

**Report of a Review of Kildare and Wicklow
Education and Training Board (KWETB) Corporate
Governance Programme Arising from Directions
Issued under Section 41(3) of the ETB Act 2013 By
Minister for Education and Skills, Richard Bruton
TD on 4th October 2018**

Final Report submitted to Department of Education by Dr Richard Thorn on 11th November, 2020

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1. Background and Context

1.1 Investigation into Certain Matters in Kildare and Wicklow Education and Training Board (hereafter 'KWETB')¹

In July, 2018 this Reviewer submitted a report of an 'Investigation into Certain Matters in Kildare and Wicklow Education and Training Board' to the Department of Education and Skills (the '**Department**' hereafter). That investigation was instigated by the Minister for Education and Skills (the '**Minister**' hereafter), Richard Bruton TD, in exercise of his power under section 40 of the Education and Training Board Act 2013 (the '**Act**' hereafter)². The need for the investigation arose from matters identified by a Comptroller and Auditor General (the '**C&AG**' hereafter) audit of the KWETB.

Amongst the recommendations made in the report of the investigation were several dealing with governance and oversight of the activities of the KWETB. These that subsequently became the subject of a Direction by the Minister under Section 41 of the Act. In addition, parts of the report of the investigation were referred to the Garda Economic Crime Bureau by this Reviewer. The Reviewer is aware that the Department referred the report *in toto* to An Garda Síochána.

1.2 Direction to KWETB by the Minister

The Minister wrote to KWETB on 12th September, 2018 indicating his intention to issue a Direction to the Board under Section 41 of the Act. On 4th October, 2018 the Minister issued the Direction³.

The requirements of the Direction included, *inter alia*,

- the preparation of an Action Plan (which has subsequently been referred to as the 'Corporate Governance Programme (hereafter the '**CGP**')) by KWETB to address the various recommendations and requirements laid out in the Direction, by this Reviewer and commitments made by, and subsequent organizational development work undertaken by, the KWETB,

¹ The Reviewer in this report makes a distinction between 'The KWETB' and 'The Board of the KWETB'. The latter refers to the entire entity (as per the Act) and includes both the statutory board and the executive whereas the latter refers only to the statutory board.

² The full Act may be found at <http://www.irishstatutebook.ie/eli/2013/act/11/enacted/en/html>.

³ <https://www.education.ie/en/Publications/Education-Reports/investigation-kwetb-letter-from-minister.pdf>

- quarterly reports to the Department on progress of the Corporate Governance Programme, until notified otherwise.

1.3 This Review

Following the issuing of the original report of the investigation in September 2018 by the Department, the Board of the KWETB accepted the Direction of the Minister and the Executive of the KWETB and developed a plan and process for its delivery. On 13th December 2018 the Chairperson of the Board wrote to the Minister committing to address the various governance issues and detailing the steps that had been taken to that date. At its December Board meeting the plan was approved by the Board. The KWETB sent a comprehensive Corporate Governance Programme (hereafter 'CGP') report to the Department in January 2019. This was followed by quarterly progress reports and a close out report in May 2020.

The Department, in anticipation of concluding the process laid out by the Minister in his Direction, now wish, *inter alia*, to have external validation of the implementation of the CGP. The full Terms of Reference for this review are provided in Appendix Two.

In conducting the Review, the Reviewer sought to determine whether or not the claimed actions covered in the CGP could be validated.

1.4 Sub Judice Matters

The Reviewer referred a part of the report of the original investigation to the Garda Economic Crime Bureau while the Department referred the report of the investigation *in toto* to the same agency. The Reviewer is aware that there is an ongoing criminal investigation and that arrests have been made arising from An Garda Síochána investigations.

The Terms of Reference for this review make specific reference to the need to ensure that no part of the review interferes with the ongoing criminal investigation. At no stage in this Review did it become apparent that continuation would interfere with the criminal investigation.

1.5 The KWETB

The KWETB serves one of Ireland's fastest growing regions in Ireland. The KWETB has enrolments of a little under 30,000 primary, post primary and further education students. It operates a complex mix of services including Youthreach, literacy programmes, apprenticeships, back to education and adult and night time programmes. In common with all the other ETBs it is still coming to terms with the cultural and administrative challenges of the mergers that took place under the Education and Training Boards Act of 2013⁴. The building of organisation capacity, including staff and back office capacity to deal with new and improved finance and HR processes and student registration and asset management systems, is an ongoing challenge and requires constant attention. The dispersed provision of services through the network of schools, adult education, further education and training centres means that ensuring everyone is operating to the same standards, for example of procurement and registration, remains a challenge. The Reviewer comments below on organisational development actions taken by the KWETB to strengthen its capacity to deal with the triple challenges of growth, the merger process and previous failings in corporate governance.

It must also be noted that, at the time of preparation, the Department of Education and Skills is itself undergoing one of the most far reaching organisational changes in the history of the State; the splitting of the Department into the Department of Further and Higher Education, Research, Innovation and Science and the Department of Education. Education and Training Boards straddle the two Departments. At the time of preparation of the report it was the Department of Education that was the commissioning authority.

⁴ <https://www.etbi.ie/wp-content/uploads/2013/12/a1113.pdf>

1.6 Investigator Statement

During the period that the original investigation was being undertaken the author of the Report of the investigation, had been engaged as a Subject Matter Expert by Prospectus, a consulting company, which had been engaged to undertake a Mid Term Review of the SOLAS strategic plan. The Reviewer disclosed this matter to officials of the Department at the time and to all other relevant persons during the course of the Mid Term Review.

