

Update on the implementation of previous recommendations made by the Committee of Public Accounts to the National Paediatric Hospital Development Board following the Committee's engagements of 9 February and 13 July 2021

- [Examination of the National Paediatric Hospital Development Board 2019 Financial Statements - March 2022](#)
- [Minute of the Minister for Public Expenditure and Reform, April 2022](#)

	Recommendations from the Committee of Public Accounts	Minute of the Minister for Public Expenditure and Reform	Update on progress of implementing the Committee's recommendations
1.	The Committee recommends that a detailed report outlining the timeline and estimated costs for the completion of the National Paediatric Hospital is published as a matter of urgency.	<p>The Minister for Public Expenditure and Reform is informed by the Department of Health that it notes the recommendation of the Committee, but that it is not possible for the Department to publish the analysis at this time, on the basis that its contents are commercially sensitive and must remain confidential at this time, so as to ensure that the NPHDB's ability to enforce the contract is not prejudiced, and ultimately the project is not adversely affected.</p> <p>The Minister is further informed by that Department that:</p> <ul style="list-style-type: none"> • The National Paediatric Hospital Development Board (NPHDB) undertook an analysis of the new children's hospital capital project to determine the implications of any delay(s) and to determine the most effective pathway to ensure the timely completion of this critical project. • The NPHDB's analysis was submitted to the Department of Health at the end of January 2021 and was subsequently assessed by the National 	<p>The NPHDB, continues to vigilantly apply all cost controls and measures and has leveraged all tools available within the contract to drive the project forward based on contractual agreements. However, due to the delay by the Contractor to deliver substantial completion date it is clear that additional capital is now needed to complete the build.</p> <p>The analysis sought continues to relate to a live contract with extensive claims and counter claims and litigation underway. It is commercially sensitive and must remain confidential to ensure that the contractual relationships, and ultimately the project, are not adversely affected.</p> <p>The information informs our budget requirements and was shared in line with our governance and reporting structures – initially to the HSE Lead Director and then to the Department of Health.</p> <p>This request is being considered by our stakeholders and as such the NPHDB is precluded from discussing the details of those figures. As we are in constant</p>

	Recommendations from the Committee of Public Accounts	Minute of the Minister for Public Expenditure and Reform	Update on progress of implementing the Committee's recommendations
		<p>Development Finance Agency (N DFA).</p> <ul style="list-style-type: none"> • The Department of Health sought the assistance of the N DFA to offer an independent analysis and scrutiny of this work. Further analysis was then required so as to provide the appropriate assurances and validation to Government, and other stakeholders, that there has been a robust analysis of the way forward. • This is not a retrospective piece of work about what has happened but rather an analysis of the way(s) forward. • Since this analysis relates to the best way forward on a project that is subject to a live contract, it is commercially sensitive and must remain confidential to ensure that the contractual relationships, and ultimately the project, are not adversely affected. • The Department of Health, the HSE and the NPHDB have collective statutory responsibilities to ensure the cost effective and timely delivery of the NCH project and programme and have a duty of care to ensure that its actions and undertakings are made in the best interests of the project and the public interest in equal measure, to ensure value for money and 	<p>engagement with the Contractor, it may also be the case that to divulge detailed information on costs publicly at this time would be disadvantageous to the State's position.</p>

	Recommendations from the Committee of Public Accounts	Minute of the Minister for Public Expenditure and Reform	Update on progress of implementing the Committee's recommendations
		<p>optimal outturn on investment and ultimately the delivery of health services for the children of Ireland.</p> <ul style="list-style-type: none"> • There is a legitimate concern over the commercial sensitivity of this analysis and discussions on cost, hypothetical or otherwise at this time, may prejudice enforcement of the existing contract, and very likely negatively impact or jeopardise the Development Board in its ongoing engagement with the main contractor, and the Board's responsibilities for the timely completion of this critical project. • It would also very likely jeopardise the NPHDB's ability to undertake its statutory responsibilities for the timely completion of the project and undermine the ability of the NPHDB to react to future challenges that arise arising out of the externalities to the construction industry at present, including but not limited to the pandemic, global supply chain risks, and Brexit. • It is worth keeping in sight that the project will deliver world class facilities that will improve and prioritise medical outcomes for the nation's sickest children, while bringing about transformational change to the delivery of healthcare 	

