

DPE 022/009/2017

12 December 2017

To: Accounting Officers

DPER Circular: 23/2017

**Minute of the Minister for Finance and Public Expenditure and Reform
in response to the Committee of Public Accounts Report on the Third-Level Education Sector**

A Dhuine Uasail,

I am directed by the Minister for Finance and Public Expenditure and Reform to enclose, for your information and guidance, a copy of the Minute of the Minister for Finance and Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Third-Level Education Sector.

Issues raised

The Minute of the Minister addresses a number of issues, including;

- Compliance with Public Procurement Guidelines;
- Financial Reporting by Third-Level Institutions; and
- Protected Disclosures.

Enquiries

Enquiries in relation to this Circular can be addressed to Government Accounting Unit, Department of Public Expenditure and Reform, telephone: +353 1 6767571 or email: govacc@per.gov.ie.

Mise le Meas,

Robert Watt
Secretary General

Minute of the Minister for Finance and Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of Financial Statements in the Third Level Education Sector

The Minister for Finance and Public Expenditure and Reform has examined the Committee's Report and has taken account of its conclusions. In relation to the Committee's recommendations, which have been grouped by chapter, sub-themes and by their paragraph number, the Minister's response is as follows:

Chapter 1: Topics common to all Institutions examined

Commercialisation of Intellectual Property

Recommendation 26

The Committee recommends that the Higher Education Authority puts a system in place to monitor and quantify research and administration resources by both the Irish and EU taxpayer which are consumed by institutions in developing commercial Intellectual Property projects. This is necessary in order to eliminate the current lack of financial information and facilitate an assessment with regard to value for money.

The Minister for Finance and Public Expenditure and Reform notes this recommendation and is informed by the Department of Education and Skills that steps are being taken to enhance the robustness of the framework for the development and implementation of Intellectual Property (IP) policies and to ensure greater transparency in the area.

Data on system performance in relation to commercialisation of research is published annually by Knowledge Transfer Ireland (KTI), the office created by the State to support system-wide knowledge transfer. In July, the HEA and KTI commissioned a review of Intellectual Property policies and their implementation and the policies and procedures employed by the HEIs for the management of Conflicts of Interest in respect of the commercialisation of IP.

KTI will work with the HEA to address the findings and recommendations arising from this review which is scheduled for completion by early December 2017. A copy of this review, once finalised, will be provided to the Committee. In order to promote greater transparency and greater understanding of the scale of activities by institutions the HEA will increase its engagement with KTI to ensure that it is able to monitor IP developments on an ongoing basis. Furthermore, the HEA will work with KTI and will follow up with all the relevant institutions to ensure they are aware of the findings and recommendations of the report, will disseminate learnings and to schedule follow-on implementation studies.

Government policy on commercialisation of research is outlined in 'Ireland's national policy on the commercialisation of intellectual property arising from public sector research' which was a report produced by the National "Intellectual Property" Implementation Group.

The Annual Knowledge Transfer Survey (AKTS), which is conducted by KTI in conjunction with the Higher Education Authority (HEA), describes the commercialisation outputs from the Research Performing Organisation (RPO) sector, including Higher Education Institutions (HEIs) and the

associated impacts. This includes information on patenting, licensing, research collaboration with industry, spin-out company creation, and revenue generation from commercialisation.

It is however difficult to quantify the exact amount of exchequer funding in research and administration that is allocated within HEIs on commercialising Intellectual Property projects, given the multiplicity of funding streams and national and international collaborative research options available.

For example, the HEA makes a foundation investment in supporting excellent research across all disciplines. This is intended to support overall research support infrastructure; support the development and supervision of postgraduate provision; allow institutions to give permanent tenure to leading researchers; and free up time of academic staff to allow them to engage in research.

As the largest competitive research funder in Ireland, Science Foundation Ireland (SFI) is also responsible for significant investments into our HEIs. It invests in academic researchers and research teams most likely to generate new knowledge; leading edge technologies and competitive enterprises in the fields of science, technology, engineering and maths. Substantial investments through SFI are made in its Research Centres Programme establishing centres of global scale and reputation, undertaking excellent research and based across our HEI base.

