An Roinn Caiteachais Phoiblí agus Athchóirithe
Department of Public Expenditure and Reform

DPE 022/002/2021

24th March 2021

To: Accounting Officers

DPER Circular: 05/2021

Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of the 2018 and 2019 Appropriation Accounts for Vote 26 – Education and Skills, February 2021

A Dhuine Uasail,

I am directed by the Minister for Public Expenditure and Reform to enclose, for your information and guidance, a copy of the Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of Matters in relation to the examination of the 2018 and 2019 Appropriation Accounts for Vote 26 – Education and Skills.

Issues raised

The Minute of the Minister addresses the following issues:

- Temporary School Accommodation;
- Paper payslips;
- Presentation of legal costs;
- Procurement;
- Caranua; and
- Defective buildings

Enquiries

Enquiries in relation to this Circular should 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,

David Moloney
Secretary General

Tithe an Rialtais, Sráid Mhuirfean Uacht, Baile Átha Cliath 2, D02 R583, Éire
Government Buildings, Upper Merrion Street, Dublin 2, D02 R583, Ireland
T +353 1 676 7571 LoCall 1890 66 10 10
www.per.gov.ie

Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of the 2018 and 2019 Appropriation Accounts for Vote 26 – Education and Skills, February 2021.

The Minister for Public Expenditure and Reform has examined the Committee's Report and has taken account of its recommendations. In relation to the Committee's recommendations, the Department of Public Expenditure and Reform has engaged with the Department of Education and the response to each recommendation is as follows:

Issue 1 – Temporary School Accommodation:

The Committee questioned whether temporary accommodation arrangements for schools are providing value-for-money to the State. Expenditure on temporary school accommodation in 2018 was €26.2 million and this increased to €29.5 million in 2019. The Committee noted that the longest arrangement for temporary school accommodation dated back to March 2000.

The Committee acknowledges the statement from the Department that the school-going population has increased nationally over the last decade and this has increased the need for school accommodation. The Committee is of the opinion that accurate forecasting of school places is essential to meeting the demand for school places.

The Committee was informed by the Department that it views temporary accommodation arrangements as interim measures to provide school spaces and that it has increased its spend on capital projects to address the use of temporary accommodation arrangements. However, the Committee remains concerned that the Department continues to heavily rely on temporary accommodation arrangements and is of the opinion that agreements that date back up to 20 years cannot be classified as interim measures.

Recommendation 1:

The Committee recommends that the Department of Education completes the following actions: -

- **Undertakes a review of all temporary accommodation agreements for schools that have been in operation for more than five years to identify and prioritise areas to commence construction of school premises. This is to ensure value-for-money is achieved in the long term,**
- **That the review process is completed by the end of 2021 and the Committee requests that it is provided with a copy of the findings, and**
- **That the Department conducts a re-evaluation of all current school extension proposals to ensure that consideration is given to projected intake at schools over the next decade.**

The Committee also recommends that the Department of Public Expenditure and Reform ensures the reasons for delays in capital projects, across all Departments, are published.

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

The Department is taking an integrated approach with the prefab replacement through the replacement of prefabs as part of all large-scaled projects. In addition, since mid-2018, all schools approved for additional accommodation under the Department's Additional Accommodation Scheme are also having necessary prefabs replaced as part of their additional accommodation project. This integrated approach helps to streamline the delivery of projects for schools.

The progression and completion of projects currently in construction activity or in advanced stage of planning and design will make further inroads on the replacement of temporary prefabricated accommodation with knock-on savings on the rental budget.

Since 2008, expenditure under the Department's rental budget has averaged at 5.5% of capital expenditure. It peaked at over 8% in 2008. In 2020 it amounted to 3.7%. The number of new rental contracts for prefab accommodation has reduced significantly since previous years with 37 approved in 2020. This compares to 282 approvals for permanent accommodation under the Additional Accommodation Scheme for 2020.

Following on from our most recent national demographic analysis, the Department will be using this information to undertake a case by case assessment of the long-term accommodation requirements for each of the 396 schools that currently have rented prefabricated accommodation. This case by case assessment will be undertaken and completed in 2021. We will update the committee of the outcome of this process. Many of these schools are already part of the pipeline of projects under the school building programme. The Department will seek to ensure that opportunities for maximising VFM opportunities are achieved with the delivery of permanent accommodation solutions as part of the rollout of the NDP.

