

Irish Museum of Modern Art

Supplement to Audit Report

As indicated in Note 21 to the financial statements the Irish Museum of Modern Art (IMMA) reached a settlement with its former Director in relation to the non-renewal of his contract at a cost of £457,850. The background to this matter is as follows.

The Articles of Association of IMMA specify that the Chief Executive may be employed on terms and conditions determined by IMMA subject to the approval of the Minister for Arts, Heritage, the Gaeltacht and the Islands with the consent of the Minister for Finance.

In accordance with these provisions IMMA employed a Director on a 5 year contract with effect from 1 October 1990. This contract was renewed, in 1997, for a further five years with effect from 1 October 1995. The use of a fixed term contract suggests that it was intended to avoid the application of the Unfair Dismissals Act 1977 (as amended) so that the Director would have no right of renewal of his contract at the end of the 5 year term.

In 2000, IMMA was advised that the Director's contract was, in fact, subject to the provisions of the Unfair Dismissals Act. For the Act not to apply, the contract would have

- to be in writing
- to be signed by the employer and the employee
- to contain a statement that the Act shall not apply to a dismissal consisting only of the expiry of the term.

In the event, neither of the latter two conditions was met. IMMA was advised that it followed that the status of the Director's contract was similar to that of a contract for an indefinite period, which could not be terminated without just cause or reason, notwithstanding its having been framed as a fixed term contract and the term having elapsed.

In the second half of 2000 a process of consultation and discussion took place, among Board members, as to the future direction of the Museum. Arising from the process the Director was informed on 20 November 2000 that the post of Director was to be advertised. The Director sought a High Court injunction requiring IMMA to retain him in his post and restraining it from the taking any action to replace him. The Board agreed to negotiate on the matter and the proceedings were adjourned on foot of an undertaking by IMMA to act as if an injunction had been granted. A settlement was negotiated through a mediator and was approved by the Board. As part of the settlement it was indicated to the Director that the Board would be in a position to offer him a new 5 year contract. The Director, however, indicated that his future lay

elsewhere and the Board approved the termination of the Director's employment and a severance package. On 4 May 2001 the Chairman of the Board wrote to the Minister seeking consent for these arrangements. On 21 May 2001 the Minister, with the sanction of the Minister for Finance, consented to the terms of the severance package as follows:

- Five years salary at £59,066 per annum,
- Five years pension at £5,084 per annum,
- Five years housing subsidy at £1,200 per month,
- Company car valued at £9,000
- Vouched legal costs up to end of action and cost of tax consultant £56,100.

In addition the legal costs of IMMA were £33,274.

A handwritten signature in black ink, appearing to read 'John Purcell', with a large, stylized loop at the end.

John Purcell
Comptroller and Auditor General

11 June 2002