Enterprise Ireland funds programmes to increase the level of collaborative Research and Development activity between industry and academia. This includes support for industry-academic projects known as Innovation Partnerships, Technology Gateways in Institutes of Technology, support for industry led Technology Centres and supports for networking initiatives. The agency also funds specific programmes to accelerate the commercialisation of third level research including the Commercialisation Fund which supports researchers to take the outputs of research with commercial potential to a point where they can be transferred into industry; the Technology Transfer Strengthening Initiative (TTSI) which funds dedicated staff within the Higher Education system to ensure that best use is made of research outputs with commercial potential; and the Campus Incubator Scheme which provides space for spin out companies.

Other research funding is also available under the Horizon 2020 programme from the EU and other sources including Teagasc and the Health Research Board.

This complex research funding environment, added to the overlap between teaching and research activities within institutions, means that it is not feasible to ascertain the specific attribution of all of the relevant activities and costs that contributed in some way to the commercialisation of a particular piece of research. However, the steps outlined above will ensure there is greater awareness of the scale of activity and provide for greater monitoring of developments in the sector on a system wide basis.

Recommendation 27

The Committee recommends that all third-level institutions report annually to the Higher Education Authority on developments in relation to intellectual property and their implementation of the National Intellectual Property Protocol.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that:

- KTI, the office created by the State responsible for, inter alia, monitoring implementation and advising the Department of Business Enterprise and Innovation (DBEI) on the National Intellectual Property Protocol, conducts an AKTS in conjunction with the HEA: http://www.knowledgetransferireland.com/About_KTI/Reports-Publications/KTI-Annual-Review-and-Annual-Knowledge-Transfer-Survey-AKTS-2016.pdf.
- The HEA is a member of the KT Stakeholder Forum convened by KTI which regularly discusses IP-related issues.
- The HEA will set up regular liaison meetings with KTI to ensure that it is able to monitor IP developments on an ongoing basis.
- The HEA in conjunction with KTI is undertaking an externally-commissioned rolling review of IP Policy and Implementation amongst the HEI sector. The report is due to be completed early December 2017. HEA will work with KTI to disseminate learnings and to schedule follow-on implementation studies.

Recommendation 28

The Committee recommends that all third-level institutions ensure that their staff are fully aware of their obligations under Standards in Public Office and Ethics legislation and the requirement to declare any real or perceived conflict of interest, particularly relating to the holding of directorships or shares in spin-out companies.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that:

- The HEA has commissioned two separate reviews (one at institutional and one at national level) relating to the commercialisation of IP / spin out companies by HEIs. The HEA and KTI will use the findings and recommendations arising from these reviews to inform future developments and policy in this area.
- The HEA will write to third level institutions in Q4 2017 and remind them of their legislative obligations in these areas.
- The current codes of governance in place in the higher education sector require that codes of conduct for employees take proper account of Standards in Public Office and Ethics legislation and that such codes also address areas such as conflict of interest. This is reinforced in the updated Code of Practice for the Governance of State Bodies, 2016.
- The codes of governance for the higher education sector are in the process of being updated to take account of the updated provisions in the Code of Practice for the Governance of State Bodies, 2016 and should be finalised by the end of 2017. Reporting by HEIs to the HEA in respect of the 2016/17 financial year will be on the basis of the revised Codes of Governance.

Recommendation 29

The Committee welcomes the fact that the National Intellectual Property Protocol is intended as a living document and recommends that the Department of Education and Skills, the Higher Education Authority and all relevant third-level stakeholders engage fully with the Department of Business, Enterprise and Innovation and Enterprise Ireland to help develop the protocol to ensure the maximum benefit to all stakeholders.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that:

- The HEA will engage with KTI, the agency responsible for monitoring and implementing the Protocol, to ensure that the Protocol is effective in ensuring the maximum benefit to all stakeholders.
- In particular, the HEA will work with KTI to ensure that any relevant findings and recommendations arising from the review of IP Policy and Implementation (that is scheduled for completion by early December 2017) are used to inform future developments and policy in this area.