The author of the report has had no other connection, current or historic, with KWETB.

2. Acknowledgements

The Reviewer gratefully acknowledges the support provided by the Department to the investigation. In particular, the Reviewer wishes to thank Luke Donnelly, for providing documentation and dealing with technical queries.

The Reviewer wishes to thank members of the Executive of KWETB, in particular Mr. Joe Kelly, Dr. Áine Murphy and Ms. Emer Roy who assembled the large amount of information required for consideration and dealt with the Reviewer's many queries. Dr Deirdre Keyes, Chief Executive and Mr. Daragh Fitzpatrick, Chair of the Board of KWETB were very helpful in ensuring the Review ran smoothly. The Reviewer also wishes to acknowledge the staff of KWETB who assisted the investigation by providing information and who dealt with queries. Members of staff and the Board of KWETB made themselves available to meet the reviewer and their perspectives were of significant benefit to the review, as were the views of a number of people independent of the KWETB.

3. The Review

3.1 Commencement and Submission

The Review commenced on 14th September, 2020. A draft of the review, excepting finding and recommendations, was provided on a confidential basis, to the Chief Executive (hereafter ‘CE’) on 7th October, to check for errors of fact. The draft was submitted to the Department on 13th October 2020 and, following observations by the Department, the final report was submitted on **TBC**.

3.2 Contacts and Meetings

All contacts with KWETB were virtual and included email, MS Teams meetings and phone conversations. Fifteen semi-structured interviews were held with members of staff of the KWETB, members of the board of KWETB and people external to KWETB. Amongst those met were the Chair of the Board, Vice Chair of the Board, CE and Chairs of the Audit and Risk (hereafter ‘ARC’) and Finance Committees. Notes were taken to assist in the preparation of the report but a formal minute was not prepared and neither have comments been ascribed to individuals. In addition to the fifteen interviews two detailed, unsolicited submissions were received from members of the Board.

3.3 Layout of Report and Approach to Review

The first three sections (including this section (3)) deal sequentially with the ‘Background and Context’, ‘Acknowledgements’ and details on the conduct of ‘The Review’.

Sections 4, 5, 6 and 7 deal in turn with Terms of Reference a), d), c) and b). In each case the general process of data triangulation⁵ followed was similar;

1. the Reviewer considered the particular issue on the basis of information and claims supplied/self-reported/made by the KWETB. This information came in several forms including progress charts, agenda items at meetings and reports,
2. the Reviewer sought available written evidence from third parties to validate the claims (e.g. C&AG and internal audit reports),

⁵ Data triangulation refers to the use of different data sources (including written, oral, qualitative and quantitative) to analyse an issue to improve the credibility of the findings.

3. the claims and written evidence were explored in a series of semi-structured interviews with members of staff of KWETB, members of the Board and a number of people external to the KWETB. Fifteen interviews ranging in duration from 30 minutes to 90 minutes were conducted online in accordance with Covid-19 guidelines.
4. Reviewer findings and recommendations were drawn from steps 1) to 3).

Section 8 deals with Terms of Reference e) and f) and, with one exception, draws from the previous four sections.

The remaining Terms of Reference g) to p) are procedural and are not addressed specifically in this report.

Section 9 is a summary of the findings and recommendations.

4. Term of Reference a)

Examine and report on the Corporate Governance Programme in KWETB with a particular focus on progress made on the issues which formed the directions issued by the Minister for Education and Skills in October 2018

The Corporate Governance Programme

The CGP undertaken by the KWETB following this Reviewer's report of 2018 was directly informed by the Minister's *Direction* (specific details of which can be found in Appendix One), the *Recommendations* in this Reviewer's original report⁶ (a summary of the Recommendations can be found in Appendix Three), the KWETB's own *commitments* to actions needed to improve governance⁷ and subsequent organisational analysis by the ETB.

Assessing progress on the *Direction*, *Recommendations* and *commitments* incorporated in the CGP

Four groups of source material have been used to assess the evidence of claimed progress on the CGP:

- Material prepared by the Executive of KWETB,
- Minutes of meetings of the Board of KWETB its ARC and its Finance Committee,
- External reports,
- Interviews with KWETB staff and Board Members and people independent of KWETB

Material prepared by the Executive of KWETB

The Reviewer acknowledges that while the final CGP was agreed with the Department in early 2019 the KWETB had proactively initiated a series of actions aimed at improving Governance in February 2018 upon receipt of his draft report of his previous investigation. These actions included, but were not restricted to, the preparation of the CGP and the commissioning of pieces of work on governance to be undertaken by external service providers.

⁶ <https://www.education.ie/en/Publications/Education-Reports/investigation-kwetb.pdf>

⁷ The KWETB in its response to the Draft Report of the original investigation made specific commitments to governance improvements. These commitments are included in summary in Appendix Four.

The CGP, as presented by the Executive, consists of the original plan, a series of reports to the Department detailing progress and a final report showing close out of actions. The plan is detailed and comprehensive and presented under headings and sub headings that cover the *Directions, Recommendations* and *commitments*. Start and finish dates and assigned responsibilities are included. The reports to the Department detail progress under each of the headings and sub headings.