	Recommendations from the Committee of Public Accounts	Minute of the Minister for Public Expenditure and Reform	Update on progress of implementing the Committee's recommendations
		<p>for children of Ireland for generations to come.</p> <ul style="list-style-type: none"> • There is a live contract in place and the NPHDB is enforcing that contract and robustly defending inappropriate claims to prevent cost escalation. 	
2.	<p>The Committee recommends that the NPHDB:</p> <ul style="list-style-type: none"> i. includes a note in its financial statements that details the additional costs paid to date that are not included in the approved budget of €1.4 billion, ii. includes a note to the accounts that indicates the overall claims received by the Employer Representative and the current stage that they are at in the dispute management processes, iii. attaches a monetary value to resolved claims to show any impact they may have on the overall cost, and iv. provides a quarterly report to the Committee on the number of claims by place in the dispute process, and the potential cost by category, for 	<ul style="list-style-type: none"> i. The Minister for Public Expenditure and Reform is informed by the Department of Health that the National Paediatric Hospital Development Board (NPHDB) accepts the recommendation and will implement it within the 2021 Financial Statements. ii. The Minister for Public Expenditure and Reform is informed by the Department of Health that the NPHDB accepts the recommendation and will provide the information in line with reporting/accounting standards; and will implement it within the 2021 Financial Statements. iii. The Minister for Public Expenditure and Reform is informed by the Department of Health that the NPHDB accepts the recommendation and will implement it within the 2021 Financial Statements. iv. The Minister for Public Expenditure and Reform is informed by the Department of Health that the NPHDB 	<ul style="list-style-type: none"> i. The C&AG Audit of the NPHDB Financial Statements 2021 commenced in August 2022. The NPHDB has been continually engaging with the C&AG on its 2021 Financial Statements since the audit commenced. The NPHDB received the 2021 audit report from the C&AG by email on the 26th September 2023. ii. The NPHDB provided the C&AG with all the NCH claims information and there was significant engagement and communication between the NPHDB and the C&AG to support them with the audit and explain the detail of the claims information. <p>Advice was sought from our financial advisors with expertise in the area and the recommendation was that the Claims Management process is not a financial accounting process, it is fluid and constantly changing. It would not be the norm for such information to be included</p>

	Recommendations from the Committee of Public Accounts	Minute of the Minister for Public Expenditure and Reform	Update on progress of implementing the Committee's recommendations
	both settled and open claims.	accepts the recommendation and will provide the report to the Committee.	<p>in the AFS and therefore not subject to audit. As such there has been a considerable amount of work for the C&AG and the NPHDB to arrive at an acceptable approach to this complex process in line with appropriate accounting standards.</p> <p>iii. Quarterly updates have been provided to the Committee of Public Accounts.</p>
3. (i)	The Committee recommends that future capital projects of this scale - where the primary aim is functionality – should prioritise value for money for the taxpayer.	<p>The Minister for Public Expenditure & Reform is informed by the Department of Health that it notes and accepts the Committee's recommendations.</p> <p>The Minister is further informed by that Department that:</p> <ul style="list-style-type: none"> • All Irish public bodies are obliged to treat public funds with care, and to ensure that the best possible value-for-money is obtained whenever public money is being spent or invested. The Public Spending Code is the set of rules and procedures that apply to ensure that these standards are upheld across the Irish public service. • The Department of Health is committed to the ongoing investment in health infrastructure with a focus on improving the delivery of such projects to ensure speed of delivery and value for money. 	The NPHDB was set up under statutory instrument to Design, Build and Equip the new children's hospital.

	Recommendations from the Committee of Public Accounts	Minute of the Minister for Public Expenditure and Reform	Update on progress of implementing the Committee's recommendations
		<ul style="list-style-type: none"> • In response to the Recommendations of the 2019 PWC Independent Review of Escalation in National Children's Hospital Costs and the updated Public Spending Code (PSC) obligations, the Department of Health has implemented new structures to review proposed infrastructural investments over €100m, in line with the updated PSC. All new and existing proposals are subject to these requirements and internal challenge on behalf of the accounting officer. • The PSC is designed to ensure that investment decisions are underpinned by a clear policy rationale and that costs are well understood. In 2019, the PSC was updated and introduced a new project lifecycle, tightening the arrangements for project decision-making, and clarifying the roles of the parties involved, including the responsibilities for Sponsoring Agencies and Approving Authorities. • All capital development proposals must progress through several approval stages, in line with the new lifecycle approach of the updated PSC, including detailed appraisal, planning, design and procurement before a firm timeline or funding requirement can be established. 	

