

Ms Margaret Falsey,  
Committee Secretariat,  
Committee of Public Accounts,  
Leinster House,  
Dublin 2.

Ref: PAC32-I-895

17 May 2018

**C&AG Report 2016**  
**Chapter13: Development of ICT Systems by the Department of Justice and**  
**Equality**

**Appropriation Accounts 2016**  
**Vote 24: Justice and Equality**

Dear Ms Falsey,

Your letter of 2 May 2018 refers. Please find below further information on matters raised during the course of the Committee of Public Accounts examination of the C&AG Report 2016 Chapter 13 – Development of ICT Systems by the Department of Justice and Equality Appropriation Accounts 2016, as requested.

**1. A comprehensive note on the Probation Service Building to include the following points:**

- **Cost of the fit out;**
- **Square footage;**
- **Relative rent at the time;**
- **A breakdown and rationale for the €1.8 million settlement figure.**

A detailed note on the project is included at **appendix A**.

**2. A note including a breakdown of costs associated with the Review of Mr Justice Iarfhlaith O’Neill relating to two Protected Disclosures.**

A total of €18,856 was incurred in costs in relation to the review of Mr. Justice Iarfhlaith O’ Neill relating to protected disclosures. The payments were made in the 2017 financial year.

**3. A note on the number of people accommodated in, including a breakdown, between commercial and State owned direct provision centres and locations.**

The breakdown requested is provided at **Appendix B** based on the current number of people in accommodation.

**4. A note on the number of sections not yet commenced of the Assisted Decision-Making (Capacity) Act.**

The Assisted Decision-Making (Capacity) Act 2015 provides a modern statutory framework to support decision-making by adults with capacity difficulties. The Act was signed into law on 30 December 2015. The Act is a complex piece of legislation that provides for the comprehensive reform of the current out-dated capacity law which is based on 19th century legislation. The Act proposes to change the law from the current “all or nothing” status approach to a flexible functional definition, whereby capacity is assessed only in relation to the matter in question and only at the time in question. In order to move over to the new statutory framework that is provided for in the Act, completely new administrative processes and supports, including the setting up of the Decision Support Service (DSS) within the Mental Health Commission (a body under the Department of Health), must be put in place before the substantive provisions of the Act can be commenced.

A high-level Steering Group comprised of senior officials from the Department of Justice and Equality, the Department of Health, the Mental Health Commission and the Courts Service, together with the Director of the DSS, is overseeing the establishment and commissioning of the DSS and this work is ongoing. The 2018 Budget provides for an allocation of €3 million in the Justice and Equality Vote for the establishment of the DSS.

In addition, the HSE set up a steering group which is overseeing the drafting of guidance material in relation to healthcare matters that may form the foundation of codes of practice under required under the 2015 Act.

#### Commencement of the 2015 Act

Two commencement orders have been made to date under the 2015 Act. These commencement orders have commenced:

- Sections 1, 2, 5 and 6 in Part 1 (Preliminary and General);
- Section 91(2) in Part 8 (Advance Healthcare Directives);
- Sections 94, 95, 97, 98, 102 and 103 in Part 9 (Director of the Decision Support Service);
- The definition of “Minister” in section 82; and
- The definitions of “code of practice” and “working group” in section 91(1).

The Assisted Decision-Making (Capacity) Act 2015 (Commencement of Certain Provisions) Order 2016 (S.I. No. 515 of 2016), brought some provisions of Part 1 (Preliminary and General) and Part 9 (Director of the Decision Support Service) of the Act into operation on 17 October 2016. These provisions were brought into operation in order to progress the setting up of the DSS and to enable the process of recruitment of the Director of the DSS to begin. Ms Áine Flynn was appointed Director of the Decision Support Service on 2 October 2017.

The Assisted Decision-Making (Capacity) Act 2015 (Commencement of Certain Provisions) (No. 2) Order 2016 (S.I. No. 517 of 2016) commenced section 91(2), and relevant definitions, of the Assisted Decision-Making (Capacity) Act 2015 with effect from 17 October 2016. These provisions were brought into operation so that the Minister for Health could establish a multidisciplinary working group of suitable persons willing and able to make recommendations to the Director of the Decision Support Service in relation to codes of practice pertaining to the advance healthcare directive provisions of the Assisted Decision-Making (Capacity) Act 2015.

