

Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of the 2019 Appropriation Account for Vote 13 – Office of Public Works and Related Financial Matters

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 OPW and the response to each recommendation is as follows:-

Issue 1 – On-going issues with the Miesian Plaza Lease:

The Committee expressed concern and frustration that the issues regarding the Miesian Plaza lease, entered into by the OPW on behalf of a number of Government Departments, had not been resolved at the time of the meeting. The issue had been highlighted by the C&AG in the *2017 Report on the Accounts of the Public Service* and examined by the previous Public Accounts Committee in October 2018. In May 2017 the OPW entered into a 25-year lease at Miesian Plaza, Dublin 2 to primarily accommodate the Department of Health and the Department of Children, Disability, Equality, Integration and Youth. The annual contracted rent for the premises is approximately €10 million, subject to review every five years.

However, OPW's mismeasurement of the floor space for the building is expected to result in an over-payment of €10 million during the lifetime of the lease. In October 2018 the OPW stated that it was negotiating with the owner of the premises in an attempt to have the floor space measurements upon which the lease is based recalibrated. The OPW confirmed in November 2020 that these negotiations were still ongoing and that it was aiming to resolve the issue without resorting to legal action. When questioned by the Committee whether legal action on the issue was possible the OPW stated that it had received advice that it was. The Committee remains concerned that the OPW will not succeed in preventing taxpayers being exposed for an additional €10 million that is a direct result of a fundamental error by OPW. The Committee is also unsatisfied that after two years of negotiations with the landlord that no substantial developments have taken place.

Recommendation 1:

The Committee recommends that the Office of Public Works takes all necessary steps to prevent the forecasted loss of approximately €10 million and that the OPW ensures it has appropriately qualified staff to manage its property transactions on behalf of the State. The Committee also requests that it is provided with quarterly updates in relation to this matter.

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

Since the application of measurement standards issue was identified, the OPW have continued to engage with the landlord. The most recent, without prejudice, meeting was held on 3rd June 2021. Further discussions will be necessary to progress the matter. Both the OPW and the Landlord are committed to continuing this process with a view to establishing if a solution acceptable to both parties can be reached.

The OPW has an extensive network of technical and professional property personnel which includes professional managers, architects, engineers, mechanical and electrical specialists, surveyors, planners, project managers, supplemented by other various specialists as required. Estate Management managers and staff are widely experienced in managing a diverse portfolio of properties. All staffing complements in the OPW are constantly monitored and, as required and as resources permit, can be supplemented or further strengthened.

The OPW will update the PAC on a quarterly basis on this matter.

Issue 2 – Delays on Flood Relief Projects:

The OPW is the lead agency on flood risk management. It is responsible for the State's 10-year investment programme in this area. During the Catchment Flood Risk Assessment and Management (CFRAM) programme 300 communities were identified as at risk of flooding and solutions were identified for approximately 95% of properties in these areas. The OPW stated that it has identified and prioritised 115 discrete schemes as part of the programme, and at the time of the meeting approximately 80 of these were in the design and development stage.

The Committee raised queries that the total amount allocated for flood relief schemes had not been spent and referenced a number of schemes where significant delays were evident. Some schemes referred to during the meeting were initiated in 2015 but physical work had yet to begin on the projects. The Committee also raised issues around the efficacy and cost benefit project analysis of the current approach to flood management taken by the OPW. The OPW maintained that a number of reviews need to be carried out before physical work can begin, including environmental impact studies and that delays were also experienced due to the time it took to transpose new EU environmental regulations into national law. The Committee expressed concern at the management of the processes requiring preparatory work and the OPW's engagement with the Environmental Impact Service process that is undertaken before physical work can commence on flood relief projects. The Committee acknowledges the importance of this work, especially the environmental impact assessments, but remains frustrated at the considerable risk of flooding that many communities continue to live with. The Committee also acknowledges the barriers these communities face when attempting to obtain property insurance and is of the opinion that this should be taken into consideration by the OPW. The Committee also expressed frustration at the lack of up-to-date information on costs, scheduling and project progression

on individual projects that is available on the OPW's website. The Committee is of the opinion that this information would provide more transparency, accessibility, and accountability to communities in respect of the State's significant investment programme in this area.

Recommendation 2:

The Committee recommends that: -

- the OPW ensures that project progress updates are available to communities for scrutiny throughout flood relief projects and that where there is under or over-spending in budgets/contracts that the reasons for the same are published on the OPW's website on an annual basis;
- the OPW assesses where project planning may be expedited and some aspects of the processes run in parallel, or overlap where possible, to reduce delays in commencing flood relief schemes;
- where there has been a significant delay in the physical commencement of a flood relief scheme that the project is reassessed from the viewpoint of community benefits, innovative strategies, and environmental impacts; and
- the OPW provide up-to-date information on its public website in relation to flood relief schemes.

