provided an example illustrating this aspect of its role. At the Joint Oireachtas Committee on Health in June 2019, the NPHDB stated that the main contractor has submitted claims which it alleges are outside of the agreed scope. The NPHDB then outlined the robust process in place for the assessment of claims by the Contractor in accordance with the Construction Contract. All claims are independently assessed and determined by the Employer's Representative. Where there is a dispute on the validity of a claim, the Construction Contract sets out the dispute management process.

Additionally, the report identifies cost pressures excluded from the Guaranteed Maximum Price. This includes costs arising from construction inflation above 4% as well as costs increases that might arise from change in statutory charges.

The Department of Health is committed to working with both the HSE and the NPHDB to deliver the new children's hospital project. The Department has had engagement with a wide variety of stakeholders in relation to this project and is continuing to engage to ensure appropriate measures are in place to deliver the project as efficiently and effectively as possible.

Recommendation A.30.

The Committee agrees with the recommendations presented in PwC's *New Children's Hospital Independent review of escalation of costs, April 2019*. The Committee recommends that all 11 recommendations in the review are implemented without delay.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Health that it is working with the Department of the Taoiseach and the Department of Public Expenditure and Reform in relation to a submission to Government regarding an implementation plan based on the recommendations of the PwC review.

The PwC independent review into the escalation in cost of the New Children's Hospital, was considered by Government on Tuesday 9 April and published that same day.

The Government noted the recommendations of the report and agreed that the Minister for Public Expenditure and Reform and the Minister for Health would revert to Government to outline an implementation plan for the recommendations contained in the report. Work in relation to this implementation plan is ongoing.

In order to develop a shared understanding and view of the recommendations and assist in the preparation of a response to them, a half-day high level workshop was hosted by the Department of the Taoiseach on 30 April 2019.

Since then, work has been ongoing on a collaborative basis by the Departments of the Taoiseach, Health and Public Expenditure & Reform in consultation with the HSE, CHI and NPHDB to develop an implementation plan which the Minister for Health and Minister for PER intend to bring to Government for approval, including approval to publish.

Recommendation A.31.

The Department of Health, as the sponsoring department for the National Paediatric Hospital Development project, has not provided proper oversight or ensured coherence on all aspects of the project. The Committee recommends that the Department of Health liaises fully and regularly with the National Paediatric Hospital Development Board, the Health Service Executive and the Department of Public Expenditure and Reform to ensure that proper control, oversight and accountability is provided for the remainder of the project.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Health that it notes the content of the PwC review regarding the importance of the liaison arrangements and flow of information with stakeholders such as the National Paediatric Hospital Development Board, the Health Service Executive and the Department of Public Expenditure and Reform to ensure proper oversight of the project going forward.

The terms of reference of the PwC review into the reasons for the cost escalation associated with the new children's hospital construction project state that the review's primary focus was on the governance and management arrangements in place within and between the National Paediatric Hospital Development Board (NPHDB) and Executive, Design Team, relevant consultants, user groups and contractors.

The Report found that while the CHP&P governance structures in place above the NPHDB – which included the Department of Health and the HSE – were complex, they did not appear to impede the flow of information relating to cost. It also stated that once significant cost pressures were identified during the GMP process, reporting of issues appears to have been correctly managed. However, the Report also found that the terms of reference and composition of the CHP&P Board and Steering Committee meant that their collective ability to provide challenge to the role of the NPHDB was limited.

The Report (recommendation no 9) recommends that “...a scrutiny process that includes all levels of the governance structure should be put in place to review all proposals that are focussed on reducing the GMP.

Accordingly, as part of the implementation plan under development, much attention has been paid to the management and oversight arrangements for the project to ensure that the deficits identified in the PwC report are addressed. Such changes will form part of the Implementation Plan to be submitted to Government.

Recommendation A.32. There is not an effective control of costs for tribunals and commissions of investigation which take longer than anticipated or whose terms of reference are extended. The Committee recommends that:

- **Costs to date and estimated total costs relative to the original estimate for each tribunal and commission of investigation are published by all relevant Departments on a six-monthly basis; and**
- **The Department of Public Expenditure and Reform works with the Government and Dáil Éireann to establish an agreed set of procedures to be followed when costs associated with a tribunal or commission of investigation have exceeded or are expected to exceed the estimated costs on establishment.**

The Department of Public Expenditure and Reform notes this recommendation.