	Recommendations from the Committee of Public Accounts	Minute of the Minister for Public Expenditure and Reform	Update on progress of implementing the Committee's recommendations
		<ul style="list-style-type: none"> • Approval must be received for each individual stage to ensure that the proposal delivers value for money and remains affordable, and that sufficient funding is available to fund the project to completion, including equipping and commissioning costs. • The delivery of capital projects is a dynamic process and is subject to a number of key considerations, including service prioritisation, clarification of scope, determination of affordability, as well as the successful completion of the various capital project approval gates under the Public Spending Code, which can impact on the timeline for delivery. • For current capital investment proposals in excess of €100m, the Department of Health is implementing and utilising the new External Assurance Process for major capital investment projects, recently established by D/PER, to achieve better value for money by provision of external expert insight relating to project risks, delivery feasibility and the robustness of costings, governance, and procurement. • In addition to the value for money framework, there are general functionality design principles that do 	

	Recommendations from the Committee of Public Accounts	Minute of the Minister for Public Expenditure and Reform	Update on progress of implementing the Committee's recommendations
		<p>and will apply to current and future capital infrastructure projects. Projects, such as the NCH, are to be designed to be as adaptable and flexible in design as possible to accommodate medium- and long-term future change and diversification in treatments, technologies and management practices.</p>	
3. (ii)	<p>The Committee also recommends that a comprehensive review is carried out following completion of this project to ensure lessons are learned for future capital projects.</p>	<p>The Minister for Public Expenditure & Reform is informed by the Department of Health that it accepts the Committee's recommendations. The Minister is further informed by that Department that:</p> <ul style="list-style-type: none"> • In line with the updated Public Spending Code, and following completion of the project, there will be a review stage process and ex-post evaluation process. • The Review Stage will consider if, <ul style="list-style-type: none"> ○ The basis on which the project was undertaken proved correct. ○ The business case and management procedures were satisfactory. ○ The operational performance and initial benefits have been 	<p>This recommendation pertains to future actions, in line with the public spending code, that are not yet due for actioning.</p>

	Recommendations from the Committee of Public Accounts	Minute of the Minister for Public Expenditure and Reform	Update on progress of implementing the Committee's recommendations
		<p>realised.</p> <ul style="list-style-type: none"> ○ The conclusions that can be drawn which are applicable to other projects, to the ongoing use of the asset, or to associated projects. ● The Ex-Post Evaluation will assess the effectiveness of the project through a framework similar to that used at the Final Business Case Stage. It will evaluate and set out: <ul style="list-style-type: none"> ○ The expected benefits and outcomes materialised including operational performance. ○ The planned outcomes were the appropriate responses to actual public needs; and ○ The conclusions that can be drawn which are applicable to other projects, to the ongoing use of the asset, or to associated projects. ● Any further reviews or evaluations other than the ones outlined in the Public Spending Code would be subject to Government approval. 	

13th October 2023

Information on the Dispute Management Process

The PwC report (April 2019) makes clear that the Guaranteed Maximum Price established through the two-stage tender process does not provide a contractual ceiling on cost and significant residual risks remain of further cost. The residual risks, for which there cannot be cost certainty, include items such as construction inflation, variations, provisional sums, claims and certain uncontrollable risks.

The processes for the determination of contractor claims and for the resolution of disputes are set out in the Construction Contract.

Clause 10.3 in the Public Works Contract is entitled 'Contractor Claims'. Contractor Claims include items such as:

- 1) Valid variations to the Main Contractor that could not be foreseen at contract stage
- 2) Employer change orders / variations that could not be foreseen at contract stage
- 3) Expenditure of Provisional Sums against allowances in the contract that could not be fully determined at contract stage
- 4) Omissions of scope, savings, that were not included at contract stage
- 5) Value engineering and opportunities that were not included at contract stage
- 6) Contractor claims for delay, extensions of time and/or disruption due to employer delay and/or compensation events

An example of a Contractor 10.3 notice is where the fire alarm drawings are updated by the Employers design team to comply with fire certification, this may result in additional time and/or cost being awarded to the Contractor subject to the ER's determination. This may also result in a cost saving to the project where changes in certification have resulted in the omission of works previously specified. Another example is where the external lighting requirements have been reduced resulting in reduced scope and a cost saving.

