

DPE 022/008/2014

06 March 2015

To: Accounting Officers

Circular 02/2015:

Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Composite Report.

A Dhuine Usail,

1. 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 arising from the examination of:

1. Land swap arrangement in the provision of affordable housing;
2. The State Pathology Building Project;
3. The appointment of the Director of the National Gallery of Ireland;
4. Lapses in controls at the Waterford Institute of Technology.

2. Issues raised

The Minute addresses a number of issues, including:

- a. Oversight arrangements;
- b. Co-ordination and delivery of major capital projects;
- c. Risk management and internal controls.

3. Attention is drawn to the responsibility of all Government Departments and Offices to adhere to the terms of the Department of Public Expenditure and Reform sanction.

4. Enquiries

Enquiries in regard to this circular can be addressed to Government Accounting Unit, Department of Public Expenditure and Reform, telephone: +353 1 6767571, LoCall: 1890 661010 or email: govacc@per.gov.ie.

Mise le meas,



Robert Watt
Secretary General

Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Composite Report.

The Minister for Public Expenditure and Reform has examined the Committee's Report and has taken account of its conclusions. In relation to the Committee's recommendations, his response is as follows:

Chapter 1.

Land Swap Arrangement in the Provision of Affordable Housing

Recommendation 1

Public authorities should not enter into contracts to sell or lease State property without a degree of certainty that the property will be vacant and available for disposal.

The Minister for Public Expenditure and Reform is informed by the Office of Public Works that it accepts and agrees with this recommendation.

The Office of Public Works does, as a matter of course, consider the occupancy of all properties being brought to the market for disposal.

Recommendation 2

When a number of State bodies are involved in property transaction with a third party, one agency should be designated the lead agency.

The Minister for Public Expenditure and Reform is informed by the Office of Public Works that it accepts this recommendation.

The Office of Public Works will pursue and support the implementation of the recommendation through its role on the steering group of the Property Asset Management Delivery Plan.

Recommendation 3

In order to avoid the State carrying all the risk, it would be advisable that a valuation be placed on property being transferred to third parties so that in the event of the transfer falling through, the entitlement to compensation is capped at the value of the property at the time of the contract to transfer is agreed.

The Minister for Public Expenditure and Reform is informed by the Office of Public Works that it accepts and agrees with this recommendation.

The Minister for Public Expenditure and Reform is also advised by the Office of Public Works that in the Harcourt Terrace case, there was a value put on the property at an early stage. The Office of Public Works will request the Chief State Solicitor's Office to consider appropriate clauses for inclusion in future contracts to limit the exposure of the State in such cases.

Chapter 2.

State Pathology Building Project

Recommendation 1

The Department of Public Expenditure & Reform should draw up a protocol on the requirements necessary in order to write-off expenditure. Such write-offs should require the sanction of the Department.

The Minister for Public Expenditure and Reform notes this recommendation, and confirms that the requirements for write-offs are already provided for under *Public Financial Procedures (C7, 7 – 11)*. The existing requirements are as follows:

As a general rule, any write-offs should be sanctioned by the Department of Public Expenditure and Reform and any loss in excess of €10,000 should be noted in the Appropriation Account.

Write-offs under €10,000 should be noted where a serious issue of principle arises or where the Comptroller and Auditor General or the Department considers that a note should be given.

Normally, the Department of Public Expenditure and Reform delegates authority to Departments to write-off losses within specified limits. In the exercise of their delegated powers, Departments should inform the Department of Public Expenditure and Reform of any case, irrespective of amount, which:

- involves an important question of principle;
- raises doubt about the effectiveness of existing systems; or
- contains lessons that might be of wider interest.

In seeking the sanction of the Department of Public Expenditure and Reform for any specific write-off, the following information should be provided:

- The amount of the loss and how it occurred; in the case of assets, the replacement cost should be indicated.
- Is there suspicion of fraud? Is prosecution proposed and, if not, why not?
- Was the loss in any way facilitated by the action or neglect of any officer? If so, is it proposed to make the officer bear part of the loss?
- Does the investigation show any defect in the existing system of control? If so, what remedy is proposed not only in the Section concerned, but in similar Sections elsewhere?