Of the 146 sections in the Act, 133 remain uncommenced for the reasons outlined above while 13 have been commenced or partly commenced.

The following sections of the Act have not yet been commenced:

- Sections 3, 4 and 7 in Part 1 (Preliminary and General);
- Part 2 (Principles that apply before and during intervention in respect of relevant persons);
- Part 3 (Assisted Decision-Making);
- Part 4 (Co-Decision-Making);
- Part 5 (Applications to Court in respect of Relevant Persons and Relevant Matters);
- Part 6 (Wards);
- Part 7 (Enduring Powers of Attorney);
- Sections 82 to 90 in Part 8 (Advance Healthcare Directives) with the exception of the definition of “Minister” in section 82;
- Section 91(1) in Part 8 (Advance Healthcare Directives) with the exception of the definitions of “code of practice” and “working group” in section 91(1);
- Sections 91(3) to 91(14), and 92 to 93 in Part 8 (Advance Healthcare Directives);
- Part 10 (Detention Matters);
- Part 11 (Convention on International Protection of Adults); and
- Part 12 (Miscellaneous).

Commencement of Part 8 (Advance Healthcare Directives) of the Act is a matter for the Minister for Health.

Further commencement orders for the provisions of the 2015 Act will be made when the DSS is in a position to implement the new decision-making support options.

#### When will the remainder of the Act be commenced?

The key preparations are being put in place under the oversight of the Steering Group to allow for further commencement orders for the provisions of the 2015 Act to be made when the DSS is ready to roll out the new decision-making support options. I understand the Director is also working to get the necessary staff resources, processes, IT system, expert panels, codes of practice and regulations in place in order that the Decision Support Service can be operational as quickly as possible. There are many complex strands to this work, including involvement of multiple organisations, and I

am informed the current view is that the Decision Support Service will not be ready to become operational until 2019.

Therefore, it is not possible at the moment to provide an exact timeframe for the full commencement of the 2015 Act, however every effort is underway to ensure that the Decision Support Service has all necessary capacity to open for business as soon as possible.

## **5. A note on the Bridge project to include membership of the Board and funding.**

### The Bridge Project

In recent years, the Bridge project has targeted male offenders in the greater Dublin area, accepting referrals from community and prison based Probation teams. Typical referrals are aged between 22-35 years with the majority experiencing complex psychosocial issues.

Responding to the changing priorities and needs of the Probation Service, the Board of Bridge by agreement with the Service, revised its objectives to deliver in three specific areas:

- a) Programme Delivery Unit (PDU) : The development and delivery of effective structured intervention programmes identified by the Probation Service which can be used nationally;
- b) Intensive Probation Supervision (IPS) : The continuation of the current intensive supervision programme to an identified cohort of higher risk offenders in Dublin ;
- c) Research and Development: In support of objectives (a) & (b) develop a support, research and development capacity to ensure programmes are in keeping with international best practice and are implemented with integrity.

The Probation Service has since then utilised Bridge to develop and introduce a range of national, evidence based offending behaviour programmes, such as the Choice & Challenge Group Work programme, Living with Life, and an Alcohol Awareness programme.

Since April 20, 2015, Bridge has delivered its new targeted intervention programme for working with violent offenders. The Change Works programme is an intensive progression programme working specifically with people with a history of violent offending. It aims to reduce each participant's propensity to engage in violent and criminal behaviour.

Change Works is a two year pilot programme, which is part of the Joint Agency Response to Crime (J-ARC) initiative and as such involves a collaborative working approach with the Probation Service, the Irish Prison Service and An Garda Síochána. A core component of Change Works is an intensive violent offending behaviour programme, RESOLVE. The Probation Service financially invested in this programme having purchased licences for use from the National Offender Management System (NOMS).

Bridge also delivers a full range of education and skills based programmes to its Community Employment clients, covering FETAC Level 3 and 4 modules.

### Governance

Bridge is a Company Limited by Guarantee with its own Board of Management. The Board sets policies with the Executive Manager responsible for their implementation. The Board is made up of Directors and ordinary Board Members. These ordinary members include an Assistant Principal (Probation) Officer from the Probation Service.