The Closing Report, dated 27th May, 2020, shows completion of the programme and includes a comprehensive list of tangible deliverables. These deliverables include, but are not restricted to, policies, procedures, various forward plans, control mechanisms and reports. The Executive has also provided a document that details the rationales for claiming delivery of each of the action areas. The rationales include examples of the impact of successfully delivery and the existence of new and reviewed policies and procedures.

The implementation of the CGP was overseen by a Steering Group representing both Executive and Board with regular review by the ARC. The project management methodology provided for an internal Project Manager, a project sponsor from the Executive, weekly meetings and a sign off process through the Steering Group. Updates were provided to the Board.

Minutes of meetings of the Board of KWETB and its ARC and Finance Committee

It is clear from the Minutes of the Board from early 2018 on that the impact of this Reviewer's previous investigation, the C&AG's expressed concerns, the Garda Economic Crime Bureau investigation and internal difficulties were challenging in the extreme. The Institute of Public Administration (hereafter '**IPA**') was commissioned to undertake a review of board effectiveness in 2018 and the final report from this work, which details the challenges, was published in early 2019.

Notwithstanding the difficulties faced by the Board, it is clear that specific actions, of which the Board were aware, were taken to initiate the process of governance reform. Work on policies and procedures was commissioned from the IPA in mid-2018. The service provided by IPA also involved Board induction in September 2019. the report on Board effectiveness was commissioned in 2018 (September) from the IPA. Irish Public Bodies insurance company (hereafter '**IPB**') was commissioned on a number of occasions to help assess and manage risk effectively in the organisation and develop the risk register.

In July 2019 the Board of the ETB changed and from later that year through to May 2020, when the final report on the CGP to the DES was submitted, there were regular updates on progress provided to the new Board.

While the ARC had a formal role in reviewing the progress on the CGP the ARC did not deal with the issue as a standalone item in 2018 or in that portion of 2019 during the period of the ARC that was established by the previous Board. A new ARC was established in November 2019, following the appointment of a new Board in July 2019. That ARC met seven times between late 2019 and May 2020 with minutes from all those meetings being made available to the Reviewer. The ARC also met in September 2020 but signed off minutes were not available at the time of preparation of this Review. The ARC is also due to meet in November 2020. On the basis of the minutes available it is clear that the CGP, together with more recent audit (both C&AG and internal audit) findings were actively discussed by ARC members, and members of the Executive invited to comment.

External Reports

In the previous section the Reviewer sought evidence of the implementation of the CGP on the basis of internal documentation. In this section the reviewer is concerned to determine whether or not external agencies validate the KWETB's own stated position on the CGP.

The C&AG in its audit of the financial statements for 2018 specifically notes

The audit noted that KWETB developed a Corporate Governance programme to improve its governance and internal control systems which was approved by the Board in December 2018 and progress has been made since then to improve the governance and internal control processes

The Internal Audit Unit for the Education and Training Boards (hereafter '**IAU-ETB**') is a unit based in Cavan and Monaghan ETB that provides audit services to the ETBs. The work of the IAU is overseen by a steering committee representative of the ETBs, ETB Ireland (ETBI), the Department, SOLAS and external members including the Chairperson with relevant governance and/or financial experience.

The IAU-ETB has not considered the CGP *in toto*. It has, however, conducted an audit on procurement for the period July 2017 to December 2018. The Director of the IAU-ETB in his opinion letter concluded

Kildare and Wicklow ETB has, in my opinion, an adequate system of internal control in place regarding Procurement Compliance.

In June 2020 the IAU-ETB submitted an Opinion Report on 'Review of Previous Audit Recommendations in Kildare and Wicklow ETB'. The purpose of this review was to test whether KWETB had an effective process for overseeing and implementing recommendations made in prior Internal Audit reports. This review did not cover IAU-ETB audits reported on in 2019 and 2020 but it did find as 'adequate' the internal controls in place for the other audits it reviewed. The Reviewer returns to this below.

The final external source of validation for development and implementation of the Corporate Governance Programme is the IPA. The IPA undertook two significant roles from 2018 to early 2020. In the first, the IPA worked closely with the KWETB to review, update and develop new policies, provide templates for meetings and draft terms of reference for the Board, all within an overall corporate governance framework. The IPA provided a report on this work in April 2020. The work is comprehensive in scope and, importantly in the context of the Reviewer Findings and Recommendations, identifies areas for enhancement. In the second, the IPA undertook a review of Board effectiveness. This work commenced in September 2018, involved an online survey and follow-up semi structured interviews and was reported on by the IPA in March 2019⁸.

Interviews with KWETB staff, Board Members and people independent of KWETB

The Reviewer interviewed fifteen people as part of the Review. These consisted of

- Board members, including the Chair and Vice Chair, members who were new to the Board and members who had served on the previous Board,
- Members of staff of KWETB,
- People external to the KWETB but who have had connections to the ETB including the Chair of the ARC and Finance Committee.

In all cases it was recognised that the CGP had been implemented comprehensively, with diligence and integrity and transparently. The impact of implementation has been felt throughout the organisation. Many people interviewed commented on the tightening up of policies and procedures. Included amongst the interviewees were two Principals who noted that while the new and revised policies and procedures had

⁸ A new Board was appointed in mid-2019. Two members of the previous board were reappointed to the new Board

undoubtedly created additional paper work there was recognition that the changes were necessary.