Compliance with Public Procurement Guidelines

Recommendation 34

All third-level institutions must ensure full compliance with national procurement guidelines and develop measures to ensure that procurement is, to the maximum extent possible, based on a competitive tendering process. Any breach of these guidelines should be reported in a transparent and comprehensive manner on an annual basis.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that:

- All HEIs under the remit of the HEA are required to comply with national procurement guidelines. As part of the HEIs annual governance reporting to the HEA, HEIs must report on any non-compliance in respect of procurement and explain the actions taken to achieve compliance. In his annual certification of institutions' financial statements, the C&AG also draws attention to any instances of non-compliance.
- The review of procurement practices in the higher education sector, that was commissioned by the HEA in 2016 and a copy of which was previously provided to the Committee, highlighted the progress that has been made within the higher education sector in recent years in ensuring compliance with procurement rules. The review also identified some areas for improvement. These include the need for more robust and well-communicated procurement policies and procedures as well as comprehensive corporate procurement plans. The report also finds non-

compliance arising from the devolvement of procurement responsibility and the need for more widespread procurement training for staff. The HEA is continuing to work with the higher education sector to ensure that all procurement undertaken by HEIs is compliant with relevant procurement rules.

- The Department of Education and Skills is currently considering the potential to introduce a financial penalty for those higher education institutions that do not fulfil their governance requirements. This could include non-compliance with procurement rules. This proposal is currently being considered by the Department of Education and Skills.

Recommendation 35

In regard to the specific Dundalk Institute of Technology procurement of student recruitment services in China, the Committee considers that a 15 year relationship with a sole supplier is excessive and recommends that a more competitive tendering process be put in place in spite of any logistical difficulties.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation. The Minister is further informed by that Department that the HEA advised Dundalk Institute of Technology (DkIT) that it required the Institute to undertake a public procurement process when the current contract ended in October 2017. DkIT subsequently initiated a public tender for international student recruitment at the end of October.

Financial Reporting by Third-Level Institutions

Recommendation 42

Except in unavoidable exceptional circumstances, the Committee is of the opinion that accounts should be presented for certification by the C&AG within 6 months of the end of the financial year to which they relate. Where this has not been achieved, the Chairman of the institution should provide a written statement to the Minister for Education and Skills providing a full explanation of why this has not been complied with.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that:

- Following consultation with the HEA, the C&AG wrote to universities and institutes of technology in 2015 specifying that annual financial statements should be submitted to the C&AG for audit within the following specified deadlines:
 - Within 6 months of the end of the 2015 financial year
 - Within 5 months of the end of the 2016 financial year, and
 - Within 4 months of the end of the 2017 financial year.
- The HEA currently monitors compliance by HEIs with these deadlines and requires institutions to explain any delay in the submission of financial statements to the C&AG.

- The Department of Education and Skills is also considering the introduction of a financial penalty system for serious governance breaches that could include late submission of accounts.

Recommendation 43

It is the view of the Committee that penalties in relation to funding should be implemented by the Higher Education Authority where institutions fail to present accounts within 6 months of the financial year end.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that a proposal is being considered, as part of a review of the grant funding model for HEIs, to impose a financial penalty for serious breaches of governance compliance, including failure to provide timely and accurate submission of required information or data; unsanctioned payments to staff; false financial, statistical or governance reporting; and wilful breaches of the relevant codes of governance.

If an institution were to provide an unsatisfactory explanation for the late submission of its financial statements, the imposition of a financial penalty along the lines described above would be considered.

The precise details of the proposed penalty system will be agreed by the Department of Education and Skills in consultation with the Department of Public Expenditure and Reform, HEIs and the HEA by the end of 2017.

Use of and Accounting for Foundation and Trusts

Recommendation 52

The Committee recommends that the Department of Education and Skills, in consultation with third-level institutions, the Higher Education Authority and Comptroller and Auditor General, provides a timeline to ensuring transparency and accountability for foundations and trusts through disclosure on their financial statements

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that it supports the approach to consolidate foundations and trust funds into the financial statements of HEIs unless specifically disallowed by applicable accounting standards. This can be done in a manner that does not impede the effective operation of foundations e.g. by protecting the anonymity of donors. Where institutions feel that for technical accounting reasons, their trust or foundation accounts should not be consolidated, there is a need for appropriate disclosures to be made within the financial statements. In that regard, the

Department of Education and Skills supports the proposal that emerged during discussions at recent meetings of the Public Accounts Committee i.e. the latest available audited accounts for trusts and foundations should be made available with the main financial statements laid before the Oireachtas. The HEA wrote to all institutions in June and July 2017 requiring this approach.