The current (2018) Directors of the Board of Management are:

Chairperson/Director	Sean Quigley
Treasurer/Director	Caroline O’Nolan
Director	Colin Roberts
Director	Rose Sweeney

The following is a list of the “ordinary” Board members for 2018:

Chairperson/Director	Sean Quigley
Treasurer/Director	Caroline O’Nolan
Director	Colin Roberts
Director	Rose Sweeney
Director	Cathal Morgan - Resigned
Member	Paul Cleary
Member	Frances Daly
Member	Ailish Glennon
Member	Judge John O’Connor
Member	Stephen O’Connor

The (September) 2007 Directors of the Board of Management were:

Chairperson	Sean Quigley
Secretary	Anne Ryan
Treasurer	Liam O’Dwyer
Director	Peter Murray

The following is a list of the “ordinary” Board members for 2007:

Chairman	Sean Quigley
Secretary	Anne Ryan
Treasurer	Liam O’Dwyer
Member	Peter Murray
Member	Judge Yvonne Murphy (Circuit Court)
Member	Judge Michael Moriarty (High Court)
Member	Anna Connolly
Member	Professor Philip O’Connell
Member	Breda O’Brien
Vacancy	

## Funding

The funding provided by the Probation Service to Bridge is the subject of an annual funding agreement, which outlines the outputs and outcomes to be achieved. Bridge must submit monthly numbers of attendees, their progress and quarterly financial accounts. At year end, annual audited financial accounts are prepared and a copy sent to the Probation Service's accountant.

The application for funding in any given year is assessed against the strategic alignment of that year's funding application with the Probation Service's priorities, feedback from Probation Service Regional Managers and achievement of agreed outputs and outcomes for the previous year. The annual budget allocation for the project is then agreed and approved by the Department.

The following table sets out the funding allocations to Bridge for the past 12 years.

<b>Funding Allocations to the Bridge Project 2007 – 2018</b>	
<b>Year</b>	<b>Funding Allocation</b>
2018	€454,500
2017	€421,500
2016	€356,000
2015	€310,000
2014	€270,000
2013	€250,000
2012	€200,000
2011	€240,000
2010	€290,000
2009	€290,000
2008	€310,000
2007	€325,225

**6. A note on the process and systems in place for matters to be brought to the attention of the Minister.**

In 2015 the Department piloted a new eSubmissions system, which was developed by the Office of Government Chief Information Officer. This was fully adopted in 2016. This system has replaced the paper-based process of handling submissions to the Minister and the Secretary General. The eSubmissions system allows for: better tracking of assignment and review submissions; an easy to search facility in one central location; the ability to locate and attach related submissions; and the creation of an audit trail and action log.

Employees are encouraged to “speak up” and where they wish to reports concerns in relation to possible wrongdoing in the Department, they can do so either informally or formally in the knowledge that the Protected Disclosures Act applies to all workers. The Department had a Protected Disclosures policy since 2015 which is available to all employees and is published on the Department’s website. Training in relation to the procedures that apply to protected disclosures has been given to 483 managers in the Department.

**7. Following the publication of the Collins Report, a note on the changes that the Department have implemented, a timeline for what will be done and the lessons learned in the Department.**

The central conclusion in Mr Collins’ report is that there was no attempt by the Department of Justice and Equality to conceal information from the Disclosures Tribunal in any way and that Department officials acted at all times in good faith and believed that they were acting reasonably in the manner in which they conducted searches for documentation. The Report does however, point out that emails of potential relevance to the Tribunal’s considerations were not located as part of the Department’s discovery process and points to the absence of a systematic process for filing emails.

To address this the Department has already used specialist IT consultants where needed and is establishing a new separate unit to interact with Tribunals and Commissions with a view to ensuring that an oversight of this kind could not happen in the future. The Department is also engaging in a Civil Service-wide project in relation to electronic file management which will assist in associating electronic documents, including emails, more easily with relevant files. The Department has formally notified the Office of Government Chief Information Officer of its intention to participate in the project and implementation of the system is scheduled to commence this year.