- The Department of Public Expenditure and Reform will issue a Circular requesting heads of Departments to publish details of costs and estimates for Tribunals and Commissions of Investigation on a six monthly basis.
- As regards procedures to be followed when Tribunal/Commission costs exceed estimated costs, would in the first instance be a policy matter for the Minister concerned, or Government, to take a decision in relation to any changes to be made in the operation of a Tribunal or Commission. The issue of estimating costs of Tribunals, and ensuring such estimates are kept up to date, was addressed in draft legislation, the [Tribunals Bill 2005](#). That Bill was subsequently discontinued. However, the Minister for Justice and Equality has signalled his Department’s intention to re-examine this Bill but cannot give a definitive timeline as to when this will occur.

Recommendation A.33.

The level of unrecovered legal costs awarded to the State at €9.6m, taking account of the costs of pursuing recovery and the level of related annual receipts, represents an unacceptable burden for the State. While the Committee recognises that the management of claims for costs awarded to the State after 29 May 2018 has passed to the NTMA, it recommends that a comprehensive review of the Office of the Chief State Solicitor's debt collection function be carried out and proposals brought forward to finalise the debts due to the Office of the Chief State Solicitor either through enforcement or, in the case of unrecoverable debts, write-off.

The Minister for Public Expenditure and Reform is informed that the Chief State Solicitor's Office (CSSO) accepts this recommendation.

The Minister is further informed by that Office that it notes the observations, conclusions and recommendations of the Committee and will carry out a review to assess its current book of unrecovered debt where no instalment payments or other enforcement security is in place.

The CSSO will also consult with the National Treasury Management Agency as to the public good principle it is currently pursuing, so as to consider how best to align policy with regard to legacy Orders having regard to the delegated function to the NTMA from 2018.

Recommendation A.34.

The management of Kildare and Wicklow Education and Training Board has been marked by inadequate governance since its establishment. The Committee notes that certain matters relating to the Kildare and Wicklow Education and Training Board are under Garda investigation and other matters under internal review. The Committee recommends that the change programme signalled, by both the new Kildare and Wicklow Education and Training Board and the Department of Education and Skills, to address management and governance weaknesses at Kildare Wicklow Education and Training Board, is completed promptly

The Minister for Finance and Public Expenditure and Reform is informed that the Department of Education and Skills accepts this recommendation.

Following the completion of a report by an investigator appointed by the Minister for Education and Skills under Section 40 of the Education and Training Board Act 2013, the Minister issued directions to KWETB with a focus on addressing the concerns raised in both the investigator report and the subsequent report of the Comptroller and Auditor General in relation to the 2015 Financial Statements for KWETB.

These directions included:

- A review of an initial Action Plan by KWETB to address the issues in the reports;
- A requirement to review measures in place to prevent conflicts of interest and inappropriate interventions in processes relating to procurement and contract management;

- Mandatory governance training for new and existing board members;
- A board self-evaluation with appropriately qualified external input;
- To provide comprehensive updates to the Department within 3 months and an ongoing engagement on all issues with the Department.

Since the issue of the Ministerial directions in September 2018, KWETB have incorporated their Action Plan into a Corporate Governance Programme for the ETB. This sets out the processes by which the Board and Executive are managing the issues which have arisen including their ongoing engagement with An Garda Síochána, Comptroller and Auditor General and the Department. The Governance Programme is a live document which continues to be updated to reflect ongoing good governance practice including the 2019 Revised Code of Governance for ETBs.

The June 2019 (quarter 2 meeting) between the Department and KWETB has identified that approximately 80% of the work in the current programme is complete (up from 52% from quarter 1 2019). Work is on track to complete the current programme by the agreed timeline of the end of December 2020. The Department is undertaking ongoing oversight of the programme and remains in regular engagement with KWETB to ensure that the issues which were identified have been appropriately dealt with.

There will be a new Board for KWETB in Autumn 2019 (following the statutory requirement to refresh boards following the local elections in May 2019). ETBI, supported by the Department, is rolling out a training programme for all board members of ETBs to support them in the discharge of their functions.

Other matters relating to KWETB remain under investigation by An Garda Síochána and therefore it is not possible to conclude all aspects of the change management programme pending the completion of that investigation. The Department remains committed to take all necessary measures to support KWETB in the fulfilment of their statutory obligations and in embedding a culture of good governance and oversight in the organisation.

Wider ETB related developments include:

- Increase funding and staffing supports for the Internal Audit function in ETBs;
- A revised Code of Governance for ETBs effective from the start of this year;
- Significant progress in relation to the development of shared services in the ETB sector;
- A procurement and legal services reform programme in ETBI;
- Enhanced oversight and support in the areas of capital and building projects in the ETBs.

Recommendation A.35.

