

An Roinn Sláinte  
Department of Health  
Secretary General



Ms Sarah Cremin  
Committee Secretariat  
Committee of Public Accounts

By email: [PAC@oireachtas.ie](mailto:PAC@oireachtas.ie)

21 March 2023

Ref: S1078 PAC33 and S1171 PAC 33

Dear Ms Cremin,

I refer to your correspondence of 13 January and 27 January 2023, where the Committee sought the following information:

1. clarification regarding the timeline for dealing with claims arising under the contract
2. the estimate of the overall cost of construction inflation for the project
3. An information note on the mechanism in place in the event that the National Paediatric Hospital Development Board (NPHDB) runs out of funding in advance of the project being completed and if there is a requirement for a Supplementary Estimate; and
4. the legal position in relation to the handover in the event that there are outstanding claims under the contract.

Regarding points 1 and 2 raised by the Committee, I note that NPHDB as part of the fulfilment of its commitment to keep the Committee regularly updated on the project, submitted its quarterly report on 22 December 2022 and has addressed these same matters recently under separate correspondence.

Since the NPHDB has statutory responsibility for the New Children's Hospital project, the Department has engaged with the NPHDB in relation to the Committee's request. Following this engagement, responses and information received by the Department from the NPHDB are provided in Appendices 1 and 2. [Enclosed]

In 2018, the Government approved a capital budget of €1.433bn for the NCH project. This included the capital costs for the main hospital at St James's Hospital campus, the two satellite centres, equipment for the three sites, and the construction of the carpark and retail spaces. The capital budget has not yet been depleted and to date, just over €1.25bn of the Government sanctioned €1.433bn budget has been drawn down for works on the project across the three sites.

Additional costs in relation to the integration and transfer of the services of the three children's hospitals to the new sites brings the total programme cost to €1.73bn. This includes

investment in ICT, a new Electronic Health Record system, and the Children's Hospital Integration Programme (the merging of three paediatric hospitals), including commissioning.

The total budget allocated for 2022 was €352m, €342m of which was drawn down.

Delays to the project have arisen due to several factors including, but not limited to, Brexit, the pandemic and the invasion of Ukraine. These externalities have severely impacted construction industry supply chains and pose more general economic challenges. The NCH project is not immune to these external challenges. Every effort is being taken to mitigate the risks, but these externalities are beyond the control of the contractor and the National Paediatric Hospital Development Board (NPHDB), making speculation unhelpful and forecasting and modelling are commercially sensitive.

The Department of Health has acknowledged before the Committee that the project will take longer than originally outlined in the definitive business case that supported Government's decision to proceed with the build and to set the budget. As a function of this extension of time the project will necessarily cost more.

The Department's position remains unchanged in that definitive updates on costs cannot be provided because there is a live contract in place which, as noted in your correspondence, is subject to dispute and claims in line with the provisions of the Public Works Contract. Any speculation on outturn costs or budgets would be detrimental to the Development Board's commercial engagements.

Regarding the Committee's request of 27 January, point 3 above, annual capital allocations are set out in the National Development Plan 2021-2030 (NDP) on a Departmental basis for the period to 2025 and on an aggregate basis out to 2030. Following the estimate process each year, the Government, along with the Department of Public Expenditure, NDP Delivery and Reform approve the Health Capital budget annually. It is on the basis of this annual funding envelope that the HSE Capital Plan is developed, including capital funding for the NCH. The 2023 Capital Programme has adequate provision to ensure that the NPHDB can meet its contractual obligations in 2023.

It is not envisaged that a supplementary estimate process will be required in respect of the NCH capital project, however, any amendments to the overall project budget sanction will be subject to Government decision. The Department, the HSE and the NPHDB are working closely together to determine and analyse any such needs. The HSE, as the Sanctioning Authority for the programme, and principal capital funder for the programme, will manage NPHDB funding within the overall health capital envelope.

Regarding point 4 above (the legal position in relation to the handover, in the event that there are outstanding claims under the contract), succession and legacy planning are currently ongoing for post-substantial completion of the NCH and post-mobilisation of services to full operations. This will include claims defence.

The process for the determination of contractor claims and for the resolution of disputes are set out in the construction contract. All claims will be managed and dealt with in line with this dispute resolution process for the duration of the project.