Reviewer Findings and Recommendations

Significant progress on the issues which formed the directions issued by the Minister for Education and Skills in October 2018 has been made by the KWETB. The Reviewer recognises that a considerable body of work has been undertaken on the CGP in the last two years by the Executive, Board and ARC. However, effective governance requires ongoing attention to ensure **compliance** with the various regulatory obligations and ongoing oversight of the **performance** of the organisation to ensure its mission is being met. Effective governance is a shared endeavour between the Executive and Board and the Reviewer recommends that:-

- **The Executive develop a rolling programme of regular review of policies and procedures focusing on effectiveness and fitness for purpose,**
- **The Board develop a ‘map’ of assurances that focuses on the key areas from which the Board draws assurances on the performance and compliance of the KWETB⁹. This ‘map’ of assurances should inform a rolling Board work programme that allows a focus on specific areas of assurance at each Board meeting. This work programme should complement and reinforce, and not replace, the work of the ARC and Finance Committee and take account of the separation of reserved and executive functions.**

Both the recommendations will be referred to again in the section dealing with Terms of Reference e) and f).

⁹ A ‘map’ of assurances covers management assurances (e.g. reports to the Board on performance and compliance), external reports (e.g. C&AG, IAU-ETB, health and safety, ICT), internal management reports (e.g. student surveys, customer care surveys) risk register and risk management, procurement, asset management and school management board reports.

5. Term of Reference d)

To advise if the KWETB Corporate Governance Programme meets the requirements of the Code of Governance¹⁰ for ETBs 2019 and identify any specific issues upon which further action is required by KWETB

Codes of Practice for the Governance of Education and Training Boards 2015 and 2019

The ETB sector has been subject to a number of different codes of practice for governance: 2005, 2015 and 2019.

At the time of the original investigation by this Reviewer the 2015 version was extant. The 2019 code became effective from the 30th January, 2019.

To ensure compliance with the 2019 code KWETB has implemented a self-assessment tool provided by IPB. The tool identifies the matters to be addressed in the new Code and provides an opportunity for an ETB to assess progress and degree of compliance. The KWETB has most recently updated this tool in September 2020. The tool was applied and a list of tasks to be undertaken to ensure full compliance with the Code was identified and documented. At the time of this review the only, self-reported, major matter of non-compliance is a Customer Charter. This is being developed by a forum overseen by senior staff of the ETBs on behalf of the whole ETB sector.

Documentary Evidence of Compliance as Claimed in the Self-Assessment

At the time of preparing this report there were no external reports/audits of compliance, or otherwise, with the updated Code. However, where claims of compliance were made for those areas of the code that needed addressing these were checked against documentary evidence supplied by KWETB. These matters included monitoring and reviewing the effectiveness of internal controls, a fraud risk review, the registration, monitoring and tracking of all assets (capital, fixed and ICT), the development of a statement of strategy and a customer charter, as noted above.

Interviews with KWETB Staff, Board Members and People Independent of KWETB

The interviews undertaken by the Reviewer covered all aspects of the CGP, including the new Code – the comments made in the previous section are applicable here.

Reviewer Findings

¹⁰ https://www.education.ie/en/Circulars-and-Forms/Active-Circulars/cl0002_2019.pdf

The Reviewer is satisfied that the actions required and claimed as completed as a result of completing the IPB self-assessment tool have been completed, excepting the Customer Charter, as noted above.

6. Term of Reference c)

Procurement, property and contract management and board engagement were specific issues identified in the original investigation and are a particular focus in the Ministerial directions – the extent to which issues are now appropriately addressed by KWETB and evidence for a sample of issues in each instance

Procurement Procedures and Policies

Multiple failures in the area of the procurement of goods and services were central to the findings of this Reviewer in the original investigation and to C&AG reports. Unsurprisingly, procurement was a central component of the CGP. Procurement within the CGP has consisted of four components; review of the procurement process and implementation of new procedures (including adoption of a sector wide ETBI-developed Procurement Policy¹¹), training in the new procedures, development of a procurement plan and engagement with the sector wide procurement initiative through membership of an ETBI procurement network.

Procurement by KWETB operates using one of three processes; from frameworks established by the Office of Government Procurement, through frameworks established by Education Procurement Services or directly of the service or good is not available through either of the previous sources.

Sample of Procurement, Property and Contract Management Cases

Five samples of procurement were selected for review; for loose furniture, stationery, an architectural consultant, a consultant for a building project and a consultant for mechanical and electrical works. The KWETB supplied files on each of the tenders and the Reviewer checked to ensure that each tender followed the required process including specifications, tender notices, submissions, openings, evaluation, compliance evaluation, responses to tenderers and contracts. In all five cases documentation was clear and comprehensive and followed a consistent process.

In addition to the five samples of procurement, the Reviewer considered leases entered into by the KWETB. A property register was made available to the Reviewer which contains details including ownership status, date of agreements, address of leases as well as an explanatory note on the property. At the time of Review the KWETB had recently (20th June, 2020) developed and approved a new lease policy to replace the

¹¹ <http://kildarewicklow.etb.ie/wp-content/uploads/sites/15/2018/04/KWETB-Procurement-Policy.pdf>

existing leasing policy and procedure arrangements. One lease only has been subject to this policy and that lease process is not yet complete.

Evidence of Management of Cases

The IAU-ETB audited procurement in KWETB for the period July 2017 to December 2018. The Director of the IAU-ETB concluded that the systems of controls were 'adequate'. The Reviewer is concerned that this audit does not cover the period when the effects of the CGP were most likely to have been felt within KWETB, i.e. through 2019 and 2020.