It is unacceptable that the last published Financial Statement for Kildare and Wicklow Education and Training Board is for the year 2015. The Committee recommends that the Financial Statements for the years 2016-2018 inclusive are finalised without delay and that in future Kildare and Wicklow Education and Training Board presents its annual Financial Statements to the Office of the Comptroller and Auditor General in a timely manner.

The Minister for Finance and Public Expenditure and Reform is informed that the Department of Education and Skills accepts this recommendation.

The Department acknowledges that the change from Vocational Educational Committees to Education and Training Boards in 2013 resulted in delays in ETBs submitting their financial statements to the Comptroller and Auditor General by the statutory deadline of the 1st April each year. However significant progress has been made in recent years and where it had taken ETBs on average 10.5 months to submit their financial statements in 2013/14, this reduced to 8 months for the 2015 and 2016 financial years. All financial statements for ETBs for the 2017 and 2018 financial years were submitted to the Comptroller and Auditor General on time, including for KWETB.

In the case of KWETB the delays in relation to their financial statements for the years 2016 to 2018 are not in the submission of those statements to the Comptroller and Auditor General by the statutory deadline but rather in having those financial statements finalised by the completion of the Comptroller and Auditor General audit. The events which followed the initial engagement by all parties on the KWETB 2015 Financial Statements, including the subsequent report of the Department's investigator, the referral of matters to An Garda Síochána and the ongoing engagement by KWETB with the Comptroller and Auditor General impacted on the timeline for the finalisation of the 2015 KWETB financial statements. The 2015 KWETB statements were laid before the Houses of the Oireachtas in February 2019.

The Comptroller and Auditor General completed the audit of the KWETB 2016 Financial Statements and the financial statements were sent to the Department of Education and Skills in July 2019. In accordance with the provisions set out in the Department of Public Expenditure and Reform Circular 07/2015, the audited accounts and audit certificate should be laid before the Houses of the Oireachtas within 2 months of receipt by the Department. The Department reviewed the 2016 KWETB Financial Statements and engaged as appropriate with KWETB in advance of submission to the Houses of Oireachtas. The 2016 KWETB Financial Statements were laid before the Houses of the Oireachtas on the 16th September 2019.

Recommendation A.36.

The instances of non-compliance with public procurement guidelines first identified in Kildare VEC and then later in the associated, and newly constituted, Kildare and Wicklow Education and Training Board indicate a failure of oversight by the Department of Education and Skills. The Committee recommends that where an Education and Training Board is found to be in breach of procurement rules and good governance, the Department of Education and Skills takes a more active role to ensuring the relevant Education and Training Board deals with matters comprehensively and promptly, and that accountability is maintained.

The Minister for Finance and Public Expenditure and Reform is informed that the Department of Education and Skills accepts this recommendation.

The findings of the investigator appointed by the Minister under Section 40 of the Education and Training Board Act 2013 found that in relation to KWETB's governance procedures adequate arrangements to manage procurement and conflicts of interest were in place according to the ETB's documented procedures. However, on an operative basis, in several instances the implementation of procurement processes and management of projects was found to be flawed or suboptimal. He further found that the Board of KWETB should be more proactive in ensuring oversight of the ETB's management of projects.

The Board of KWETB has accepted the findings of the investigator and the directions subsequently issued by the Minister to support better governance and oversight in KWETB. The KWETB Corporate Governance Programme, which remains under ongoing review by this Department, is the means by which good corporate governance, including for matters relating to procurement, is embedded in KWETB and allows for the appropriate levels of accountability within the ETB Executive and Board as is appropriate for a statutory body.

In addition, the Public Service Reform function within ETBI (which is providing the means to ETBs to better comply with procurement requirements) launched the Corporate Procurement Plan for ETBs in April 2019 which included templates for multi annual procurement planning to allow ETBs better plan their procurement activity. This procurement planning will allow both the ETBs and the Department access to more timely information on the procurement issues as they arise with the aim of enhancing procurement compliance in the sector.

In relation to governance matters generally, the [Revised Code of Governance for ETBs 2019](#) sets out the requirements of ETBs to comply with good governance required of all civil and public service bodies and includes service level agreements and performance delivery agreements between the Department and ETBs. Work is progressing on these between the Department and ETBs to further strengthen the oversight function of the Department in relation to the activities of the ETBs.

The steps above are some of the mechanisms designed to allow for better and earlier information to flow to the Department so that the appropriate steps can be taken to manage procurement and governance in the ETB sector.

L.S.

Given under the Official Seal of the Minister for
Finance and Public Expenditure and Reform on this
the 12th day of December, 2019.

A handwritten signature in black ink that reads "Robert Watt". The signature is written in a cursive style with a large initial 'R' and 'W'.

Robert Watt

Secretary General

Department of Public Expenditure and Reform