As it stands, claims are now at all levels of the Dispute Management Process, which involve:

Employers Representative	All claims are independently assessed and determined by the Employers Representative (ER). This can include additional payments to the Contractor, savings for the Employer, or no costs awarded either way. This can also include an Extension of Time awarded to the Contractor. Once determinations are made the Contract Sum is adjusted up or down accordingly.
Project Board	Claims determined by the ER can be disputed by either party by referring to the Project Board. The Contract facilitates that the Project Board may resolve disputes that cannot be addressed at the project level.
Conciliation	Under the Contract if the Project Board is unable to resolve the dispute it is referred to Conciliation. The Conciliator's recommendation is not legally binding and should either party disagree with the recommendation then High Court Proceedings can be initiated, four Conciliator's recommendations have referred to the High Court.
Adjudication	This is a statutory payment dispute process that either party can avail of that function in parallel with the Contract.
High Court	Either Party has the option to issue a notice of dissatisfaction with the Conciliator's Recommendation When this occurs either party may issue High Court Proceedings.

Please see below table of relating to the status of Claims and Adjustments referred to dispute as at end of September 2023.

Table 1. The status of Claims and Adjustments referred to dispute as at end of September 2023.

NCH-10.3's Notified to the ER as at end September 2023	10.3 Qty No.	Contractor 10.3 Value (Including Inflation 3 No.) €	ER Determined Amount Amending the Contract Sum (Excluding Inflation) €	Savings & Client Claims €	Provisional Sum's ER Determined Amount Amending the Contract Sum €	Net Contract Sum Change €	Contractor Claimed Amount Referred to Dispute (Including Inflation) €	ER Determined Amount of 10.3's Referred to Dispute (Including Inflation) €	Amount Referred to Dispute by Contractor €	Amount Referred to Dispute by NPHDB €	Provisional Sum Extra Over to ER Determination	Agreed 10.3 Amount Post Conciliation €	Total Adjudications	Adjudicators Decision In Favour of NPHDB	Adjudicators Decision In Favour of the Contractor	Adjudicators Award In Favour of the Contractor
10.3's Notified for ER Determination	2379															
Substantiated Claims Issued for Determination	1937	€ 769,163,732														
Claims Determined by ER	1610	€ 641,203,662	€ 13,476,659	(€ 5,569,843)	€ 8,838,119	€ 16,744,935										
Disputed Claims & Adjustments																
Contractor Only, ER Determined Claims that are disputed and referred to Project Board and Conciliation	1338						€ 414,546,133	€ 30,649,817	€ 383,896,316							
Contractor Only, ER Determined Claims that are disputed and referred to the High Court	1						€ 115,722,111	€ 0	€ 115,722,111							
NPHDB and Contractor, ER Determined Claims that are disputed and referred to the Project Board and to Conciliation	19						€ 126,096,979	€ 3,674,371	€ 122,422,608	€ 3,674,371						
NPHDB Only, ER Determined Claims that are disputed and referred the Project Board and to Conciliation										€ 0						
NPHDB Only, Dispute referred the High Court (Phase B Instruction)	1									€ 0						
Subtotal	1359						€ 656,365,223	€ 34,324,188	€ 622,041,035	€ 3,674,371						
Conciliations agreed and no longer in Dispute Management	28					€ 2,103,096	€ 8,215,979	€ 3,241,662			€ 704,936	€ 6,049,694				
Disputes Referred to Adjudication	6	€ 59,187,466	€ 0										6	4	2	€ 1,916,628
Totals	1393					€ 18,848,031	€ 664,581,202	€ 37,565,850	€ 622,041,035	€ 3,674,371		€ 6,049,694				



NATIONAL
PAEDIATRIC
HOSPITAL
DEVELOPMENT
BOARD

NCH Office
Block A, Herberton
St. James's Walk
Rialto
Dublin 8
TEL **+353 (1) 556 4500**
www.newchildrenshospital.ie

Sarah Cremin
Committee Secretariat,
Committee of Public Accounts
Leinster House
Dublin 2
D02 XR20

18th September 2023

Dear Ms. Cremin,

I am writing in response to correspondence from the Committee of Public Accounts reference S1410 PAC 33.

