



**Oifig an Ard-Rúnaí**  
An Roinn Oideachais agus Scileanna



**Office of the Secretary General**  
Department of Education and Skills

Ms. Margaret Falsey,  
Committee Secretariat,  
Committee of Public Accounts,  
Leinster House,  
Dublin 2.

5th February 2018.

**Your ref: PAC32-I-710 and PAC32-I-711**

Dear Ms. Falsey,

Your correspondence dated 23 January, 2018 refers. I welcome the opportunity to address important issues which have been highlighted in the correspondence received by the Committee.

The Committee has asked that I respond to claims made in the correspondence attached to your letters about health and safety concerns for the school building project at St. Conleth's Community College, Newbridge, Co. Kildare. The Department acknowledges and shares those concerns.

The project has been devolved for delivery to the Kildare and Wicklow Education and Training Board (KWETB) and the issues raised in the correspondence were brought to its attention by the Department early in 2017. They were, however, already taken in hand by KWETB and its Design Team.

The building project is an extension to an existing building. It is important to note that the new build element of the school is not occupied by the school so there is no health and safety issue for the staff or pupils of the school. This will remain the case as the new build will not be accepted for handover until such a time as the Design Team and the Assigned Certifier for the project together with the Health and Safety Authority (HSA) are satisfied that the design and testing regimes for the precast building frame are in compliance with Building Regulations, that any works required on foot of test results are carried out to the correct specifications and the proper certifications are presented by the main Contractor.

In addition, the Department will not be providing funding for any works that are not yet certified until the test reports and certificates are provided and signed off by the Design Team and the Assigned Certifier.

While a client's Design Team is responsible for the design of a building, there are components of a building which are the responsibility of the main Contractor to design and certify such as precast frames. Testing reports and certification for all components of any school building project, including precast elements, are a critical part of the development without which a building will not be certified by the Design Team or the Assigned Certifier as being in compliance with Building Regulations nor will the building be accepted for handover. Test reports and certificates for Contractor designed elements are provided by the main Contractor and sub-contractors and they can be handed over at any stage during a building project up until handover stage.

In this regard, there is a Code *of Practice for Inspecting and Certifying Buildings and Works - Building Control Regulations 2014*, published by the Department of the Environment, Community and Local Government along with agreed industry wide Practice Notes that must be adhered to by all parties to a building contract. These are being strictly followed by the Design Team for the project at St. Conleth's (a copy of these documents is enclosed for the information of the Committee).

For the St. Conleth's project, the original sub-contractor employed by the main Contractor for pre-cast concrete design and supply ceased trading having carried out some work. Issues surrounding this development are the subject of both a Garda investigation and High Court proceedings.

This occurrence led to the requirement for the main Contractor to employ an alternative sub-contractor to take over the precast concrete element of the building with the exception of the pre-cast hollow core flooring which was designed and manufactured by the company referenced in the correspondence to the Committee.

With the change of sub-contractors, the Design Team sought the test reports and certificates from the main Contractor for the complete precast frame at an early stage in the project together with collateral warranties from the party employed by the main Contractor to take overall responsibility for certifying the design, manufacture and testing of the precast frame. The latter involves a complete examination of any and all designs and completion of design rectifications where necessary. While some satisfactory documentation has been received from the main Contractor, other documentation remains outstanding. As the requested information was not being provided by the main Contractor in a timely manner, the Design Team stopped a percentage of the payment due for the pre-cast work (which is permitted under the contract) pending its receipt. This payment is still withheld.

Separately, the Design Team has carried out its own due diligence by having independent testing carried out on elements of the precast concrete. The HSA is also

aware of the issues and it is engaging with the main Contractor in relation to testing and certification issues.

The project is now nearing completion and, because some of the documentation is still outstanding, KWETB authorised its Design Team to issue the main Contractor with a notice to cease work before Christmas. This notice remains in place at this time and will continue to remain in place pending receipt of the outstanding documentation and subject to the Design Team and the Assigned Certifier being fully satisfied with same when received.

When the notice to cease work issued, a meeting was convened with all of the stakeholders, including the Department and the HSA, to clarify for the main Contractor the certification documentation outstanding. The Department is satisfied that, following this meeting, the Contractor is clear about what must be provided by him. When the certification is received, it will again be thoroughly examined by KWETB's Design Team who will not sign off on the certification unless they are completely satisfied with it.