Recommendation 2

Capital expenditure which involves expenditure that spans a number of calendar years should be ring fenced in a capital envelope with a separate and distinct provision being made in the Appropriation Accounts. In this way funding can be protected, retained and available when the expenditure is incurred.

The Minister for Public Expenditure and Reform notes this recommendation and would point out that:

- In order to facilitate better planning and rollout of capital investment, multi-annual capital envelopes were introduced in Budget 2005.
- This system gives Departments and implementing agencies certainty in the medium term on the level of resources available to them to fund their capital programmes and more flexibility to plan and manage them on time and within budget.
- Departments also have access to the capital carryover system which allows them to carry unspent capital of up to 10% of the Voted capital budget into the following year.

- While multi-annual envelopes and the carryover facility can assist Departments to better manage the roll out of projects and programmes which span a number of years, it is important that allocations are expended in line with profiles as much as possible as the opportunity cost of unspent capital in the current climate is considerable and there are competing demands for investment right across all Departments.

Recommendation 3

Where a public body does not have a dedicated capital project unit, all its major capital projects should be put under the care and management of the Office of Public Works.

The Minister for Public Expenditure and Reform notes the recommendation and would point out that:

- The majority of large scale capital projects undertaken by the State (i.e. projects with a value greater than €20m) fall under the remit of Departments with dedicated capital project units or agencies responsible for managing procurement of capital projects (e.g. the HSE, the National Roads Authority, the Department of Education and Skills, the OPW, etc.).
- Government Departments and State Agencies can seek the procurement and project management expertise of the OPW when undertaking large capital projects. Departments are also required to seek the advice of the National Development Finance Agency (NDFA) regarding financing options for all capital projects in excess of €20m.
- The OPW is already managing a number of capital projects for Departments (e.g. the INTREO Offices of the Department of Social Protection, Garda Stations for the Department of Justice, the Oberstown Child Detention Facility on behalf of the Department of

Children and Youth Affairs, etc.). Decisions to assign additional projects to the OPW must be made on a case by case basis having regard to statutory capacity, expertise required and existing resource commitments within the OPW.

- The merger of the National Roads Authority and Railway Procurement Agency which is currently underway will deliver a new streamlined organisation which will be a leader in the planning, delivery and management of transport infrastructure in Ireland. The new body will be further strengthened and its scope increased when the procurement functions of the National Development Finance Agency are transferred to it. While decisions in relation to the precise remit of the new body (including the NDFA element) are still under discussion, it has the potential to offer a further resource for Departments seeking to undertake large scale capital projects.

The Minister for Public Expenditure and Reform is advised that the Commissioners of Public Works have no objection to this recommendation subject to an analysis of need and to issues of statutory capacity, availability of necessary expertise and resource commitments being considered in each case.

Recommendation 4

The State Pathology Service should be provided with infrastructure which has facilities that would have been available had the project in Marino gone ahead.

The Minister for Public Expenditure and Reform notes the recommendation and would like to point out that:

- Matters relating to investment in specific projects and the prioritisation of expenditure within each Department's capital envelope is a matter, in the first instance, for the relevant Department.

- In respect of this particular matter, the Department of Public Expenditure and Reform received a request from the Department of Justice and Equality on 9 October 2014 seeking sanction to proceed to tender for the reconfiguration of the former Garda Station at Whitehall, Dublin 9 for use by the Office of the State Pathologist and the Dublin City Mortuary. The costs of this new project to be met from within already allocated multiannual capital budgets.
- Following a review of the request, sanction to proceed with tender was granted by the Department of Public Expenditure and Reform on 7th November 2014.

Chapter 3.

The appointment of the Director of the National Gallery of Ireland

Recommendation 1

There is a need for guidance note, to be drawn up, to cater for situations where the public service needs to recruit talent from abroad and where such appointees incur extra costs arising from the need to locate here.

The Minister for Public Expenditure and Reform cannot accept this recommendation as worded.

Given the small number of CEOs in the public sector and the even smaller subset of overseas candidates appointed to senior positions (who may seek the payment of relocation expenses), that the recommendation about issuing a general guidance note is not warranted.

