An Roinn Oideachais
agus Scileanna
Department of
Education and Skills

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

Your ref: PAC32-I-1586

November 2019

Dear Ms Fallon,

I refer to previous correspondence from the Public Accounts Committee dated 10th October requesting a note on the Department’s current position in relation to the Minister appointing an investigator under the relevant legislation to examine matters raised in the Comptroller and Auditor General Special Report 104 ‘Development and Disposal of Intellectual Property in FeedHenry at Waterford Institute of Technology’.

As set out in my previous correspondence in this matter dated 18th September, the Department has, on an ongoing basis, been working to seek to satisfactorily address all issues arising from the Special Report and other sources.

The actions taken to date are set out below for the Committee’s information.

Firstly, the Department received responses to questions set out in the Department’s letter to the Governing Body (GB) of Waterford Institute of Technology (WIT) of the 19th December 2018 and subsequent letter of 18th February 2019. Having carried out an assessment of the responses received from WIT, the Department met with the relevant sub-committee of the GB on 5th June 2019. At that meeting, the Department advised the representatives of the WIT GB that an expert independent study of institutional governance and oversight in WIT, with a particular focus on commercialisation of IP, would be necessary. This study was intended to provide the necessary assurances and validate the assessment set out in the Governing Body’s response to the C&AG’s report and the Department’s questions that the current framework now in place in WIT was detailed, comprehensive, in line with best international practice and national and institutional policies were operating effectively. The Department subsequently requested the Higher Education Authority (HEA) to initiate the arrangements for an independent study of institutional governance and oversight in WIT with a particular focus on the commercialisation of intellectual property.
In addition, the Department also received correspondence and documentation from an individual on foot of the HEA’s advice to contributors to its Independent Review which could not be finalised due to legal issues, giving them the option of forwarding their information to the Department. The correspondence and documentation subsequently received by the Department set out a number of concerns relating to the management of conflicts of interest arising from commercialisation activities of the Telecommunications Software and Systems Group (TSSG) in WIT.

On the basis of that correspondence and documentation and the responses received from WIT the Department concluded that further action was warranted in order to satisfactorily address all issues arising from the Special Report and other sources, in particular to consider the governance, oversight and management of potential conflicts of interest arising in relation to commercialisation activities of the TSSG in WIT over a specific period. In making this assessment the Department also considered, in particular, the references contained within the C&AG Special Report 104 to a review of the commercialisation process in WIT carried out in WIT in late 2009 including the relationship between WIT and a named company (i.e. Aceno).

The Department of Education and Skills (DES) works with the Department of Business, Enterprise and Innovation (DBEI), which has lead responsibility on a whole-of-Government basis for national research, development and innovation policy, to ensure that there are effective frameworks in place in the higher education sector for the appropriate governance, oversight and policy development for commercialisation activities of Higher Education Institutions (HEIs).

DBEI has developed a national framework for IP commercialisation most recently through the updated National Intellectual Property (IP) Protocol 2019 and the related Resource Guide prepared by Knowledge Transfer Ireland (KTI). The 2019 Protocol references the concept of a “spin-in” company co-located within a Research Performing Organisation (RPO). This is defined as an existing incorporated company that intends to license, develop or otherwise exploit RPO IP and and/or leverage staff, infrastructure and/or other RPO resources on agreed terms. The company named in the C&AG’s Special Report can be regarded as having several of the characteristics of a spin-in company as set out in the IP Protocol 2019. In order to ensure risks are appropriately managed, and to ensure the HEI’s and the State’s financial interests are protected, it is necessary for the Governing Bodies of HEIs to have and ensure the effective operation of frameworks, policies and procedures to govern and oversee commercialisation activities and manage any potential conflicts of interest that may arise in relation to the activities of spin-in companies.

DBEI has advised that there are benefits arising from close engagement between enterprise and academia and that these benefits can arise through many forms and channels both formal and informal (of which the spin-in model is one such form), that the term spin-in has no legal meaning in its own right and is a term that can be used to describe a variety of arrangements and that the IP Protocol includes its own definition which is an
attempt to put some boundary on the concept. DBEI has also advised that many of the key principles issued as guidance in relation to “spin-out” companies in the IP Protocol 2019 also apply in the case of spin-ins.

Therefore, the proposed review provides an opportunity to assess whether the current national and institutional framework for the effective governance, oversight and the management of potential conflicts of interest arising in relation to spin-in and spin-out companies and their role and their relationship with HEIs with regard to the operation of the IP commercialisation process is comprehensive and effective.

In the context of the foregoing, the Minister for Education and Skills recently approved a recommendation that a review should be carried out of the performance of the Governing Body of WIT of its functions concerning the governance, oversight and management of potential conflicts of interest arising in relation to commercialisation activities of the TSSG in WIT between 2009 and 2011 under the relevant provision of the appropriate legislation. The Terms of Reference for the review have been finalised and the Department has initiated the relevant procurement process to appoint a reviewer. The Governing Body has been advised of the Minister’s decision in this matter. It should be noted that, consistent with the legislative basis on which the review is to be carried out, the subject matter relates to the performance by the GB of its functions and the review cannot comment on, criticise or present any view with respect to the conduct of actions of any individual(s).

Finally, the Department met with representatives of the GB of WIT on 24th October last to provide an update on developments and to advise of the proposed review. At that meeting, the Chair advised of the Governing Body’s intention to contract an independent external expert review of the governance procedures currently in place for the oversight of commercialisation activities at WIT. In view of the clear potential for overlap and duplication between this review and the focus of the HEA study and consistent with the effective performance of the governance responsibilities of the Governing Body, the Department has decided to postpone the HEA study referred to above, pending completion of WIT’s own externally contracted review.

A copy of the report of this review will be shared with the Department and the HEA following approval of the report by the WIT Governing Body. This will allow the Department and the HEA to conclude whether the WIT GB review provides the necessary assurances to the Department that WIT has in place the relevant, policies procedures, processes and systems to ensure effective governance and oversight of all aspects of IP commercialisation including any conflicts of interest that may arise. Following that consideration, a decision will be made as to whether it is necessary to re-engage with the HEA regarding a potential resumption of the study which was proposed to be conducted by them.
The Department will continue to keep the Committee apprised of developments as appropriate with regard to these matters.

Yours sincerely

William Beausang
Assistant Secretary
Department of Education and Skills