Recommendation 53

Where full consolidation of foundations and trusts is not possible, it is the opinion of the Committee, that full disclosure of the foundations and trusts' transactions and balances should be made in the notes or in an appendix to the accounts.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation. The response to recommendation 52 is also relevant here.

Protected Disclosures

Recommendation 61

It is the view of the Committee that third-level institutions must ensure that all staff are fully aware of the Code of Practice on Protected Disclosures Act 2014 (Declaration) Order 2015.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that all HEIs are required to have protected disclosures policies in place. There is an obligation on all public bodies to have protected disclosures policies in place under Section 21 of the Act. Many institutions already had good faith reporting policies in place prior to the introduction of the 2014 Protected Disclosures Act. The HEA monitors compliance in this regard via the annual governance reporting process. However the HEA will remind institutions of the need to ensure their staff are fully aware of their rights and responsibilities under the Protected Disclosures legislation.

Recommendation 62

It is the opinion of the Committee that all third-level institutions should have an appointed person to accept protected disclosures and that that person's name is communicated effectively to all staff.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that many HEIs already have such a designated person in place. The HEA will write to all institutions in Q.4 2017 requiring them to implement the Committee's recommendation in this regard with immediate effect. Compliance with this requirement will be monitored through the annual governance statement submitted to the HEA by each institution.

Recommendation 63

It is the Committee's opinion that training and related informational material on protected disclosures should be provided to staff of third-level institutions

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that the HEA will conduct a survey of HEIs in Q4 2017 to gather information on how information relating to protected disclosures is communicated to staff. The HEA will use this survey to determine the most appropriate method for delivering information and training on protected disclosures for staff in HEIs.

The Department of Public Expenditure and Reform guidance for public bodies on the performance of their functions under the Protected Disclosures Act, 2014 provides that public bodies should state in their procedures to whom protected disclosures can be made within the body.

Recommendation 64

The Committee recommends that the Department of Public Expenditure and Reform ensure that adequate and appropriate guidance and training are provided to all public bodies in relation to Protected Disclosures.

The Minister for Finance and Public Expenditure and Reform accepts this recommendation. The Protected Disclosures Act 2014 provides robust statutory protections for workers in both the public and private sectors against the real or potential penalisation by their employers where they have brought concerns about wrongdoing in the workplace to light.

Following enactment of the Protected Disclosures Bill in 2014, the Department of Public Expenditure and Reform held a number of briefing sessions for public bodies to create awareness and give them an overview of the Act. The Department subsequently published, in accordance with Section 21 of the Act, a set of guidelines for the purpose of assisting public bodies in the performance of their functions under the Act. These guidelines are available at: <http://www.per.gov.ie/wp-content/uploads/Guidance-under-section-211-of-the-Protected-Disclosures-Act-2014-for-the-purpo.pdf>.

To further support public bodies in implementing the Act, the Department of Public Expenditure and Reform has put in place a Framework Contract for the provision of training services in respect of

protected disclosures, which public bodies can draw down from as required. Two types of training courses are available to public bodies under the Framework:

- *General Overview Training* to develop general knowledge and awareness of the Act among public service employees; and
- *Advanced Training* for staff developing internal procedures for managing protected disclosures; acting as confidential recipients; and following up on/investigating allegations made in a protected disclosure.

In addition to the training framework, a network of officers responsible for protected disclosures policy in Government Departments and bodies has been established to provide advice and guidance on issues and will continue to support public bodies in this regard.

In respect of supports for disclosers or potential disclosers, Transparency International Ireland (TII), which seeks to promote safer working environments for people who speak up about wrongdoings, provides a Speak-Up helpline and last year, with grant support from the Department of Public Expenditure and Reform, it launched the Transparency Legal Advice Centre (TLAC) and Integrity at Work (IAW) Initiative. TLAC is an independent law centre which provides free specialist legal advice about the Protected Disclosures Act, among other things, to people who have made disclosures or are thinking of doing so. The IAW initiative aims to promote positive cultural change in Irish workplaces. Full details on the Transparency Ireland supports are at www.transparency.ie

Chapter 2: Institution Specific Issues

University College Cork

Recommendation 73

Given the substantial amount of public funds allocated on an annual basis to the third-level education sector, all third-level institutions should develop and submit to the Higher Education Authority for its advance approval a value for money based business case in respect of proposals for significant outlays such as UCC's acquisition of the Irish Management Institute.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation with respect to capital projects in receipt of public funds.