Neither the Department, the KWETB, the Design Team nor the HSA would countenance a situation where the extension project at St. Conleth's would be accepted on hand over for use by the school community. In the circumstances, I can give assurances that the matters in question are being addressed through the appropriate and competent channels which, in this instance, is with the main Contractor through the KWETB's Design Team and with the HSA. I can also give assurances that the Code of Practice to address the issues involved is being applied by the Design Team.

It is worth highlighting that when all of the testing regimes have been finalised and certified, this building will have been certified by 2 separate sets of engineers independently of each other – the Design Team's Structural Engineer and the company employed by the main Contractor to take overall responsibility for the design and testing of the precast frame. The engineering firms involved are reputable and widely known in the industry. Again, in this instance, the HSA must also be satisfied before the building will be accepted on handover

All school building projects require certification that they meet building regulations and it is a function of Design Teams and their employers to ensure that this is the case. The St. Conleth's project is an example of how a Design Team addresses Building Regulation issues that can arise during a school building project.

It should be noted that certificates recently provided by the sub-contractor (that is referenced in the correspondence to the PAC) for the hollow core flooring in the building, which was designed and manufactured by that company, are not acceptable to the Design Team and it will be necessary for that sub-contractor to re-issue certification to meet Building Regulations.



For clarity, building companies/contractors do not have overall sign-off on school building projects. Projects are signed off by Design Teams and Assigned Certifiers employed by the client for the project and working in the client's best interests.

The Committee has also asked that I respond to claims made in relation to governance issues and to the resignations from the KWETB Board and that I advise what the Department is doing to ensure that governance requirements are being met.

As the Committee is aware, all ETBs are obliged to operate under the provisions of the Education and Training Boards Act 2013 and the Code of Practice for the Governance of ETBs (2015). Governance matters such as those raised in the correspondence received by the Committee (e.g. conflicts of interest, arrangements for minutes, access by the Board to professional advice) are comprehended within these important instruments. The Act and the Code provide overarching guidance and principles on such matters. Subject to the provisions of the Act and Code, Boards are then responsible for the procedures to be observed in conducting their business and must regulate for same, for example through standing orders. Boards are also required to review their own performance.

The Department has had ongoing engagement with the Chairperson and the ETB following the raising of queries during the audit of the ETB's 2015 accounts. These queries were brought directly to the attention of the former Chairperson and the Department by the Comptroller and Auditor General in July 2017. While not privy to the content of any legal advices provided to the ETB, the Department understands that the then Chairperson considered it necessary to seek legal advice at that time in relation to Board's functions under the Act, to ensure proper engagement with the Board and with the process leading to, and during, the investigation.

In late December 2017 a new Chairperson and Vice-Chairperson were elected unanimously to the Board, on the stepping-down of the previous Chairperson and Vice-Chairperson.

I understand that the Board has had four meetings since the appointment of the new Chairperson. In this period, the Board has, naturally, had as a main focus its requirement to consider the draft report submitted to it by Dr Richard Thorn, in respect of which any representations from the Board were required by 2<sup>nd</sup> February. Department officials have continued to engage with the new Chairperson and the ETB, whilst exercising caution not to intrude inappropriately on matters potentially within the scope of the investigation.

As outlined, it is primarily the Board's responsibility, collectively, to address and resolve issues raised by Board members and to manage the conduct of its meetings. However, given the serious nature of a number of the issues highlighted in the correspondence to the Committee concerning the operation of the Board, the Department has plans to engage further with the Chairperson of the ETB with a view to seeking reassurance that these issues are being worked through and brought to a conclusion. A meeting has been scheduled with the Chairperson of the ETB in relation to the above.

The Committee can be assured that all aspects of the investigation will also be given thorough consideration, including any that relate to governance issues, procedures or practices within the ETB.

In relation to executive functions of the ETB, it is a requirement of the ETB Act that there be a Chief Executive of each ETB. In this context the Department moved quickly to seek sanction for, and approve, both the filling of the KWETB Chief Executive post on an acting basis from the date of the outgoing Chief Executive's retirement and a permanent Chief Executive as soon as practicable thereafter. There are standard national procedures for filling Chief Executive roles on a temporary acting basis and these were applied by the ETB. The appointment of an acting Chief Executive is for a limited period. The permanent post has been advertised by the Public Appointments Service and should be filled in the coming months.

The ETB is subject to the Department's regular oversight requirements in relation to funding, staffing etc. and is fulfilling its obligations in this regard. Given that the ETB is in a period of transition due to the changeover in personnel on both the Board and in the Executive, the Department has had some additional engagement with the ETB to support it through this period and will continue to be available to provide guidance or information to the ETB as required.

Yours sincerely,



Seán Ó Foghlu,  
Secretary General