The Department of Public Expenditure and Reform rejects the recommendation that it ensures the reasons for delays in capital projects, across all Departments, are published on the grounds that the management, delivery and reporting of capital projects are a matter for the Sponsoring Agency and Approving Authority in each case. While DPER publish regular updates on Project Ireland 2040 delivery through the Capital Projects Tracker and myProjectIreland map, it is important to stipulate that this information is drawn from data provided by relevant Government Departments and agencies themselves, as they are responsible for the reporting on the management and delivery of projects. The Capital Projects Tracker and myProjectIreland map are intended to aid public engagement and transparency by providing updates for all sectors but does not form part of regular project management reporting that Departments themselves should conduct.

Capital Project Tracker - Background material

The Project Ireland 2040 Capital Projects Tracker is available on the website of the Department of Public Expenditure and Reform. The purpose of the tracker is to facilitate communication, monitoring and planning of investments over €20m, to inform citizens of the variety of projects currently in the planning and construction phase and to also give a greater overview to the construction and infrastructure sectors of the Government's investment commitments and future opportunities for these sectors. The tracker provides the public, businesses and other stakeholders with reliable information about current and future infrastructure delivery. There are about 210 projects in excess of €20m on the current version of the tracker (December 2020). The tracker will continue to be further developed to become the primary tool for public transparency on infrastructure project priorities, timelines and performance targets. An interactive mapping tool MyProjectIreland also allows members of the public to view the status of about 800 projects in their area. It is important to stipulate that the **Capital Projects Tracker** and **myProjectIreland** map are drawn from data provided by relevant Government Departments and agencies themselves, as they are responsible for the reporting on the management and delivery of projects. The Capital Projects Tracker and myProjectIreland map are intended to aid public engagement and transparency by providing updates for all sectors. While it does not provide an exhaustive view of all capital expenditure, the tracker and map serves to highlight the diverse range of infrastructural demands competing for the resources of the State. Management and delivery of the projects are a matter for the Sponsoring Agency and Approving Authority in each case. The Department of Public Expenditure and Reform (DPER) is responsible for setting the overall capital expenditure allocations for the spending Departments. DPER does report on in-year underspends by Ministerial Vote Groups in the Fiscal Monitor on a monthly basis. It is up to Departments to report on delays in delivery on an individual project level and to update the tracker with this information on a regular basis.

Issue 2 – Paper Payslips:

Over a six-year period the Department of Education spent €13.8 million on postal and telecommunication services. €10.2 million of this expenditure was spent on posting payslips to approximately 130,000 members of school staff on a fortnightly basis. The Committee was subsequently informed that the Department currently operates four separate payroll systems with a range of complex circumstances - including 9,000 casual employees and a fluctuating number of employees on approved leave - that need to be taken into account before any system upgrade takes place. Consequently, the Department informed the Committee that it anticipates it would take approximately three to four years to develop and implement an electronic system to replace paper payslips in the sector.

However, the Department stated that this is an area it intends to explore following an interim payroll upgrade at the end of 2021. The Committee remains unsatisfied at the situation outlined above and is of the opinion that a modern State organisation could expend approximately €1.7 million annually in a more productive manner than posting payslips. The Committee is aware that the development and implementation of an electronic payroll system would require up-front capital expenditure, however, it is of the opinion that this would represent value-for-money for the State in the long-term.

Recommendation 2:

The Committee recommends that the Department of Education begins to develop an electronic payroll system as a matter of urgency. The Committee requests that the Department provide the Committee with a detailed timeline for the implementation of this recommendation by quarter three 2021. The Committee also requests that the Department keep the Committee appraised of progress on an annual basis.

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

The Department operates an integrated suite of ICT applications to deliver payroll services to over 3,700 schools and in the region of 130,000 payees each fortnight. The interim upgrade of the existing payroll systems is currently being progressed and will be completed in 2021. The feasibility of introducing self-service functionality and, in particular, online payslips as soon as possible is being assessed as a matter of priority. A range of issues need to be considered in providing such functionality including the security and safeguarding of personal information. The Department will keep the Committee appraised of progress on an annual basis.