The Minister is further informed by that Department that:

- Regarding capital funding, the HEA already requires all third-level institutions to identify major capital development proposals as part of the annual budgeting process.
- In the case of capital projects in receipt of public funding, third-level institutions are required under the Public Spending Code to provide the HEA with the relevant value-for-money business case as a condition of funding.

- These capital projects are then considered by the Department of Education and Skills and reflected, if deemed appropriate, in their priorities for the Government's Capital Plan.

With respect to Universities more generally, historically they were classified as privately controlled non-profit institutions in the National Accounts. In 2012 the CSO reclassified the universities as market producers meaning they were classified to the non-financial corporations sector rather than the non-profit sector. Currently the universities are classified outside Government on the basis that they are (a) privately controlled and (b) market producers. Therefore, the requirement to ensure accountability in respect of the use of public funds must be balanced with the autonomy of HEIs to make decisions on expenditure.

The HEA will review existing practice in this area to identify whether there are any additional measures necessary to ensure that significant capital investment decisions by HEIs do not impact adversely on the Exchequer. In addition, the proposed approach to consolidate foundations and trust funds into the financial statements of HEIs unless specifically disallowed by applicable accounting standards, as outlined in Recommendation 52 will promote greater transparency in this area.

Recommendation 76

The level of legal costs and settlements relating to staff issues incurred by UCC be kept under review by the Higher Education Authority to ensure that the university's recent policy change from "litigation to mediation" drives down the costs.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that the HEA will request a report from UCC in Q4 2017 on the level of legal costs and settlements incurred by the university relating to staff issues, the progress that has been made to reduce those costs, and any impact on industrial relations within the university as a result of the policy change.

Dundalk Institute of Technology

Recommendation 82

The Committee recommends that the Higher Education Authority engages with Dundalk Institute of Technology to develop and monitor a plan of action to address the accumulated deficit within an agreed time frame.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that:

- In January 2016 the HEA agreed a three-year financial plan with DkIT to return to the institution to a breakeven position by financial year end 2018.
- The HEA is receiving quarterly reports and monitoring the situation closely.
- DkIT reported an operating surplus of €211,000 for the 2015/16 year.
- While DkIT's accumulated deficit remains high, the HEA continues to monitor the situation closely and receives regular financial reports from the Institute.

Recommendation 83

Given the key role of the President in the governance of Dundalk Institute of Technology and the difficult financial position faced by the Institute, the Committee recommends that the position of President is filled on a permanent basis without further delay.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation. The Minister is further informed by that Department that a new President was appointed to DkIT on a five year fixed term contract and took up post in October 2017.

University of Limerick

Recommendation 89

The Committee recommends that a review, overseen by the Higher Education Authority, be carried out on sabbatical leave practices in the third-level sector with particular reference to tax compliance.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation. The Minister is further informed by that Department that a national review will commence in Q4 2017 into staff compensation and benefits in the higher education sector. In line with the Committee's recommendations, this review will also examine sabbatical leave practices.

Recommendation 95

The Committee recommends that the Department of Public Expenditure and Reform should issue or amend written guidelines setting out the process to be followed by public sector entities when a severance payment is being considered. In particular, the guidelines should include a comprehensive checklist of the supporting documentation that should be retained on file and clear instructions in relation to the external sanctions that are required before an entity can enter into a severance agreement.

The Minister for Finance and Public Expenditure and Reform accepts this recommendation. A draft Circular is being drawn up that will consolidate the existing arrangements for the offer of severance

terms that currently operate in the civil and public service and, in addition, incorporate additional measures identified as necessary following consideration of the recommendations of the Comptroller and Auditor General Special Report No. 91, Management of Severance Payments in Public Sector Bodies.

The Circular, which it is anticipated will issue before the end of 2017, will address, inter alia, the following matters:

- Preparation of business case to support the decision to offer severance terms
- Obtaining the necessary authority
- Establishing the cost of severance terms
- Severance agreement, and
- Disclosure in the financial statements of public bodies.