The management of claims will continue once handover of the NCH from the NPHDB to Children's Health Ireland (CHI) is complete. Importantly, this dispute management process under the contract shall not have any impact upon the ability to open the hospital. All outstanding disputes that remain under the contract shall be dealt with as a different stream of work to that which relates to the operation of the NCH.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Robert Watt', written in a cursive style.

---

*Robert Watt*

Secretary General

## Appendix 1

### The timeline for dealing with claims arising under the contract

The form of contract used for the new children's hospital project is the standard Office of Government Procurement Public Works Contract (PWC) for employer design, a small number of elements of the works contract were modified to meet the 2-stage procurement requirements of the project.

The Contract includes Clause 10 Claims and Adjustments, and Clause 13 Dispute Management Procedure.

Under Sub-Clause 10.3 if the Contractor considers there should be a Claim or Adjustment, the Contractor is to give notice to the Employers Representative (ER) within 20 working days after it became aware or should have become aware of the event.

Within a further 20 working days of issuing the notice to the ER, the Contractor shall provide full substantiation of the claim to the ER. The Contractor shall give any further information requested by the ER, if requested to do so within 10 working days.

Within 20 working days of receipt of the substantiation requested by the ER, the ER shall issue a determination of any adjustments to the Contract Sum and or the Date for Substantial Completion.

The ER's determination is final and binding on the parties unless within 28 days of the determination a party issues a notice to the other party disputing the determination and referring the dispute to the Project Board. The Project Board is part of the Clause 13 Dispute Management Procedure.

The Project Board meets monthly. The Contract facilitates that the Project Board may resolve disputes that cannot be addressed at the project level. Either party may refer unresolved disputes to conciliation within 14 days of the Project Board.

The conciliation timeline in the Contract between referral and a conciliator's recommendation is 42 days, or a longer period proposed by the conciliator and agreed by the parties.

If either party is dissatisfied with the conciliator's recommendation, it may issue a notice of dissatisfaction to the other party within 20 days of receiving the recommendation. If a notice of dissatisfaction is not issued, the recommendation is conclusive and binding.

If a notice of dissatisfaction is issued the dispute moves to the High Court and potentially the Court of Appeal and ultimately the Supreme Court unless the dispute is settled.

There are currently two disputes before the High Court:

- The Phase B instruction dispute – court proceedings are currently adjourned.
- The frame claim dispute - court proceedings initiated, but no action currently being taken by either party.

Without agreement between the parties, further disputes may be referred to the courts in the future. Without agreement between the parties, it is likely that disputes will continue after the hospital is operational.

Adjudication is a statutory payment dispute process that either party can avail of in parallel with the Contract. The adjudicator is required to issue the decision within 28 days of the adjudicators appointment or 42 days as agreed to by the referring party and as directed by the adjudicator. An adjudicators decision can be referred to the courts for final resolution. There are currently no adjudications in process on the project.

## Appendix 2

### The estimate of the overall cost of construction inflation for the project

The amounts certified for payment to the Contractor are adjusted for inflation in accordance with the Contract for works to the Date for Substantial Completion. The contract Date for Substantial Completion includes any ER determined extensions of time. Based on the current contract Date for Substantial Completion including the current ER determined extensions of time, the NPHDB estimate of inflation payments to the Contractor on the NCH project of approximately €54m including VAT.

This forecast is made based on the following inflation payments to date and forecasted rates of construction inflation. Final inflation figures for payment in 2023, for 2022 construction activity, will not be available until after in 2023.

	2019	2020	2021	2022	2023
<b>Average Tender Inflation</b>	6.67%	2.48%	10.24%	Not yet published but forecast to be between 9% and 11%	Not yet published but forecast to be between 6.5% and 10%
<b>Base contract Provision</b>	4%	4%	4%	4%	4%
<b>Inflation Adjustment</b>	2.67%	-	6.24%	tbd	tbd
<b>Inflation Adjustment Cumulative</b>	2.67%	1.52%	7.39%	tbd	tbd
<b>Total payable €m in subsequent year as a result of inflation</b>	~€1.8m	€1.5	€17.9m	tbd	tbd
<b>Total inflation payments made by the NPHDB, to date</b>		~€21m		tbd	tbd