Below please find responses to questions from the Committee of Public Accounts.

1. *“a copy of the outcome of the contractor’s review of the impact of moving the grilles in each of the 11 theatres in the National Children’s Hospital, when the Board became aware of the issue, the cost of the alterations required, whether the alterations will delay the project and why the matter was not acted on in May 2022 when it was first discovered”.*
2. *“what reports, reviews or examinations have been undertaken on the issue concerning the theatres in the hospital, and can copies of same be provided to the Committee”.*

As outlined in correspondence to the Committee on the 21st June 2023, the NPHDB taking learning from other international healthcare projects of a similar scale and complexity commenced a due diligence process in association with STS (advisor to Children’s Health Ireland) and the Design Team in 2017, which is ongoing, to review the design, coordination, construction and commissioning of the specialist ventilation systems within the hospital including the operating theatres. As part of this due diligence process the potential issue with the position of the ceiling grilles was flagged by STS. The Design Team was actioned to respond to the STS report with its opinion on the issues raised as they are responsible for the design of the theatre ventilation systems. This entailed specialist computer modelling to check against guidance stated in the Health Technical Memorandum published by the UK NHS and then later physical testing on site in 2023. On 29th May 2023, BAM with its specialist subcontractors were instructed to engage with the Design Team in a desktop review, to consider an option to move the four ventilation grilles within each of the eleven theatres and to fully understand the outcome of this change, that review is now completed.

A second option to replace the type of grille in its current position has been computer modelled by the Design Team and will be physically tested shortly to verify the computer analysis. Whilst these options are being considered, none have been agreed to date. The NPHDB in association with CHI will decide what

Board Members:

- Ms Fiona Ross (Chair)
- Mr Tim Bouchier-Hayes
- Mr John McGowan
- Mr Alan Seabourne
- Ms Susan Bryson
- Mr Alan Moore
- Mr John Cole
- Mr Alex White
- Mr Michael Shelly
- Mr Michael Barry
- Mr Brian Keogh
- Mr Derek Moran

option is to be instructed to deliver compliant operating theatres in the best interests of the State, it is expected that this decision will be agreed shortly, and further information will be provided to the Committee. Please note that Children's Health Ireland has provided copies of the relevant reports to the Committee by separate cover.

To date none of the operating theatres have been offered by BAM as complete for inspection by the Design Team or commissioned. There is significant work to be completed in these rooms. BAM has been instructed to continue works in accordance with the current design.

3. *"whether a completion programme has been provided that is not compliant and if so, in what way is it not compliant."*

The NPHDB received a new programme from BAM on 18 July 2023 and a progress update of that programme on the 23 of August 2023. The programme is subject to a review by the Employer's Representative (ER) to determine whether the programme is compliant with the Contract. As there are over 40,000 separate activities to be completed over the course of the build and due to the level of complexity and detail involved with a programme of this nature, this review process will take approximately three months to complete. The review is ongoing and initial comments have been exchanged with BAM awaiting a response. Workshops are ongoing.

4. *"what date was it decided to apply the 15% withholding sanction, what date was the contractor was notified and what date was the sanction applied"*

BAM has not delivered on its commitments to manage, resource and deliver its programmes to realise the substantial completion date. The NPHDB has applied all levers available within the Contract to get BAM to deliver on its contractual obligations. In Q3/Q4 2020, the NPHDB withheld payments to BAM as the ER had not received a contract compliant programme.

In June 2023, the NPHDB issued an Employer claim to withhold 15% of the payments due to BAM resulting from BAM's failure to issue a new Programme and four monthly progress reports. This measure was due to come into effect for payments due to BAM for work completed in May and June 2023. BAM submitted a new programme on 18 July 2023 and a progress update of that report on the 23 of August 2023 which is currently being reviewed by the ER. The NPHDB is contractually obligated not to withhold 15% of payments due to BAM until the programme has been determined by the Employer's Representative as either compliant or not compliant with the Contract.

Yours sincerely,



David Gunning

Chief Officer, National Paediatric Hospital Development Board