Issue 3 – Presentation of legal costs: During the course of the meeting the Committee requested information regarding the legal expenditure recorded by the Department in 2018. The Department informed the Committee that legal costs for the education sector, including settlements, totalled €2.265 million in 2018. The Committee queried why legal costs appear to be substantially higher than the claims awarded. The Department provided a number of reasons for the difference, including:

- A claim may be made or initiated in a different year to the year in which any settlement is ultimately made or paid,
- Not all claims made result in the making of an award, and
- The payment of legal costs can arise in a different year to the year in which a claim or settlement was made.

The Committee acknowledges the information provided by the Department, however, it remains concerned that the true cost of legal claims against the Department, including legal fees, in any given year, is not being reported with sufficient clarity. The Committee notes that the presentation of the Appropriation Accounts for Vote 26 are compatible with the Department of Public Expenditure and Reform's requirements. Consequently, the corresponding recommendation is issued to the Department of Public Expenditure and Reform.

Recommendation 3:

The Committee recommends that the Department of Public Expenditure and Reform liaises with the Office of the Comptroller and Auditor General to examine whether additional clarity and transparency regarding the reporting of legal costs in Appropriation Accounts can be achieved. Changes that could be considered include the reporting of:

- **the number and type of 'live' claims by reference to standard claim categories and, where possible, an estimate of the associated contingent liabilities;**
- **expenditure incurred in the year of account by payment type such as compensation, settlements, public body's own legal costs, and claimant's legal costs;**
- **cases completed in the year of account, by cumulative payment and payment type including compensation, settlements, public body's own legal costs, claimant's legal costs; and**
- **all costs incurred in respect of claims related to a voted service, whether incurred directly by the Vote, by another Vote or by the State Claims Agency.**

The Minister for Public Expenditure & Reform acknowledges and accepts the recommendation by the committee to examine whether additional disclosure by Departments relating to the reporting of legal costs, can be achieved.

The current note to the Appropriate Account provides details on the Legal Costs paid by a Department, Compensation Awarded and Legal Costs awarded. Additional information can

also be disclosed, under the Contingent Liabilities note, if it is probable a liability will arise from a legal case.

The Government Accounting Unit within the Department will liaise with the OCAG with a view to examine whether further clarifications can be disclosed in the presentation of legal costs, subject to any disclosures not prejudicing past, current or future legal cases. The Department will review the current note and examine if any additional disclosures can be achieved, with the intention of including any amendments to the note, in the Appropriation Circular and Guidance Manual for the 2021 Appropriation Account.

Issue 4 – Procurement:
The Committee had a general discussion with the Department around its standard procurement process, with a particular focus on the level of safeguards which are generally put in place with respect to urgent procurement contracts.

The Committee was informed by the Department that in the event of an accelerated procurement process there are procedures and a standard mechanism in place to protect the taxpayer.

Recommendation 4:
The Committee recommends that the Department of Education continue to strive for high standards of oversight and risk management with regards to its procurement process. In addition the Department should liaise with the Department of Public Expenditure and Reform to ensure that the risks that taxpayers are exposed to when Departments undertake accelerated procurement contracts are minimised.

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

The procurement risks for the Department will be reviewed to address the risk of potential loss of value for money in accelerated procurement processes. Timeline: Q2 2021.

The Office of Government Procurement (OGP) has responsibility for the National Public Procurement Policy Framework which sets the overarching policy framework for public procurement in Ireland. However, it should be noted that while the policy framework and associated guidelines and guidance documents facilitate compliance with public procurement rules, it is the responsibility of each contracting authority to ensure they adhere to these rules. The operation of any contract is also strictly a matter for the contracting authority which is party to the contract.

The OGP has published the Public Procurement Guidelines for Goods and Services on its website www.ogp.gov.ie. The Guidelines provide a comprehensive interpretation of the public procurement regulations designed to improve consistency and promote best practice

in the application of the public procurement rules to deliver best value for money. In addition, the OGP's Key Account Managers are in regular contact with Procurement Officers in Government Departments and public bodies to assist and support them in fulfilling their obligations in relation to public procurement.

The procurement rules contain mechanisms for authorities to buy necessary goods and services in cases of urgency, for example using a standard procedure with accelerated timescales to substantially reduce the deadlines for open or restricted procedures due to urgency if the standard timescales are impracticable. The minimum time limits vary (see Regulations 27(4), 28 and 29 respectively). For procurements under the open procedure, timescales can be reduced to 15 days for receipt of tenders plus the minimum 10 days for the standstill period.