Recommendation 96

It is the view of the Committee that members of staff whose employment with a public body has been terminated by means of a severance payment should not be re-engaged on contract or by any other arrangement. In exceptional circumstances where it is being considered, Departmental and/or Higher Education Authority approval should be required.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that the HEA will advise all HEIs in Q4 2017 that any proposals to re-engage staff who have been the subject of severance arrangements must be approved in advance by the HEA. This is in line with the provision of the Employment Control Framework for the higher education sector that requires institutions to seek prior HEA approval for the re-employment of retired staff from that institution.

Waterford Institute of Technology

Recommendation 99

The Committee recommends that the Higher Education Authority engages with Waterford Institute of Technology to develop and monitor a plan of action to address the accumulated deficit within an agreed time frame.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that:

- The HEA has agreed a 3 year financial plan with Waterford Institute Technology (WIT) to return the institute to a balanced budget position.

- The HEA is receiving quarterly reports and monitoring the situation closely. The operating deficit for 2015/16 was €1.689m and the accumulated deficit was €6.7m. The HEA is also working with WIT to address short-term cash flow issues.
- WIT has engaged an independent financial expert since February 2017 to assist in addressing financial issues.

Recommendation 101

It is the view of the Committee that all third-level sector audit committees should comply fully with the provisions of the relevant Codes of Governance of the Irish Universities and of the Irish Institutes of Technology, including prompt production of an annual report.

The Minister for Finance and Public Expenditure is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that:

- The roles and responsibilities of audit committees of governing bodies of HEIs are already set out in the relevant codes of governance and further articulated in the updated Code of Practice for the Governance of State Bodies, 2016.
- The codes of governance for the higher education sector are in the process of being updated to take account of the provisions of the Code of Practice for the Governance of State Bodies, 2016 and should be finalised by the end of 2017.
- Compliance by HEIs in this regard is monitored through the annual governance statement that is submitted by each institution to the HEA.

Recommendation 102

It is the view of the Committee that the Higher Education Authority should play a more proactive role in monitoring and ensuring compliance with the Codes of Governance for the third-level sector.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that:

- Since 2015 the HEA has reviewed its approach to the oversight and governance of HEIs and established a clear Governance Framework for the Higher Education System, which is available at <http://hea.ie/funding-governance-performance/governance/governance-framework-for-the-higher-education-system/>
- The significant existing governance and accountability infrastructure has been built upon with a series of new and improved mechanisms to provide more robust assurance of compliance with legislative and other requirements and more timely and responsive interventions to address any issues arising.

Changes have included:

- Submission by institutions to the HEA of annual governance statements and statements of internal control based on a revised template covering a comprehensive list of governance requirements, with non-compliance in any matter to be identified within the statement.
- Reduced timelines for the submission of draft accounts for certification by the C&AG.
- The introduction of a financial memorandum which is signed by each institution on an annual basis setting out respective responsibilities.
- Establishment of a formal policy framework for intervention when an Institute of Technology is in deficit, and core principles that should apply to universities or specialist colleges in a similar situation.
- The introduction of annual rolling reviews on corporate governance compliance themes, focusing on good practice and areas of improvement across the sector.
- The embedding of the HEA's Strategic Dialogue Process with HEIs and their associated commitment to achieving specific outputs and targets set out in individual performance compacts.
- Strengthening of the HEA's relationship with the Department of Education and Skills around governance via mechanisms including the Annual System Performance Report, a Service Level Agreement, Financial Accountability Framework, Corporate Governance Risk Register and 'early warning' reporting.
- Enhancing the HEA's working relationship with the C&AG via the introduction of quarterly meetings that focus in particular on the status of C&AG audits of financial statements of HEIs and the identification of any issues or difficulties arising.
- This is in addition to other ongoing pieces of work including the HEA's review of its funding allocation model for the distribution of grant funding and the analysis of annual budgets submitted by each institution under the HEA's remit.
- A proposal to introduce a financial penalty for HEIs in instances of serious governance breaches is currently under consideration by the Department of Education and Skills as part of a review of the grant funding model for higher education institutions.
- The Department of Education and Skills will work with the HEA and the higher education sector to identify areas where the existing legislative framework (e.g. HEA Act 1971, Universities Act 1997 and Institutes of Technology Act 2006) will need to be updated.