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

The OPW ensures that project progress updates are available to communities for scrutiny throughout flood relief projects and that where there is under or over-spending in budgets/contracts that the reasons for the same are published on the OPW's website on an annual basis;

The OPW has an extensive public consultation and engagement process with local communities and stakeholders which is central to delivering the schemes in the Capital Flood Relief Programme. The OPW, together with Local Authorities, organise public consultation and information days, which are advertised on local and national media and on social media.

In relation to keeping the communities up to date with progress on scheme delivery, the OPW updates www.floodinfo.ie, a web-portal that provides an easy to use, location-specific, access point to flood risk and management information to the public and a wide range of users, including agencies and emergency response planners. The information disseminated on this web-portal includes (but is not limited to) up-to-date information on flood relief schemes completed, underway, and planned in locations with access to individual flood project websites.

The OPW, and its delivery partners, will continue to seek improvements to its ongoing consultation and communication activities.

The OPW assesses where project planning may be expedited and some aspects of the processes run in parallel, or overlap where possible, to reduce delays in commencing flood relief schemes;

The OPW either works in association with the relevant Local Authorities or funds Local Authorities directly to undertake flood relief schemes. The delivery of flood relief schemes involves five distinct, usually sequential and related stages. The stages involve assessing the flood risk and identifying options, planning, detailed design, construction and handover.

Where possible, the OPW's project management does allow for running some stages in parallel to expedite delivery, such as detailed design and planning. To significantly advance work in later stages, runs the risk of duplication of resources during later stages from changes to scheme design as part of the statutory approval processes. The OPW will continue to work with delivery partners to identify such opportunities.

Where there has been a significant delay in the physical commencement of a flood relief scheme that the project is reassessed from the viewpoint of community benefits, innovative strategies, and environmental impacts; and

Under the Public Spending Code, the OPW and its Local Authority delivery partners are required to revisit the business case, economic viability, and cost effectiveness of flood relief scheme projects at a number of approval stages throughout the project lifecycle. The OPW will continue to comply with this requirement.

The OPW provide up-to-date information on its public website in relation to flood relief schemes.

The OPW will review the provision of up to date information on its public website.

Issue 3 - Issues identified with a Maintenance Contract:

In the 2018 *Report on the Accounts of the Public Services* the C&AG examined a specific contract entered into by the OPW that resulted in a number of instances of non-compliant procurement. The C&AG explained that the OPW draws on the services of a private contractor for maintenance works under what is referred to as a "measured term" contract. This is a contract that provides for the drawdown of services within a specified period on the basis of a tendered schedule of payment rates. The maintenance contract also allowed for minor construction work up to the value of €500,000. However, any works forecast in excess of that amount was required to be tendered for separately.

In 2014 the OPW signed a three-year contract, with an optional extension of one-year that began in 2015. The OPW estimated that the contract would cost approximately €3 million per annum, or €12 million over a four-year period. However, the actual total cost of the contract over four years was €39.4 million, over three times more than the estimate. The C&AG also identified six instances where construction works carried out as part of the contract breached the €500,000 limit and thus were non-compliant with procurement guidelines.

The OPW re-advertised the contract during its final year with an estimate that it would cost €5 million per annum and a new three-year contract was awarded to the same company in October 2018. By the end of 2019 the maintenance contract had incurred expenditure of €34.7 million, with €22 million attributed to Brexit preparations. However, leaving aside Brexit preparations, the works carried out cost approximately €12.7 million in one year, nearly €8 million more than estimated, despite this being OPW's second attempt to accurately forecast costs.

Recommendation 3:

The Committee recommends that: -

- **the OPW reviews its tender specifications for maintenance contracts to ensure that its forecasted expenditure is accurate and to prevent the State from being exposed to unexpected costs; and**
- **the OPW ensures that all works carried out under its maintenance contracts do not breach the financial limits specified in those contracts. Previous failures to prevent such breaches represents poor contract management.**

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

The OPW reviews its tender specifications for maintenance contracts to ensure that its forecasted expenditure is accurate and to prevent the State from being exposed to unexpected costs;

The OPW estimates contract values based on certain assumptions. The estimated value of these contracts are closely aligned with the tenders received for the contracts advertised.

In the case the Measured Term Maintenance Contract (MTMC), the contract was used for urgent and unanticipated projects which were in addition to the regular routine maintenance and minor works delivered via the MTMC. The MTMC was deemed the best value for money option due to the limited options available to deliver urgent projects within tight timeframes. The MTMC is being re-tendered in June 2021. A detailed review on the estimates for contract values will take account of the use and purpose of the new contract and will be included in the tender documents.