**8. A note on the spend on the Morris Tribunal for 2017 and 2018.**

The total payments in 2017 were €78,017 mainly relating to third party legal costs. The cost of the Tribunal to the end of December 2017 is €68.8 million. There have no payments to date in 2018. Correspondence has been received from solicitors who represented one party at the Tribunal indicating that further fee notes may be submitted.

**9. A note on vacancies in COSC in 2016 including the number of vacancies, the reasons for the vacancy and the up to date position.**

The payroll saving in 2016 arose mainly because the salary cost of the Executive Director was met from another area within the Vote where that officer had other responsibilities.

There is only one vacancy in Cosc currently which relates to a part-time post at Higher Executive Officer level.

**10. A note on whether all agencies under the remit of the Committee have submitted their accounts for audit within the three-month timeframe.**

The following bodies under the remit of the Departments vote have submitted their accounts for 2017 to the Comptroller and Auditor General for audit by the end of March 2018;

Garda Síochána Ombudsman Commission,  
Insolvency Service of Ireland,  
National Disability Authority,  
Private Security Authority,  
Property Services Regulatory Authority.

The Legal Service Regulatory Authority has also submitted its accounts to the Comptroller and Auditor General by the end of March 2018 and will be audited in due course, subject to an outstanding matter in relation to the format of the accounts being finalised in conjunction with the Department. These are the first set accounts prepared by the body in question.

A further three organisations - the Legal Aid Board, Office of the Data Protection Commissioner and Criminal Assets Bureau- have recently submitted their accounts for audit. In all three cases there were outstanding issues, mainly involving clarification of data with external parties which delayed the finalisation of the accounts.

I thank the Committee for its attention and if any further information or clarification is required, please do not hesitate to contact me.

Yours sincerely

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Oonagh McPhillips  
Secretary General (Acting)

### **WOLFE TONE STREET PREMISES**

#### **Background to move to premises**

Following a Strategic Review completed in 2003 by the Centre for Criminology at Oxford University, Bridge produced a new Business Plan for an expanded provision of interventions to Probation clients in the greater Dublin area. This involved appointing a Director to manage the project and locating a team of Probation Officers within the Bridge project.

The Strategic Review and subsequent plan for Bridge centred on the need for co-location of all staff and services with Bridge. It was also anticipated that Bridge would provide a service to young offenders when intensive supervision was rolled out. With the proposed future development of Bridge, involving a unique inter-disciplinary approach the Board employed an architect to examine the development possibilities of the existing premises in Parnell Street. The conclusions of this examination were that Parnell Street could not accommodate Bridge's current and future needs and that renewing the lease which was due to expire in September, 2006 was not a viable option. There were also serious health and safety concerns in relation to the premises. A possible expansion/adaptation of the premises was also considered however it was considered that the premises would still be too small and even so would entail significant costs. It was therefore concluded that new premises were required for Bridge to carry out its multi-agency and multi-model approach to working with offenders.

The location of the premises at Wolfe Tone Street was key to its selection, as it serves the Bridge project client catchment area of Greater Dublin and has access to good public transport links. Given the history of the project and the fact that it was successfully established in the Dublin 1 area for nearly 20 years the preference was also to stay in this area. The premises was identified by the Board of Management of Bridge.

### **Size of premises/Cost of fit out**

The premises at Wolfe Tone Street has a net lettable floor area of 1,436 square meters (15,457 square feet). Requirements for the new premises included rooms for interviews with individuals, office accommodation for the team of Probation Officers, administrative space for the management of the project and some small rooms for group work and information sessions. As it was also anticipated that Bridge would provide a service to young offenders when the intensive supervision for young people was rolled out, provision was also necessary for a dedicated space for potential juvenile offenders attending Bridge.

In August 2009 the Department gave approval to the Board of Management of Bridge to tender for the internal fit-out of the Wolfe Tone Street premises. The construction project was advertised on e-tenders and Capital Appraisal procedures were followed. The contract for the works was awarded in December, 2009 at an agreed price of €0.935m, this followed normal public procurement procedures where the expenditure of public monies is involved. This figure excludes professional fees. The fit-out work commenced in January 2010 and was expected to be completed in May 2010. This substantial interior fit out work included installation of significant mechanical services and electrical services. The fit out also included finished stud partition walls, incorporating doors, frames and glazed screens to form office spaces, lecture rooms and general break out areas. Toilet facilities and kitchen facilities, suspended ceilings and floor finishes were also included. The fit out did not include office equipment or furniture.