Should those flexibilities not be sufficient, Regulation 32 of the European Union (Award of Public Authority Contracts) Regulations 2016 has a provision to allow contracting authorities to use a negotiated procedure without prior publication. This is a departure from the normal procurement procedures and as such should be considered an exceptional procedure.

Individual Accounting Officers are responsible for ensuring that their public procurement functions are discharged in line with the standard accounting and procurement rules and procedures and that contract prices are fair and reasonable and represent best value for money. Contracting authorities should document the reasons for choosing a non-competitive procedure and these should be retained for audit purposes. If a Government Department or a body under its aegis makes a direct award above €25,000 (ex. VAT), this should be reported in line with Circular 40/02 at the appropriate time.

Issue 5 – Caranua:

The Committee discussed the wind-down of Caranua and the role of the Department in that process. Caranua is the service name of the Residential Institutions Statutory Fund which is administered by the Fund's Board. Caranua will cease to exist on 23 March 2021 and the Committee sought confirmation that all survivors' cases would be completed before the dissolution of Caranua.

The Department informed the Committee that Caranua is responsible for any outstanding appeals and cases as it moves towards its completion date. The Department also confirmed that it is working with Caranua and other bodies to determine the services and supports that should be in place after Caranua dissolves but that direct expenditure in respect of survivors is unlikely to continue after the dissolution of Caranua.

The Committee also sought information in relation to the anticipated legislation to dissolve Caranua. The Department could not provide a timeline for the introduction of legislation to dissolve Caranua at the time of the meeting.

Recommendation 5:
The Committee recommends that the Department of Education completes the following actions: -

- **Provide the Committee with a timeline for the implementation of legislation to dissolve Caranua,**
- **Ensures that on-going supports for survivors are available following the dissolution of Caranua, and**
- **Undertakes a review of the operation of Caranua from the survivors' perspectives to inform the development of any future redress schemes.**

The Minister for Public Expenditure & Reform is informed by the Department of Education that it partly accepts the first bulleted recommendation.

A General Scheme of legislation to dissolve Caranua is being finalised. It is planned to submit this for consideration by Government in the near future.

The Minister for Public Expenditure & Reform is informed by the Department of Education that it accepts the second bulleted recommendation.

The Department continues to work with other agencies and organisations regarding services available to survivors following dissolution. This will be considered by Government as appropriate.

The Minister for Public Expenditure & Reform is informed by the Department of Education that it accepts the third bulleted recommendation.

Caranua has commissioned an independent evaluation of the service it provided. The terms of reference of the external evaluator are to:

1. Identify to what extent have the objectives of Caranua been achieved.
2. Measure the impact of the provision of services for Survivors of institutional abuse.
3. Identify the lessons learnt during the operations of Caranua, creating a shared learning experience for professionals and organisations working with Survivors.
4. Produce a final report.

This report should be available before Caranua closes and can be referenced in the development of any future redress scheme.

Issue 6 – Defective buildings:
The Committee discussed the construction of defective buildings that were funded by the Department of Education. The Committee raised concerns regarding the level of oversight performed by the Department on sites where defective buildings were constructed.

The Committee discussed the certification process of capital projects. The Committee was informed that certification is a three-party process with self-certification provided by the contractor, clearance by an independent project team and the final sign off by the Department. However, the ultimate responsibility for certification lies with the contractor.

The Department was unable to confirm whether a clerk of works had been on specific construction sites in the past due to the fact that this has not always been a mandatory requirement during construction. However, the Department went on to state that there is now a clerk of works onsite for all large construction projects.

Recommendation 6:
The Committee recommends that the Department of Education place significant attention on the need for a full-time clerk of works or other suitable qualified person to be on site during all large construction projects and that regular inspection of all other projects takes place. The failure to do so previously does not represent good oversight and has left taxpayers exposed to additional costs.

The Minister for Public Expenditure & Reform is informed by the Department of Education that it partly accepts this recommendation.

Since 2017 a full-time clerk of works is appointed on large-scale school building projects. This is one of a number of quality assurance arrangements in place for projects delivered under the School Building Programme.

It is important to note that under Design & Build projects the primary responsibility, and contractual obligation, for the design and construction of a school to the required standards rests with the Design & Build Contractor. A legal process is underway to deal with costs arising from the schools remediation programme.

Given under the Official Seal of the Minister for Public Expenditure and Reform on this the 24th day of March, 2021.

L.S.

David Moloney

Secretary General

Department of Public Expenditure and Reform