

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

07 September 2018

**Re: Terms of Reference**

Dear Ms. Falsey,

I refer to your email on 27 August 2018 seeking clarification in relation to the preparation of the terms of reference for KPMG review of the anonymous allegations against CIT.

Arthur Cox were the legal advisers to the Audit Committee of CIT's Governing Body in relation to this matter and drafted the terms of reference. The Audit Committee as the client in that context ultimately decided (i.e. "set") on any particular course of action. The advice which the Audit Committee received from Arthur Cox was provided directly to it on an independent basis, and it should be noted that the content of that advice is subject to legal privilege. However, having sought clarification on the matter, I can confirm that the Audit Committee approved the terms of reference which had been proposed by Arthur Cox without making any changes to them.

I believe the above should answer your recent query. However, I would like to take this opportunity to provide some more detail in relation to the nature and role of the Audit Committee in the context of the anonymous allegations and the KPMG review, and the process that was followed.

Under the Institutes of Technology (IOT) Acts, the roles and functions of the Governing Body and the Executive (President and staff) are distinct. The Governing Body of CIT discharges the reserved functions of the Institute, and any functions not classified as reserved functions are executive functions and fall to be discharged through the President (and other offices in the executive branch by means of delegated authority).

Under the IOT Acts, the Governing Body has the power to establish committees to assist in the performance of its functions. In CIT, the Governing Body has established an Audit Committee, a Finance Committee, an Arts Committee, and a Strategic Development Committee. These sub-committees operate on the basis of terms of reference.

The terms of reference for Audit Committee includes the following (emphasis added):

*1. Purpose*

*1.1 The Audit Committee is a committee of Governing Body its role is to assist the Governing Body in fulfilling its oversight responsibilities as set out in the CIT Code of Governance January 2012 and in the Institutes of Technology Acts 1992-2006...*

*2. Authority*

*2.1 The Audit Committee **has authority to conduct or authorise investigations** into any matter within its scope of responsibility. It is empowered to:*

*2.1.1 Investigate any matter within its terms of reference and the Governing Body will provide it with the resources that it needs to do so.*

*2.1.2 Have full access to all information. Seek any information it requires from employees (all of whom should be directed to cooperate with the committee's requests) or external parties.*

*2.1.3 **Retain outside professional advice to advise the committee or assist it in the conduct of an investigation** subject to the Second Schedule of the RTC Act 1992, as amended by the Institutes of Technology Act 1992-2006.*

*2.1.4 Invite outsiders with relevant experience to attend Audit Committee meetings.*

*2.1.5 Meet with Institute officers and external auditors.*

In 2014, the Audit Committee of CIT's Governing Body was comprised exclusively of external individuals. This particular composition of the Audit Committee sat for five years to 31 March 2015. Therefore, no member of the executive management in CIT, nor any other CIT staff was a member of the committee during this time.

The first of anonymous letter was dated 25 March 2014, and the second was dated December 2014. They were sent to the C&AG (not directly to CIT by the author). The anonymous letters were then forwarded by the C&AG to the Chair of CIT's Governing Body by letters dated 16 May 2014 and 24 December 2014, and the Department and HEA were copied on same. On furnishing the anonymous letters to CIT, the C&AG asked that it be kept apprised of the actions proposed to deal with and investigate the allegations.

On 03 June 2014 the then President of CIT wrote to the C&AG, copied to the Department and HEA, to advise them that the Chair of CIT's Governing Body, having reviewed the first anonymous letter, had decided to refer the matter to the Audit Committee of CIT's Governing Body. Again, neither the President at the time or the Chair, nor any employee of CIT, were members of that Audit Committee.

In order to ensure the independence of any review and to ensure that the review was thorough, objective and comprehensive, the Audit Committee sought approval from Governing Body to take independent advice. CIT's Governing Body approved this at its meeting in July 2014.