On 22 March 2010, Dublin City Council issued a warning letter to the Bridge Project informing it that the change of use planning permission obtained by the Landlords (from commercial to office use) had expired in January 2006 and consequently there was no valid planning permission and the premises could not be occupied. On 31 March the advice of the CSSO was sought and a planning specialist was engaged to advise on the planning issues and interact with DCC. The work on Wolfe Tone Street building was wound down and the site made safe and secure during a three week period in April/May

2010. Work on the premises was fully suspended by 7 May 2010. (These details are also referred to in the Report of the Comptroller & Auditor General 2011, Chapter 15).

Payment for the work already completed was made on 29 September, 2010. In line with normal practice, there was retention of a portion of payment. As the Department was not in dispute with the company who completed the work, all retention amounts were finally paid to the contractor and professionals by early 2012. The contractor was paid €0.917m in respect of the work that had been completed and other professional fees, including architect's costs amounted to approximately €166,000. Thus, the total refurbishment costs for the Wolfe Tone building were €1,083,201.30.

The fit out was overseen by a Steering Group chaired by the Probation Service, membership included the manager of the Bridge Project, the architect and a representative from the Department. The architect and Bridge manager had operational responsibility for the oversight of the work of the building contractor. The Steering Group reported back to the Director of the Probation Service and the Department on progress.

The settlement in relation to Wolfe Tone Street meant that the Department surrendered the building in its current condition and was not required to restore the building to the state it was in when the lease was taken out.

### **Rent**

The premises at Wolfe Tone Street was leased in June 2008. The lease was for a term of 25 years with a "break out" clause after 10 years and an annual rent of €309,000. Based on the letting market for offices in Dublin 1 at the time this was on a par with the market value and the OPW also provided advice in relation to the proposed rent. A rent free period of 12 months was agreed. €172k provided by the landlords in lieu of basic refit of the premises was accepted by the Department in the form of rent. Payment of the annual rent did not therefore commence until February, 2010. The Department continued to pay rent from when it was notified of the planning issue in March,

2010 until the third quarter of 2011. While preliminary legal advice was received in May 2010 it was not until July 2011 that those advices were finalised. The Department needed clarity on its contractual obligations under the terms of the Lease and the options available. By September, 2011 it was clear that the matter would not be resolved swiftly and the decision was taken on the basis of protecting the taxpayer from further losses to withhold further payment of rent and management fees.

### **Settlement figure of €1.8m**

Alternative use of the premises by the State continued to be explored, but an alternate use for the premises could not be identified. It is also the case that there remained no planning permission for alternative uses at that time.

The total expenditure on the premises including the settlement figure of €1.8m was €3.89m. This was negotiated between Counsel and the Department followed legal advice at all times. The final settlement to surrender the lease was made in December, 2016. As part of the settlement the lease was terminated with no further liability to the State. The settlement provided that the building was surrendered in its current condition and that the Department was not required to restore the building to the state it was in when the lease was taken out and that the State was not liable for any damages or, importantly, any legal fees.

It should be noted that, had a settlement not been reached before the point where the 10 year break out clause could be invoked, the legal dispute might have centred around a claim for the full cost of 25 years rent. As the Committee will appreciate, in such matters both parties start negotiations with an opening position and conditions and it is through the negotiation process that a settlement is arrived at which is considered to be the best that can be achieved in the circumstances of a particular case based on legal advice. The settlement figure was less than the amount in rent of €2.1m (including interest on rent owed) which would have otherwise been incurred, as the Department stopped paying rent in the last quarter of 2011 as well as

miscellaneous other costs and if costs had been awarded against the State if the case was lost.

### **Expenditure summary**

The total expenditure on the premises including the settlement figure of €1.8m was **€3.890m**. This is as shown below.