Dublin Institute of Technology

Recommendation 113

The Head of Finance at all third-level institutions should approve any up-front advance payments when significant sums are at stake. These should be only made in exceptional circumstances and with a clear business case made in relation to any related savings and analysis of risks.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that the HEA will instruct HEIs in Q.4 2017, to comply with this recommendation. The Department of Education and Skills and the HEA will seek guidance from the Department of Public Expenditure and Reform in relation to the most appropriate expenditure threshold (see recommendation 114 below). Compliance with this requirement will be monitored by the HEA through the annual governance statements submitted to the HEA by each HEI.

Recommendation 114

The Department of Public Expenditure and Reform should develop appropriate guidance in relation to up-front payments for procured services as part of general procurement procedures

The Minister for Finance and Public Expenditure and Reform accepts this recommendation and the Government Accounting Unit of his Department will work with the Office of Government Procurement (OGP) to clarify the position in relation to up-front payments for procured services as part of general procurement.

Recommendation 115

The Higher Education Authority should review all procurement framework agreements for the third-level sector and put a requirement in place that periodic due diligence exercises be carried out on suppliers during the lifetime of the framework agreements.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by the Department of Education and Skills that:

- The HEA works closely with the OGP and its education sector hub, Education Procurement Service (EPS), and the HEA will raise the issue of due diligence of suppliers with the OGP to ensure a robust approach. This relationship includes regular procurement compliance committee meetings involving the Department of Education and Skills, OGP, EPS and the HEA and this committee will review the issue on an ongoing basis.
- The HEA will also continue to monitor compliance with all relevant procurement guidelines through annual governance reporting.

Recommendation 116

The Committee recommends that the Higher Education Authority collaborates with third level institutions to examine whether value is being achieved in the provision of and access to articles, books and journals. Such an examination should include an exploration of alternative arrangements that might bring greater financial benefit to the institutions themselves and to the academics in those institutions.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that:

- Currently access to research publications, journals, databases and e-books by universities is managed by the Irish Research eLibrary (IReL) – a collaborative project of the Librarians Group of the Irish Universities Association (IUA). The universities collaborate to agree deals with publishers that offer considerable savings from those that could be agreed on an individual basis. It is funded by the HEA and Department of Business, Enterprise and Innovation. The HEA facilitated a process whereby DIT was also invited to join the IReL consortium in June 2017.
- The HEA will liaise with the IUA Librarians Group in Q.4 2017 to examine the value for money provided by the IReL arrangements.
- The HEA will also engage with the Technological Higher Education Association (THEA) Librarians Group in Q.4 2017 to review the value-for-money being achieved in the provision of articles, books and journals.

Recommendation 119

The Committee recommends that a value for money based business case should always be prepared in advance of significant outsourcing proposals. The business case should include a long-term costs benefits analysis and a comparison in terms of cost and quality with in-house provision.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation. The Minister is further informed that the HEA will continue to require HEIs to undertake a cost-benefit analysis before entering into arrangements with private providers.

Recommendation 120

The Committee recommends that any assessment of outsourcing proposals should take account of relevant social and employment factors.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed that the HEA will require HEIs to take cognisance of social and employment factors as part of any cost-benefit analysis undertaken in advance of entering arrangements with private providers.

Recommendation 128

The Committee recommends that third-level institutions should report annually to the Higher Education Authority on the engagement and associated costs of external consultancy firms contracted to carry out investigations and enquiries on internal matters.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Minister is further informed by that Department that as part of annual governance reporting requirements, HEIs are already required under the heading of 'financially significant developments' to provide details of significant expenditure on internal investigations and the appointment of advisors for investigations. The HEA has expanded this reporting requirement to take account of the Committee's recommendation. It has been included as part of a revised reporting template for the 2016/17 academic year that recently issued to the higher education sector.

Recommendation 129

The Committee recommends that the Higher Education Authority should review and report on the corporate relationships between Cork Institute of Technology and other corporate entities, including those referred to in this report.

The Minister for Finance and Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation. The Minister is further informed by that Department that it is currently consulting with the HEA about the scope of the proposed review.

Given under the Official Seal of the Minister for Finance
and Public Expenditure and Reform on this the 12th day
of December, 2017.



L.S.

A handwritten signature in black ink, reading 'Robert Watt', is written in a cursive style.

Robert Watt

Secretary General

Department of Public Expenditure and Reform