The OPW ensures that all works carried out under its maintenance contracts do not breach the financial limits specified in those contracts.

The OPW is developing alternative delivery and procurement models for urgent works and larger construction projects. The OPW's procurement strategy is to develop and implement flexible construction procurement frameworks. A progress update on these frameworks is as follows:

- A multi-party framework agreement for construction refurbishment and fit-out projects within the Dublin Region was advertised in Q3 2019 and implemented in Q1 2020.
- A consulting architectural services framework was advertised in Q2 2020. This framework which is sub-divided into five geographical areas was implemented in Q4 2020.
- A multi-party framework contract, for the purposes of delivering design and construction of fit-out and refurbishment works in buildings, was advertised in Q1 2021 and the responses to the request for tenders are being evaluated.

The implementation of these frameworks will ensure that the MTMC is limited to the scope of the contract.

Issue 4 – The Development of a Garda Complex at Military Road, Dublin 8:

The Committee discussed the development of a new Garda complex at Military Road in Kilmainham, Dublin 8. The complex is due to be completed in quarter three 2022 and is estimated to cost €86.6 million. This is an increase of €6.6 million on the original estimate. The complex will replace current Garda accommodation on Harcourt Square which is currently occupied under a lease agreement with a commercial landlord.

As a result of delays experienced by the construction sector due to COVID-19 restrictions, the Committee questioned whether the building will be completed on time and whether a contingency plan exists to manage such delays. The OPW informed the Committee that it expects the site to be completed on time. It also confirmed that there is a contingency plan to use a number of existing Garda buildings to accommodate staff if the development is delayed. Due to the on-going pandemic the Committee is of the opinion that further delays are highly likely.

The Committee also requested information from the OPW regarding the selection process for the Military Road site and whether potential future increases in Garda personnel informed the decision. In a Policing Authority report published in 2019 the Garda Commissioner stated that the development at Military Road will not be sufficient to accommodate all units currently based in Harcourt Square. The Committee sought information from the OPW regarding this issue.

The OPW informed the Committee that, in 2016 there were 850 - 890 members of Garda personnel based in Harcourt Square and that the Military Road complex will be sufficient to accommodate the same number of staff upon completion. However, the OPW also explained that recent increases in Garda personnel, combined with changes to Garda operations, has resulted in other locations being required to house some of the units currently based in Harcourt Square. The OPW informed the Committee that these units will be based in other premises currently occupied by An Garda Síochána. However, they also explained that contingency plans are in development to accommodate anticipated further increases in Garda personnel and operations. These contingency plans include utilising State owned and leased premises.

The Committee is of the opinion that developing a premises based on 2016 staff numbers and operational needs does not represent best practice. This is compounded by the fact that as early as 2018 the OPW and An Garda Síochána were aware that An Garda Síochána's staff numbers had increased and that the organisation had undergone organisational change. The Committee concludes that the failure to review the Military Road development in 2018 based on these factors represents poor management and has resulted in a major capital project no longer being fit for purpose.

Recommendation 4:

The Committee recommends that the OPW develops a detailed contingency plan to accommodate the staff in Harcourt Square if the Military Road development is not completed on time. The Committee requests a copy of this plan upon its completion.

The Committee further recommends that the OPW keeps all its projects in the planning stages under review to ensure that any changes, such as staff increases or operational change, are incorporated into the plans and that construction does not commence until all parties are satisfied that the project will meet the needs of the client Department, both at the time and into the future. This will help ensure that public funds expended on capital projects provide long-term value-for-money for the State and the taxpayer. Failure to proactively manage capital projects in this way can result in additional expenditure.

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

The planning to cater for any delay in completion of the Garda Security and Crime Operations Centre, Military Road (Military Road) is ongoing and will be further developed in detail with An Garda Síochána, as recommended. The plan has a number of options and includes the temporary refurbishment of a facility in Garda HQ, leased buildings and State owned buildings. The plan is commercially and security sensitive and cannot be shared with the committee before the move from Harcourt Square is completed.

The OPW does not progress beyond the planning stages of projects until the brief is agreed with the client to ensure that any changes, such as staff increases anticipated at the time or operational change, are incorporated into the plans. A key decision gateway is planning permission approval after which time the size of the physical building cannot be changed. Before proceeding, the Approving Authority and the OPW must both be satisfied that projects meet the current and expansion needs of the Client.