The Reviewer interviewed internal procurers and a person independent of the ETB with oversight responsibility for the procurement function. On the basis of those interviews the Reviewer is satisfied that the CGP has resulted in a significant tightening of procurement processes and procedures throughout the organisation at both central and school level. The involvement of budget holders and staff with specialist expertise in the tendering process, together with extensive procurement training, has resulted in a more effective procurement process. However, interviewees did acknowledge that risks remain, particularly in respect of local purchasing of smaller items leading to a risk of spend over the threshold that requires a procurement competition. This matter will require constant monitoring and training.

Reviewer Findings and Recommendations

The reviewer is satisfied that the CGP, as it deals with Procurement, is comprehensive and has impacted on the way procurement is approached throughout the organisation. The Reviewer is satisfied that if implementation continues risks to the KWETB should be significantly lessened over time. However, ongoing assurance of adherence to effective procurement standards will require third party confirmation and the Reviewer recommends that:-

- **There be an audit of procurement within the next two years by the IAU-ETB as part of the rolling policy and procedure review process.**

With regard to leasing arrangements, the Reviewer recognises the existence of a new policy and procedures. However, no new leasing arrangement, has gone through the procedures in their entirety. The Reviewer therefore recommends that:-

- **There be an audit of the new lease arrangements within the next two years, or when five leases have progressed through the new lease policy and procedures, whichever comes sooner, as part of the rolling policy and procedure review process.**

7. Term of Reference b)

The special report of the C&AG¹² into the 2015 KWETB Financial Statements and issues raised by the C&AG in the subsequent KWETB Financial Statements also deal with areas that are covered by the directions - review and report on the extent to which these issues have been addressed in the KWETB Corporate Governance programme

The Special Report

The original investigation by this Reviewer arose as a result of issues identified by the C&AG whilst undertaking the annual audit of the KWETB for 2015. That audit was not completed and the C&AG awaited the results of enquiries of KWETB by the Department and the report of this Reviewer's investigation before attempting to complete the audit. In December 2018, following the publication of the report of this Reviewer's investigation, the C&AG issued a Supplementary Report¹³ on the Financial Statements of 2015 of the KWETB.

The Supplementary Report deals with lapses in controls over procurement of capital projects and certain other expenses.

Annex A of the C&AG Supplementary Report provides an overview of the audit query in respect of control lapses and the responses by the current CE in which commitments are made to changes in policies and procedures and future performance in respect of the matters raised by the C&AG. This Review has taken each of those responses in turn, checked to ensure that the commitments given by the CE are valid and provides a finding.

Issue – Contract Documentation

In summary, the issues were concerned with inadequate record keeping and failure to follow the appropriate tender processes.

Response

The 2015 procurement policy has now been replaced by the ETB Sectoral Policy which was adopted by KWETB in March 2018. Work is ongoing to ensure full understanding and implementation of this policy.

¹² <https://www.audit.gov.ie/en/Find-Report/Publications/2019/Report%20106%20-%20Supplementary-Report-KWETB-Financial-Statements-2015.pdf>

¹³ Provided for under Section 7(4) of the Comptroller and Auditor General (Amendment) Act 1993 (as amended by the Education and Training Boards Act 2013)

Supporting documentation is required at all levels of approval and at all stages of the procurement process. This is further supported by a financial authority and approvals levels policy.

Reviewer Findings

See comments previously in respect of term of Reference c). The Reviewer is satisfied that the procurement issues identified in the C&AG Special Report have been addressed in the context of the CGP.

Issue – Summer Works and Related Payments

In summary, the audit queried tender processes adopted, the engagement of consultants and contracts awarded in building projects.

Response

KWETB have implemented the Sectoral Procurement Policy which was adopted by KWETB in March 2018 and work is ongoing to ensure full understanding and implementation of this policy. A schedule of briefing/training sessions has commenced for staff, including organisation support and development staff, school principals and training centre managers.

Reviewer Findings

See comments previously in respect of term of Reference c). The Reviewer is satisfied that the procurement issues identified in the C&AG Special Report have been addressed in the context of the CGP.

Issue – Project Cost Overruns

In summary, the audit queried a series of cost overruns relating to new and temporary building works.

Response

KWETB accepts that there was non-compliant management practices on the Arklow College Project. The decision to accelerate the project resulted in an extra payment of €483,000 which was agreed through a conciliation process.

Following our review of the situation, we have concluded that KWETB was not fully compliant in procuring contractors to move the temporary accommodation. We can confirm that all necessary procedures and processes with regard to procurement will be followed in similar circumstances, should they arise.

Reviewer Findings

The issues that arose in respect of cost overruns relate to procurement failures and the relationship between the KWETB and the Employer's Representative.

In relation to procurement, see the Reviewer's comments previously in respect of term of Reference c). The Reviewer is satisfied that the procurement issues identified in the C&AG Special Report have been addressed in the context of the CGP.

In relation to the relationship between the KWETB's agents and Employer Representatives working on behalf of the ETB the KWETB has previously committed to respecting the role of the Employer's Representative in the response of the KWETB to this Reviewer's original investigation¹⁴. The CGP included the development of a protocol dealing with the role of the Employer's Representative in which it is made clear, *inter alia*, that

The Employer must never issue instructions directly to the Contractor.

The Reviewer is satisfied that there is no ambiguity about the role of the Employer's Representative.

Issue – Propriety Matters

In summary, these refer to standards of conduct, behaviour and corporate governance and, in this case, relate to a rental agreement, disposal of a motor vehicle, hotel expenditure and subsistence claims.