The Minister would be concerned that it might create an expectation that such expenses will be paid rather than the present arrangements where business cases have to be made by Departments. To address the concerns of the PAC the Minister has asked his officials to write directly to the Public Appointments Service (PAS) informing them of the policy in this regard as they often seek suitable overseas candidates on behalf of Departments.

Recommendation 2

All public bodies should take cognisance of the need to adhere to the terms of any sanctions of the Department of Public Expenditure and Reform.

The Minister for Public Expenditure and Reform agrees with this recommendation.

The Minister for Public Expenditure and Reform further informs the Committee that the matter is being drawn to the attention of Accounting

Officers in this Minute of the Minister and has issued as a Circular to all Accounting Officers.

Recommendation 3

Payment of removal/relocation expense should be vouched and should not be paid in advance of the expense being incurred.

The Minister for Public Expenditure and Reform accepts this recommendation and is happy to confirm that all sanctions issued by this Department for the payment of removal and relocation expenses provides that all such expenses should be vouched and that they conform with the Revenue Commissioners Statement of Practice on removal/relocations expenses.

Chapter 4.

Lapses in controls at Waterford Institute of Technology

Recommendation 1

The HEA should engage directly with networks of key officials involved in controls in third level institutions, such as Chief Finance Officers and heads of internal audit, in order to share learning and to ensure that issues relating to governance are implemented across the sector with a high degree of uniformity.

The Minister for Public Expenditure and Reform is informed by the Department of Education and Skills that both the Department and the Higher Education Authority (HEA) accept this recommendation.

In terms of implementation, in the first instance it should be noted that both the Institutes of Technology (IoTs) and Universities already have, (through the Irish Universities Association (IUA) and Institutes of Technology Ireland (IoTI)) in place well established networks of chief financial officers. The HEA attends those meetings on specific issues as appropriate. The HEA will work with the IUA and IoTI to put in place formal arrangements to build on those arrangements. This will provide for a formal and regular discussion (most likely annually) in relation to issues arising in any specific institutions that concern governance and that might have a more widespread application across the sector. It would also operate more generally to ensure continued uniformity with regard to the implementation of all governance issues.

Recommendation 2

There is a need to review the size and skill- mix of boards of Governors in the third level sector so as to ensure that each board operates efficiently and effectively.

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

recommendation. Arising from the recommendations of the National Strategy for Higher Education to 2030 and subsequent consultation with the higher education sector, legislative proposals are being brought forward that will provide for a revised and modernised governance structure for all institutes of technology and for technological universities. These proposals are contained in the General Scheme of the Technological Universities Bill which is currently being drafted by the Office of the Parliamentary Counsel with a view to publication and enactment in 2015.

In summary, the size of the new governing bodies can be within a range of 11 to 20 members with a majority of external membership. Changes are proposed in the methods of nomination and selection of the Chair and ordinary members as follows:

- Under existing legislation the Chairperson is the only position the Minister nominates and appoints. Under the new model, the Chairperson will be appointed by the Board from nominees identified by a process to be determined by the Board. This is the current practice in the university sector and is standard practice internationally.
- The Minister will have the power to nominate and appoint 2 external members of the Board (and, in this regard, the Guidelines on State Board Appointments, issued by the Minister for PER in November 2014, will apply whereby candidates for appointment to State board must be assessed by the statutorily independent Public Appointments Service). Currently the Minister appoints all members of the Board, on the recommendation of the VEC, but he has no right to nominate any member of the Board.
- A maximum of one external member will be nominated from the Education and Training Board/s in whose functional area the institution operates.

- External ordinary members will form a majority on the governing authority. Other than the 2 Ministerial nominees and the nominee from the Education and Training Board/s, the external members will be chosen by a nominations committee using a competency framework drawn up by each institution and agreed with the HEA. The competency framework will incorporate the skill- sets required for modern governance, such as financial, legal, HR skills, the inclusion of members from enterprise and community or others appropriate to the objectives and mission of the institution. It has been agreed following pre-legislative scrutiny by the Joint Oireachtas Committee on Education and Social Protection that the Bill will specify that a minimum of two of the external members must be enterprise or industry leaders.
- The staff and student representatives will continue to be elected as in the current model.

