

Terms of Reference

In the course of the Audit by the Comptroller & Auditor General of the Kildare & Wicklow ETB's financial statements for 2015 (which is ongoing) the C&AG brought a number of issues to the attention of the Department of Education and Skills. The Department corresponded with Kildare & Wicklow ETB and sought responses to the issues concerned.

Having considered the issues raised by the C&AG and the subsequent correspondence between the Department and the ETB, in exercise of his power under Section 40 of the ETB Act 2013 the Minister for Education and Skills has appointed an investigator to carry out an investigation into the performance by the board of its functions particularly in relation to public procurement, usage and disposal of assets and propriety matters and to submit a final report to the Minister as soon as practicable after the report is completed.

The terms of reference for this investigation are:

1. a) To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:
 - i. Compliance with Department procedures in relation to the procurement and delivery of various building projects
 - ii. The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017
 - iii. The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit
 - iv. The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same
 - v. The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use
 - vi. The operation and use of pool vehicles and business case for same
 - vii. The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB
 - viii. The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit
 - ix. The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit
 - x. To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project.

- b) Where lacunae, inconsistencies or insufficient clarity are identified, to establish the factual position in relation to the matters in question in so far as it is reasonably practicable to do so.

c) In the light of the above, to report and make recommendations as appropriate, in relation to the ETB's compliance with the relevant requirements regarding governance, procurement, ethics and Department policies and procedures.

2. The investigation may include:
 - a) any other matter which was raised in the C&AG Audit or the Department's subsequent correspondence which, in the light of the ETB's response, the Investigator considers is a cause of concern or a matter of public interest, and
 - b) any other matter which, during the course of his/her investigation, comes to the attention of the Investigator and which the Investigator considers is a cause of concern or a matter of public interest. If the Investigator considers that it is not feasible or appropriate to deal with such matters within this investigation, s/he may bring such matters to the attention of the Minister.
3. The investigation may encompass examination of documents and matters which relate to periods before or after the year 2015, if deemed relevant by the Investigator.
4. The investigator shall be entitled at all reasonable times to enter any premises occupied by Kildare & Wicklow ETB and shall be afforded every facility and cooperation by the board, chief executive and members of staff of the board, including access to all records, to perform his or her functions.
5. Where appropriate, the Investigator will interview or consult with any relevant member of staff of the Board, member of the Board, or any other person, in relation to the matters identified. The Investigator may revert to any party if further clarification or information is required.
6. The investigator will have access to any persons with relevant specialist expertise, as required.
7. To ensure that it is effective, the investigation will proceed on the basis that confidentiality will be maintained during the investigation process.
8. Following his/her investigation, the Investigator will prepare a draft report and a final report in accordance with the provisions of Section 40 of the Act.
9. It is envisaged that the investigation will be completed in Quarter 1 2018.
10. The terms of reference may be subject to such addition or amendment as the Minister considers appropriate in the context of this investigation.