It should be noted that, in relation to the rental agreement, aspects of the matter were referred by this Reviewer to the Garda Economic Crime Bureau and the Reviewer makes no further comment on the CE's response, which is not included here but is in the Supplementary Report of the C&AG.

Response

Procedures for monitoring the use of pool vehicles were in place but were not followed in all cases and therefore gaps in records have been identified. Following a review of the business case for using pool vehicles in KWETB, we can confirm that the practice is now discontinued.

Following a KWETB review of the sale of the van through an auction house, we accept that information provided to the Office of the Comptroller and Auditor

¹⁴ <https://www.education.ie/en/Publications/Education-Reports/investigation-kwetb.pdf>

General is incomplete. While we are unable to locate any further documentation that would clarify the situation, we can confirm that KWETB no longer uses or will use the services of an auction house for the purchase or disposal of vehicles.

KWETB accepts the conclusion of the Comptroller and Auditor General about the expenditure at a five-star hotel and golf resort. We are currently carrying out a full review of our hospitality and travel policies to ensure value for money in line with best practice and relevant Department of Education and Skills and Department of Public Expenditure and Reform circulars.

Reviewer Findings

Review of the KWETB practices in respect of pool vehicles, their use and subsequent disposal was provided for in the CGP. The KWETB confirmed that the use of pool vehicles has ceased. It was confirmed to the Reviewer that all pool vehicles have been disposed. The Reviewer has examined a register showing details of the disposal of four vehicles. One vehicle was sold at auction prior to the provision of this Reviewer's draft report in early 2018 to KWETB and three subsequent to the provision of the draft report. The details provided for the three vehicles disposed since receipt of the draft report claim disposal to the highest tender and the involvement of IPB-recommended motor assessors in the disposal.

In respect to hospitality and travel policies, the policies were reviewed and new policies and procedures issued in line with Department and Guidelines. It was confirmed to the Reviewer during the course of the interviews that hospitality provision has been significantly curtailed in comparison with the situation prior to the Investigation by this Reviewer.

The Reviewer is satisfied that the issues identified by the C&AG in respect of hospitality and travel have been addressed in the CGP.

8. Terms of Reference e) and f)

To advise if good practice in corporate governance is now embedded in all areas of KWETB, including at:

- *KWETB board level*
- *KWETB finance, audit and risk and other committees;*
- *KWETB Executive and head office;*
- *KWETB schools, further education and training centres and other centres of education;*

Where there are any gaps in evidence of the embedding of good corporate governance across KWETB the steps necessary for that process to take place

Context

Governance refers to the systems and procedures used to direct, control and manage organisations. It involves effectiveness (doing the right things) and efficiency (doing things the right way). It is concerned with performance of the organisation and compliance with legal and regulatory requirements. It requires leadership at board level and throughout the organisation and it requires adherence to ethical and behavioural standards.

The overall purpose of effective governance is not, primarily, to satisfy audit standards or to meet legal and regulatory requirements but, rather, to more effectively meet the mission and purpose of the organisation. When governance fails it fails the purpose of the organisation. Conversely, when effective governance is present the mission of the organisation is more effectively met. In the case of KWETB, effective governance means that the needs of the communities that KWETB serves and, more particularly, the needs of its students at every level from primary to PLC, many of whom are from disadvantaged backgrounds, and many of whom are vulnerable, are more effectively met.

Reviewer Findings and Recommendations

The CGP embarked upon by KWETB has been comprehensive, undertaken with an obvious desire to improve and a recognition that while much has changed effective governance is always a work in progress. There is clear evidence that the new and revised systems and procedures are being implemented at schools and adult education

centres, within the central administration and in the activities of the Finance Committee and ARC.

In addition to reviews of policies and procedures, the implementation of the CGP has involved the establishment of new staff positions and training arrangements. To support the CGP the KWETB has created six new positions that either directly or indirectly support the ambition of the CGP. These include a Corporate Governance and Compliance officer, procurement, buildings and IT managers and a finance officer. These new posts have been embedded within a much enhanced organisational structure and supported through training and development to assist in the implementation of the new and revised policies and procedures and embed appropriate, supportive behaviours.

The Reviewer is of the opinion that at Finance and Audit and Risk Committee, Executive and head office, school and centre levels there is reason to be confident that the implementation of the CGP will substantially reduce the risk profile of the KWETB and improve its capacity to meet its mission.

While there is much to commend in KWETB's implementation of its CGP, concerns were expressed by many of those interviewed about one specific matter – the capacity of the Board to provide the necessary leadership to ensure ongoing adherence to high standards of corporate governance. During the course of the interviews, it was recognised that the new board and its Finance Committee and ARC had worked effectively and collegially on all aspects of the KWETB, including the CGP. However, concerns were expressed by all about recent unhelpful developments at board level that have diminished trust and effectiveness. In considering the commentary of those interviewed, it is the Reviewer's opinion that there is a significant risk that, unless these issues are addressed, the Board's capacity to continue to lead the improvements in governance in KWETB will be diminished. Accordingly, the Reviewer recommends that

- **There be an immediate external review of board effectiveness,**
- **Agreement be established by the Board on the legal distinction between reserved and executive functions, the role of the ARC and Finance Committee in supporting the Board and the purpose of 'in camera' meetings,**
- **The Board agree an annual work programme that recognises the distinction between reserved and executive functions and which builds on**
 - 1) **a rolling programme of regular review of policies and procedures prepared by the Executive that focuses on effectiveness and fitness for purpose,**

- 2) a 'map' of assurances that focuses on the key areas from which the Board draws assurances on the performance and compliance of the KWETB to allow a focus on specific areas of assurance at each meeting.