Also arising from the National Strategy recommendations and following consultation and feedback from Irish Universities Association in 2012 on governance reforms, provisions to reform governing bodies in the university sector will be contained in the General Scheme of a new Higher Education Bill. The Bill will provide for system governance and university governance reforms and is currently being drafted in the Department of Education and Skills. It is hoped that the General Scheme will undergo pre-legislative scrutiny and publication during 2015.

These provisions will amend the Universities Act 1997 to provide for much smaller governing bodies in the universities (with a maximum of 19 or 20 members). The bodies will also be flexible and competency-based with a majority of external members.

Recommendation 3

Third level institutions should be required to disclose instances of non-competitive procurement in their annual statements on governance and internal controls.

The Minister for Public Expenditure and Reform is informed by the Department of Education and Skills that both the Department and the HEA accept this recommendation.

Non-competitive procurement is permitted by public sector guidelines in extreme situations (e.g. urgency, specialised skills etc.). At present, as part of the Annual Governance Statements returned from the Higher Education Institutions (HEI's) to the HEA, institutions are required to report any matters of non-compliance, (including confirmation that the relevant Procurement policy and procedures are being adhered to where appropriate) to the HEA and provide an explanation for same and any corrective action taken or contemplated. The HEA then request an update from the Institute in relation the detail on the issues regarding the instances of non-compliance along with detail on the actions and timelines in place to address the issues.

The Department and the HEA will put appropriate processes in place to ensure that details of all contracts that were not competitively procured by institutions (including those that are permitted under public sector guidelines) will be disclosed, in an agreed format, in their annual statements of Institutions for 2014/15 and subsequent years.

Recommendation 4

All Internal Audit should review “proprietary” expenditure by public bodies at regular intervals.

The Minister for Public Expenditure and Reform is informed by the Department of Education and Skills that both the Department and the HEA accept this recommendation.

The HEA will formally request that each institution include the review of "proprietary" expenditure" as part of a multi annual internal audit plan.

Recommendation 5

All third level colleges should develop a whistle-blowers charter and could use the one developed by WIT as a blue-print.

The Minister for Public Expenditure and Reform notes the recommendation. He further notes that section 21 of the Protected Disclosures Act 2014, which was commenced in its entirety on 15th July 2014, places a legal obligation on every public body to establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures and that each public body is required to provide to workers employed by the body written information relating to those procedures.

Section 21 of the Act also provides for the issue of guidance by the Minister for the purpose of assisting public bodies in the preparation of the required procedures and that public bodies must have regard to any such guidance. The Minister is currently working on the preparation of detailed guidance in accordance with this provision and a draft of that guidance has recently issued to all Secretary Generals and Heads of Office with a view to seeking their observations. It is anticipated that a finalised version of the Guidance, which will take account of any significant issues arising from this consultation process, will be presented to Government by the end of Q1 2015 and issued shortly thereafter.

It should be noted however that notwithstanding the fact that the Ministerial Guidance have not as yet been issued this does not absolve public bodies from their responsibilities under section 21 to establish and maintain procedures in accordance with the provisions of that section.

Recommendation 6

There is a need to place a performance clause in contracts between public bodies and consultants so that there can be a claw-back in fees where underperformance is subsequently established.

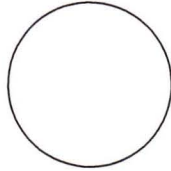
The Minister for Public Expenditure and Reform notes the PAC recommendation that there is a need to place a performance clause in contracts between public bodies and consultants so that there can be a claw-back in fees where underperformance is subsequently established.

The Minister for Public Expenditure and Reform would point out that the Guidelines for Engagement of Consultants and Other External Support by the Civil Service currently allows for a contracting authority to retain the right to withhold payments where a contract holder has failed to meet his/her contractual obligations in relation to the provisions of goods / delivery of services to the agreed quality levels (Section 6.4). The model contracts available on e-Tenders also allow for the retention of payment in the event of unsatisfactory performance by a contractor (Special Condition 3).

The Office of Government Procurement, in consultation with the Chief State Solicitor's Office, is examining whether this additional clause needs to be included or not in public contacts.

Given under the Official Seal of the Minister
for Public Expenditure and Reform on this the
day of 6 March, 2015

L.S.



Handwritten signature of Robert Watt in cursive script.

Robert Watt
Secretary General
Department of Public Expenditure and Reform