#### **Actual Expenditure:**

€1,083,201.30	Refurbishment costs
€0,528,449.58	Rent Paid (to 30.09.11)
€0,460,703.00	VAT on creation of the Lease <sup>1</sup>
€0,007,896.56	Management fees
€0,006,221.00	Planning advice
<u>€0,003,505.50</u>	Consultant Engineering Advice
<b>€2,089,976.94</b>	<b>Subtotal</b>
€1,800,000.00	Settlement
<b>€3,889,976.94</b>	<b>TOTAL</b>

### **Current Approach**

The principal issue in this case was the legal advice to the effect that the draft lease was in order from a legal perspective. The C&AG stated in 2011 that it was reasonable for the Department to have relied on the advice of the CSSO in negotiating the Lease. The C&AG also made a recommendation that “the CSSO should review its risk assessment in relation to planning compliance on property acquisitions and the practice of reliance on architects’ opinions on compliance and consider the need for additional assurance procedures where compliance risks are evident.” An examination of that particular aspect of the matter formed Chapter 15 of the 2011 C&AG Report.

From a purely administrative perspective, when the new premises in Francis Street was being arranged, the Probation Service was instructed by the

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<sup>1</sup> Under tax legislation at the time, vat was charged on the creation of a long lease at the rate of 13.5% of the value of the leasehold interest created. The vat invoice was sent to the Department via the CSSO (as the Departments legal advisors). The Department received advice from the OPW on the calculation of the vat and that it was in order to pay the vat invoice.

Department that the Board of the Bridge Project could not progress negotiations until and unless there is absolute certainty about compliance with the necessary and correct planning permission being in place. Assurances would not be accepted unless the facts have been independently verified. A planning specialist was therefore engaged and there are no problems with this new lease. Bridge has been successfully operating from this Francis Street premises since 2015.

The same instructions were given to the Probation Service to engage a planning specialist in relation to Restorative Justice Services (another Community Based Organisation) moving from premises in Tallaght to the city centre. This project successfully relocated to its new premises in Marshalsea Court, Merchants Quay, Dublin 8, in March 2018.

It is intended that this practice will continue for any initiatives/relocation of projects going forward.

## Appendix B

RIA ACCOMMODATION CENTRES				
	CENTRE	ADDRESS	CURRENT CONTRACTED CAPACITY	CURRENT OCCUPANCY
State-owened Centres	Knockalisheen*	Meelick**	250	247
	Kinsale Road	Cork City	299	281
	Atlas House (Killarney)	Killarney	90	76
	Atlas House (Tralee)	Tralee	100	95
	Johnston Marina	Tralee	90	74
	Park Lodge	Killarney	55	42
	Athlone	Athlone	300	284
			1184	1099
Commercial Centres	King Thomond Hotel	The Bog Road, Lisdoonvarna	115	93
	Ashbourne Hse	Glounthaune	95	95
	Glenvera	Wellington Road	130	130

Millstreet	Millstreet	284	275
Clonakilty Lodge	Clonakilty, Co. Cork	110	102
The Towers***	The Ninth Lock, Clondalkin, D.22	225	234
Hatch Hall	28 Lower Hatch Street, Dublin 2	220	218
Eglinton	The Proms, Salthill	200	195
Great Western House	Eyre Square	162	159
Linden House	New Road, Killarney	57	56
Eyrepowell	Newbridge	87	79
Montague***	Emo, Portlaoise	202	215
Hanratty's	Glentworth Street, Limerick	118	114
Mount Trenchard	Foynes, Co. Limerick	85	81
Richmond Court	Richmond Street, Longford	80	78
The Old Convent	Ballyhaunis	245	242
Mosney	Mosney***	600	602
St. Patricks	Monaghan	175	164
Globe House	Chapel Hill	215	207
Bridgewater House	Carrick-on-Suir, Co. Tipperary	129	118
Atlantic House	Tramore, Co. Waterford	82	80
Ocean View	Tramore, Co. Waterford	100	98

	Birchwood	Ballytruckle Road	145	146
	Viking House	Coffee House Lane	81	78
	Temple Acc: Centre	Horseleap,Moate,Co:Westmeath	80	15
Self Carering	Watergate House	11-14 Usher's Quay, Dublin 8	68	52
	Carroll Village	Dundalk	60	38
Reception Centre	Balseskin	St. Margarets, Finglas, Dublin 11	320	288
			4470	4252
		<u>Overall Totals</u>	<u>5654</u>	<u>5351</u>