9. Summary of Findings and Recommendations

The Reviewer finds that substantial progress has been made by KWETB in improving the effectiveness of its corporate governance. The Corporate Governance Programme agreed with the Department has been implemented comprehensively throughout the organisation and there is evidence that the programme has effected change in the organisation. Recommendations are made to ensure the ongoing effectiveness of the programme.

The Reviewer finds that recent developments in the functioning of the Board of the KWETB give rise to a risk that the ability of the Board to provide leadership to the organisation may be reduced. Recommendations are made to help the Board maintain an effective leadership role in the governance of the KWETB.

The Reviewer recommends that:-

- **There be an audit of procurement within the next two years by the IAU-ETB as part of a rolling policy and procedure review process.**
- **There be an audit of the new lease arrangements within the next two years, or when five leases have progressed through the new lease policy and procedures, whichever comes sooner, as part of the rolling policy and procedure review process.**
- **There be an immediate external review of board effectiveness.**
- **Agreement be established by the Board on the legal distinction between reserved and executive functions, the role of the ARC and Finance Committee in supporting the Board and the purpose of 'in camera' meetings.**
- **The Board agree an annual work programme that recognises the distinction between reserved and executive functions and which builds on**
 - 1) **the rolling programme of regular review of policies and procedures prepared by the Executive,**
 - 2) **a 'map' of assurances that focuses on the key areas from which the Board draws assurances on the performance and compliance of the KWETB to allow a focus on specific areas of assurance at each meeting.**

Appendix One

Extract from Letter to KWETB by Minister for Education and Skills, Richard Bruton TD on 4th October 2018 giving a Direction under Section 41(3) of the ETB Act 2013

I now wish to confirm that my direction to KWETB under Section 41 (3) of the Act is as follows:

- To review the actions set out in Appendix Three to the Section 40 report in the light of receipt of the final report and the findings and recommendations contained therein.
 - To implement a final action plan arising from the review above. The action plan should be agreed with my Department before finalisation.
 - To review the measures which are in place in the ETB to prevent conflicts of interest and inappropriate interventions in processes, which may be contrary to Public Procurement Procedures/internal controls in relation to procurement, contract and project management in particular. This review is to include circumstances where emergency situations arise with school or other buildings.
 - To ensure that mandatory governance training is provided to new and existing board members;
-
- To conduct a Board self-evaluation, with appropriately qualified external input, to ensure that the Board is operating effectively and has appropriate procedures in place, including in relation to the management of conflicts of interest and oversight of the executive which is accountable to the Board for the carrying out of executive functions.
 - To provide a comprehensive update to the Department on the above matters within three months and quarterly thereafter until notified otherwise.
 - To engage with my Department as required in the context of the response of the ETB to the report and any other matters related to the report or to governance and oversight arrangements in the ETB.
 - To ensure that any obligations to report to relevant statutory agencies in relation to the matters raised in the report (such as, but not limited to, An Garda Síochána, the Comptroller and Auditor General, the Charities Regulator, Standards in Public Office Commission) are addressed.
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Appendix Two

Terms of Reference of Review

Purpose:

To review the KWETB Corporate Governance Programme arising from directions issued under Section 41(3) of the ETB Act 2013. The directions provide, amongst other things for:

A comprehensive update to the Department on ... matters within three months and quarterly thereafter until notified otherwise;

Engagement with the Department as required in the context of the response of the ETB to the report and any other matters related to the report or to governance and oversight arrangements in the ETB.

This review is proposed as part of the ongoing oversight by the Department of the directions issued under Section 41(3) and has the specific purpose of confirming, as appropriate, that the directions as issued by the Minister have been complied with and if not, to make recommendations as to what additional actions are required.

Background:

In July 2018 the then Minister for Education and Skills, Richard Bruton TD received a report of the investigation commissioned under Section 40 of the Education and Training Board Act 2013 into the performance by KWETB of its functions particularly in relation to public procurement, usage and disposal of assets and propriety matters. Having considered the matter the Minister, under the powers available to him under Section 41 (3) issued directions to KWETB on the 4th October 2018 which the ETB were required to comply with.

KWETB has taken steps to implement the directions as issued by the Minister and has developed a Corporate Governance programme, which includes the matters referenced in the directions and other issues of corporate governance which require review and consideration since that time, including requirements to comply with the findings of the special report of the Comptroller and Auditor General into the Financial Statements of KWETB in 2015 and the revised Code of Governance for ETBs which issued in January 2019, amongst others.

The Department has engaged with KWETB on a quarterly basis since October 2018 on

compliance with the Corporate Governance programme where significant progress has been made. It is the view of the Department that it is timely and in the interest of ensuring appropriate oversight that an external review of the KWETB Corporate Governance Programme takes place with a focus on the directions issued by the Minister in October 2018.