Arthur Cox were then engaged directly by the Audit Committee to provide independent legal advice to it. A letter of engagement was issued to CIT by Arthur Cox which defined the legal work to be undertaken as *“advising the Audit Committee of CIT in relation to an investigation of allegations of wrongdoing made in an anonymous report dated 25 March 2014 as sent to the Comptroller and Auditor General.”* This letter was sent to the CIT’s Vice President for Finance & Administration (VPFA) and signed by him. However, this was merely an administrative step to process the engagement. The Office of the VPFA provides clerical and administrative support to the Governing Body and all of its sub-committees, including the Audit Committee. The VPFA made no decisions on behalf of the Audit Committee at any stage of this process.

Arthur Cox were asked by Audit Committee to give advice on the approach to be taken. They were sent a copy of the anonymous letter and they responded with a proposal to address the anonymous letter. Their proposal was to procure a company who have specialist investigative experience.

The Audit Committee reviewed Arthur Cox’s proposal and agreed to ask Arthur Cox to begin the procurement process to engage an investigator. Arthur Cox issued tenders to four companies. Tenders were received and sent to the Audit Committee on 9th September 2014. Arthur Cox recommended KPMG as the most competitive tender.

The Audit Committee met again on 29th September 2014 to review the bids. It was decided to request Governing Body approval to use the services of KPMG. This was requested and approved at the Governing Body meeting of October 2014.

On 21 October 2014, KPMG sent a letter to the Chair of the Audit Committee to detail their engagement, which was structured on a phased approach to ensure that the Audit Committee could retain oversight of the investigation whilst ensuring KPMG had sufficient freedom to complete their work. Indeed, KPMG noted in their report that *“we did not note any material limitations of scope as part of our review which prevented KPMG from completing the scope of work as set out”*.

The phased approach involved KPMG carrying out a detailed review (spending approximately two weeks on site in CIT) of the allegations, which included: a review of the anonymous letters and management responses; a corporate governance review and review of internal policies and procedures and CIT’s compliance; a review of expenditure documentation in CIT and its subsidiaries; and consideration of whether each allegation had been addressed.

KPMG ultimately produced two separate and comprehensive reports in relation to the first and second anonymous letters. In summary, the outcome of the KPMG reports was that, of a total of 196 allegations, 35 were deemed to have insufficient evidence to allow further review, 102 were deemed to require no further action as the allegations had been adequately addressed by CIT, and 59 were deemed repetitious to other allegations and required no further action. During the course of its review, KPMG identified a small number of issues incidental to/aside from the 196 allegations contained in the anonymous letters. As is the case with any audit report, these matters and management responses were considered by the Audit Committee, and controls were changed or strengthened as appropriate.

CIT provided copies of the two KPMG reports (full, un-redacted versions) to the C&AG, the Department and the HEA.

By letter dated 13 May 2015, the then Chief Executive of HEA, Mr. Tom Boland, wrote to the then President of CIT as follows:

*"I note that the process approved by CIT's Governing Body resulted in a comprehensive and thorough examination of the allegations. Based on our examination of both reports and additional supporting information provided to us, we are satisfied that CIT implemented a process which thoroughly investigated the allegations contained in both letters and there are no concerns for HEA at this time."*

The KPMG reports were also considered at a meeting before the Committee of the Public Accounts on 22 December 2015. At that meeting, the C&AG, the Department and the HEA all confirmed that they were satisfied that a detailed and thorough investigation was carried out and that no significant issues arose.

As requested, the Chair of CIT's Governing Body and also the then President provided regular written updates to the C&AG, Department and the HEA by way of numerous letters over the course of 2014 and 2015 detailing the process taken to investigate the allegations.

The direct cost to CIT of the legal advice and investigation amounted to some €65,000. CIT has also incurred significant internal costs in terms of the demand on resources in dealing with the anonymous letters from 2014 to date.

I trust this is of assistance. Please contact me if you require anything further.

Yours sincerely



DR BARRY O'CONNOR  
PRESIDENT  
UACHTARÁN

c.c. Office of Secretary General, Department of Education & Skills  
Office of the CEO, Higher Education Authority