



Ms Éilis Fallon
Committee Secretariat
Committee of Public Accounts
Leinster House
Dublin 2

Your ref: PAC32-I-1382

18 April 2019

Dear Ms Fallon,

I refer to the request of the Public Accounts Committee dated 5th April 2019 seeking an update on the next steps in relation to the Independent Review of the Spin-out and Sale of Companies from Telecommunications Software Systems Group at Waterford Institute of Technology (WIT).

As stated at the Committee's meeting of 24 January, the Department continues to treat seriously the issues which gave rise, in the first instance, to the Internal Review compiled by WIT on the matters associated with FeedHenry. Committee members will recall that on foot of a request from WIT to the Higher Education Authority (HEA) to validate this Internal Review, the HEA commissioned the Independent Review of the Spin-out and Sale of Companies from Telecommunications Software Systems Group at Waterford Institute of Technology. However, as advised to the Committee at its meeting of 24 January last, the HEA has concluded on the basis of legal advice regarding the Authority's vires to conduct a review of this nature that it is not possible for the Authority to finalise the Independent Review.

As also stated at the Committee's meeting of 24 January, the Department is conscious of the concerns that have been raised by individuals who contributed to the Independent Review which extend beyond those issues highlighted in the report of the Comptroller and Auditor General and which remain to be examined.

In this context, the HEA has advised the Department and the Public Accounts Committee that it is seeking to make contact with all contributors to the independent review. Those contributors who made what the HEA regards as disclosures can still avail of the protected disclosures process of WIT. They may also, subject to their express permission, have the information they provided forwarded to the Department of Education and Skills for its attention. In this way, those who contributed information to the independent review may still have their concerns examined, subject of course to the scope of the legal framework available to do so. The Department will take those issues into account in its assessment and advice to the Minister in due course.

In parallel, the Department is also continuing to examine the matters of concern highlighted in the Special Report on the Development and Disposal of Intellectual Property in FeedHenry in WIT, compiled by the Comptroller and Auditor General (C&AG). In December 2018, the Department requested detailed responses from the Governing Body of WIT to sixteen questions arising from the C&AG's Special Report which relate to institutional governance and oversight in connection with the process for the commercialisation of intellectual property (IP) in FeedHenry by WIT and the existence, scope and effective operation of relevant policies, procedures and guidelines. Following that correspondence, in February 2019, and as part of the Department's ongoing consideration of this matter, two supplementary questions were posed to the Governing Body for answer also.

The Department has recently requested the Chair of WIT to provide an update on when the Department can expect to receive the responses to these questions. The Department will consider the response from the Governing Body, when it is received, in preparing its advice to the Minister on next steps in relation to the issues set out in the Special Report.


In terms of the legal powers of review available to the Department in responding to the forgoing issues, as outlined to the Committee at the above meeting under Section 20 of the Regional Technical Colleges Act 1992, as amended by the IOT Act 1996 and the Technological Universities Act 2018, the Minister for Education and Skills has the power to *'appoint a person... to carry out an investigation into any matter specified in writing by the Minister concerning the performance by a college or its governing body of its functions.'*

As set out above, any such review relates to the performance by an Institute of Technology or its governing body of its statutory functions as specified in the RTC Act, and accordingly any such review would be subject to those parameters. For the information of the Committee, the statutory functions of an Institute of Technology are set out in the appendix to this letter.

I trust the foregoing clarifies the position for the Committee in respect of its query for the Department. If, however, the Committee has any further questions or requires any further information at this juncture please do not hesitate to contact me.

As this is an ongoing process, the Department will keep the Committee updated once there are further developments.

Yours sincerely


William Beausang
Assistant Secretary
Department of Education and Skills

S. 4 [No. 16.] *Regional Technical Colleges Act* [1992.]
1992

(2) Membership of a college under subsection (1) (f) shall continue until the governing body otherwise declares.

Functions of colleges.

5.—(1) The principal function of a college shall, subject to the provisions of this Act, be to provide vocational and technical education and training for the economic, technological, scientific, commercial, industrial, social and cultural development of the State with particular reference to the region served by the college, and, without prejudice to the generality of the foregoing, a college shall have the following functions—

(a) to provide such courses of study as the governing body of the college considers appropriate;

(b) F12[...]

F13[[bb) F12[...]]

(c) subject to such conditions as F14[An tÚdarás] may determine, to engage in research, consultancy and development work and to provide such services in relation to these matters as the governing body of the college considers appropriate;

(d) to enter into arrangements with other institutions in or outside the State for the purpose of offering joint courses of study and of engaging jointly in programmes of research, consultancy and development work in relation to such matters as the governing body of the college considers appropriate;

F15[(e) in relation to any of the following companies or undertakings and in accordance with the following law, namely—

(i) a limited liability company in the State — in accordance with the Companies Acts, or

(ii) a company or undertaking (the liability of members of which is limited) in a state other than the State — in accordance with the law of that state, to—

(I) promote and take part in the formation of it,

(II) acquire, hold or dispose of shares or other interests in its capital, or

(III) participate in the management or direction of it,

but only if the objects of the company or undertaking include the carrying on of such business, trading or other activities, as the college thinks fit, for the purpose of promoting or assisting in the performance of, or in connection with, the functions of the college;]

(f) to institute and, if thought fit, to award scholarships, prizes and other awards;

(g) to maintain, manage, administer and invest all the money and assets of the college;

(h) to accept gifts of money, land or other property upon such trusts and conditions, if any, as may be specified by the donors: provided that nothing in any such trust or condition is contrary to the provisions of this Act;

(i) subject to the approval of F16[An tÚdarás,] to acquire land;

(j) to do all such acts and things as may be necessary to further the objects and development of the college.

(2) F17[...]