The terms of this review are:

- a) Examine and report on the Corporate Governance Programme in KWETB with a particular focus on progress made on the issues which formed the directions issued by the Minister for Education and Skills in October 2018;
- b) The special report of the C&AG into the 2015 KWETB Financial Statements and issues raised by the C&AG in the subsequent KWETB Financial Statements also deal with areas that are covered by the directions - review and report on the extent to which these issues have been addressed in the KWETB Corporate Governance programme;
- c) Procurement, property and contract management and board engagement were specific issues identified in the original investigation and are a particular focus in the Ministerial directions – the extent to which issues are now appropriately addressed by KWETB and evidence for a sample of issues in each instance;
- d) To advise if the KWETB Corporate Governance Programme meets the requirements of the Code of Governance for ETBs 2019 and identify any specific issues upon which further action is required by KWETB;
- e) To advise if good practice in corporate governance is now embedded in all areas of KWETB, including at:
 - KWETB board level
 - KWETB finance, audit and risk and other committees;
 - KWETB Executive and head office;
 - KWETB schools, further education and training centres and other centres of education;
- f) Where there are any gaps in evidence of the embedding of good corporate governance across KWETB the steps necessary for that process to take place;
- g) Report any other matter found during the course of the review which may be a cause

of concern or a matter of public interest. If not considered feasible, or appropriate to deal with such matters within this review, such matters are to be brought to the attention of the Department for further consideration;

- h) The review may encompass examination of documents and matters relating to the original investigation (which included for periods before or after the year 2015) if deemed relevant;
- i) At all reasonable times, entry to any premises occupied by KWETB should be permitted and every facility and cooperation shall be afforded by the board, chief executive and members of staff of the board, including access to all records, to perform the functions required. Appropriate arrangements necessary to support good hygiene in light of the COVID-19 pandemic should be maintained throughout this process;
- j) Where appropriate, interviews or consultations will take place with any relevant member of staff of the Board, member of the Board, or any other person, in relation to the matters above, or if further clarification or information is required, subject to the requirements relating to hygiene and physical distancing in light of COVID-19 pandemic being maintained;
- k) Access to any persons with relevant specialist expertise will be available as required.
- l) To ensure that it is effective, the review will proceed on the basis that confidentiality will be maintained during the process;
- m) Following the review, a final report will be prepared and provided to the Department for consideration;
- n) It is envisaged that the review will be completed in Quarter 4 2020;
- o) The terms of reference for the review may be subject to such addition or amendment as the Department considers appropriate in the context of this review;
- p) While the final report should be as informative as possible, account should be taken that there is an ongoing Garda investigation into related matters and the report shouldn't jeopardise any part of that investigation.

Appendix Three

Summary of Recommendations From ‘Investigation into Certain Matters in Kildare and Wicklow Education and Training Board’, submitted in July 2018, Pertaining to Governance

- The Board of KWETB, utilising the services of an external agency, should develop a checklist of policies and procedures covering procurement, and any related matters, to include their version control, promulgation and sign off by Board members and members of the Executive.
- The Board of KWETB, utilising the services of an external agency, should develop and approve a policy and procedures for managing real or perceived conflicts of interest at Board or Executive level.
- The Board of KWETB, utilising the services of an external agency, should review the arrangements for the functioning of the Audit Committee to ensure its effectiveness and make adjustments as required.
- The Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within the KWETB.
- Any functions delegated under Section 16 of the Act should be clearly and unambiguously laid out in a document prepared by the CE and tabled at the Board.
- The Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within the KWETB.
- ... the Executive and Board members of the Kildare and Wicklow Education and Training Board should ensure that the requirements of the Code of Practice for the Governance of Education and Training Boards in respect of Board approval for ‘the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings’ are adhered to.
- The business case for maintaining a collection of car pool vehicles should be reviewed to ensure currency and the procedure for recording vehicle use examined to ensure that it meets standards required to ensure no BIK obligations accrue.
- The practice of offsetting sales proceeds against items purchased, as here, and as initially proposed at section 5 above, is not a good practice and should cease. Future purchases of motor vehicles should be from reputable dealers willing to provide guarantees.
- While a shortened tender response time is provided for in the Department guidelines, this should only be used *in extremis*, be fully justified, and auditable, and documented at the time of the decision to reduce the tender response time.

- The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.
- The Procurement Policy of the KWETB is based on national and EU requirements and should be adhered to in all cases without exception.

Appendix Four

Summary of Actions Committed to by the Board of KWETB, (and Within its Control), on 1st February, 2018 in Response to the Draft Report of the Investigation Prepared by the Reviewer

1. The Board to review all approvals to date regarding the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings. This to comprise of a formal Register of same.
2. The Board shall direct the Executive to include all Licences in the Register mentioned at 1 above. For the purposes of clarity all licences being entered into by KWETB are to be placed before the Board for approval from this time forward.
3. The Board has resolved that “Conflict of Interest” will be item 2 on the agenda of all Board meetings.
4. The Board shall review the Codes of Conduct for members and staff forthwith.
5. The Board shall conduct a review of all procurement procedures within KWETB to ensure the transparency of same.
6. The Board is committed to full cooperation by it and all staff with any investigations which may be conducted by the Garda National Economic Crime Bureau.
7. The Board believes that an Ethics Registrar should be appointed by KWETB to oversee compliance with duties to oversee adherence to the Codes of Conducts which were issued to all members and employees, completion of Annual Declarations of Interests, and compliance with the law relating to ethics and standards in public office.
8. ...in the meantime the Board has agreed that “Risk” be an agenda item at each Board meeting.
9. The Board is committed to pursuing and scrutinising all matters of concern raised by the Comptroller and Auditor General and not referred to in this Report.
10. The Board is of the view that it is in the interests of all stakeholders in KWETB that this Report and Response be made public by the Minister as soon as possible.