Issue 5 – Vacant Garda Property:

The Committee discussed the issue of vacant Garda properties, including former Garda Stations that are managed by the OPW. The OPW informed the Committee that between 2012 and 2013, 139 Garda stations were closed as part of An Garda Síochána's rationalisation programme. Between 2014 and 2016 the OPW disposed of 36 former Garda stations. However, the disposal of vacant Garda properties was paused between 2016 and 2018 due to the commencement of two Garda reviews related to the vacant properties.

The disposal of vacant Garda stations resumed in January 2019. In April 2021 the OPW informed the Committee that there were 49 vacant Garda properties that were either being prepared for disposal or under consideration for community or County Council use. Nine of the properties identified were vacant prior to 2012. The Committee is of the opinion that as some Garda properties have been vacant for up to a decade the OPW has not been pro-active enough in maximising the potential of the State's assets. However, the Committee welcomes that as of April 2021 there is a plan for the majority of the remaining 49 vacant Garda stations.

Recommendation 5:

The Committee recommends that: -

- **the OPW actively works to ensure that the timelines provided to the Committee for the disposal of vacant Garda stations are met;**
- **any other vacant Garda property, such as former Garda residences, are reviewed and that timelines for the use or disposal of those properties are developed; and**
- **that decisions are made before the end of 2021 for stations under consideration for other State uses. If Garda stations under consideration for additional State use are not concluded by the end of 2021, the properties should be re-evaluated to determine whether any other State or community uses are possible.**

The Committee requests that the OPW reports back to the Committee before December 2021 regarding the progress of these recommendations.

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

A summary of the OPW policy with regard to vacant properties is set out below and vacant properties are considered on an ongoing basis under this policy.

The OPW continues to implement its policy with regard to non-operational State property, is summarised as follows:

- a) Firstly, to identify if the property is required/suitable for alternative State use by either Government Departments or the wider public sector;
- b) If there is no other State use identified for a property, the OPW will then consider disposing of the property on the open market if and when conditions prevail, in order to generate revenue for the Exchequer; or
- c) If no State requirement is identified or if a decision is taken not to dispose of a particular property, the OPW may consider community involvement through the Local Authority concerned who is deemed to have the best knowledge of the community group and their capacity to manage the property.

Revised mechanisms to facilitate Local Authorities taking responsibility for such properties without recourse to a full inter-state agency purchase are being developed. This will facilitate the decision making and implementation of such arrangements to the benefit of local communities.

In exceptional circumstances, the OPW will itself directly facilitate community involvement. This is subject to a detailed written submission, which would indicate that the community/voluntary group has the means to insure, maintain and manage the property and that there are no ongoing costs for the Exchequer.

As a matter of policy, no property or site is disposed of until there is absolute certainty that there is no alternative State use. A number of strategic properties or sites are retained in anticipation of potential State use/development in line with service demands arising from Government policy changes to public service provision.

Of the 139 closed Garda stations, 37 have been retained or transferred for alternative State use, thereby negating the need for the State to enter into additional acquisitions to meet State requirements.

The disposal programme for these properties began in 2014 and continued through to 2016. During 2014, 2015 and 2016, the OPW disposed of 36 former Garda stations. However, the disposal of these properties halted from 2016 to 2018, due to two An Garda Síochána Reviews;

In 2016, An Garda Síochána/Policing Authority undertook a review of the closed Garda Stations under the Programme for a Partnership Government. In late 2017, the preliminary review initially identified six stations for re-opening on a pilot basis.

In January 2018, following the preliminary review, An Garda Síochána requested the OPW not to dispose of any former Garda stations that remained in State ownership, pending a further review of closed Garda stations.

This second review, carried out by the Garda Inspectorate, was published in December 2018 and did not recommend the re-opening of any other former Garda stations.

The OPW recommenced its disposal programme in January 2019. This disposal programme was interrupted by Covid-19 related lockdowns in 2020 and 2021. During 2021, subject to pandemic restrictions, there are 3 auctions planned. A further four auctions are planned for 2022.

As of May 2021, there are 39 former Garda stations that are under consideration for disposal, alternative State use or community use. More recently, given the announcement of additional funding by the Minister for Rural and Community Development for town and village renewal, the OPW has engaged with local authorities who may wish to consider availing of the funding to transform these properties for community purposes, by way of a lease from the OPW.

The responses to the above engagement will determine the future of the remaining stations, i.e. whether they are assigned to local authorities or will proceed for open market disposal during 2021 and 2022.

The OPW will provide an update on progress to the Committee in December 2021, as requested.

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



L.S.

A handwritten signature in blue ink, appearing to read 'David Moloney', with a long horizontal stroke extending to the right and a small loop at the end.

David Moloney

Secretary General

Department of Public Expenditure and Reform