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Bord Oideachais agus Oiliúna
Chill Dara agus Chill Mhantáin
Kildare and Wicklow
Education and Training Board

*A Meeting of Kildare & Wicklow Education & Training Board was held in
Aras Chill Dara, on Tuesday 9th January 2018, Commencing at 10.30 a.m.*

Present: Mr Noel Merrick Chairperson, Cllr. Rëada Cronin, Cllr. Fiona McLoughlin-Healy, Cllr. Daragh Fitzpatrick, Cllr. Tommy Annesley, Cllr. Brendan Weld, Mr John McDonagh, Ms Deirdre Coghlan Murray, Dr Elizabeth O’Gorman, Cllr Jennifer Whitmore, Cllr Aoife Breslin, Ms Lorraine Hennessey, Mr John Hurley.

In attendance: Dr Rory O’Toole
Mr Joe Kelly
Ms Eileen Cullen
Ms Mary Kemmy
Ms Rose Murray

Apology: Cllr Jim Ruttle
Cllr Nicola Lawless
Cllr Naoise O’Cearuil
Cllr Edward Timmins
Cllr Teresa Murray
Ms Finula Haran

AGENDA

1. Minutes
2. Philip Lee Invoices
3. In committee discussion on Board response to draft report from Dr Richard Thorne.

Minute No. ETB-01-01-18

No. 1 Agenda Minutes

The Minutes of the KWETB Meeting held on 21st December 2017, circulated on MinutePad, received six amendments. Chair advised he has not had time to consider them.

It was proposed by the Chair the minutes of the last meeting be taken at the next meeting. Cllr Fiona McLoughlin – Healy objected and wanted it noted and on record that the minutes were not being delivered satisfactorily.

It was decided to have a discussion on format of minutes at next meeting of KWETB to be held on Tuesday 16th January 2018.

Minute No. ET- 01-02-18

No. 2 Agenda Philip Lee Invoices

Acting CE, Dr Rory O’Toole advised previous CE issued an instruction on 24th December that Philip Lee invoices as well as other accounts, were to be paid. He advised he did not want to expose the organisation to further costs. Acting CE issued an instruction and advised the invoices will be paid in the next payment run. Chair noted that Acting CE was obliged to pay outstanding bill.

Cllr McLoughlin –Healy enquired why the Philip Lee invoices were not referred to the Taxing Master. She referred to her motion forwarded to the Chair. The Chair confirmed motion was received but it was too late to include for this meeting.

Cllr Reada Cronin expressed concern that proper procedures were not followed for the engagement of Philip Lee. The role of the Audit Committee was raised.

Chair advised it was an executive function to pay. The matter was discussed by the Chair, previous Chair, Vice Chair and the Chair of the Audit Committee to pay Philip Lee invoices.

Chair advised all share the objections and issues raised by Cllr Cronin but the bill was outstanding and needed to be addressed.

Previous Chair and Vice Chair on recommendation from the C&AG advised that legal advice was required. Reference was made to the Code of Governance and the seeking of legal advice.

Acting CE reported previous Vice Chair was advised by DES and C&AG to seek legal advice. Use of Framework Agreement to pay Philip Lee was confirmed. He advised that Philip Lee Solicitors were engaged in good faith working on behalf of KWETB and reported if the invoices were not paid KWETB would be exposed to legal proceedings. Acting CE had the authority to rescind the decision of the previous CE but did not do so.

Cllr Jennifer Whitmore voiced her frustration once again that KWETB Board are practically powerless and she would have supported the motion by Cllr Fiona McLoughlin-Healy that the matter be referred to the Taxing Master.

Cllr Tommy Annesley enquired was there a tender submitted on legal advice. Chair again referred to the Framework advising that the rates are agreed nationally in advance. Cllr Annesley also made reference to the matter being sent to the Taxing Master.

The meeting then went into in committee.

Minute No. ETB-01-03-18

No. 3 Agenda
In committee discussion on Boards response to draft report from Dr Richard Thorne

Signed: Niall Ní Mhaoldomhnaigh Date: 27-03-18
(Chairperson)

NEXT MEETING

DATE: Monday 5th February 2018

VENUE: Tinakilly House, Rathnew, Wicklow.

TIME: 10.30 am

Document appended to minutes. See Minute No – 04/03/18 March 2018 minutes.

Amendments to January 2018 minutes from Cllr Fiona McLoughlin Healy

Agenda no.1 - Minutes

.....F McLoughlin Healy objected and wanted it noted and on record that the minutes were not being delivered as and when they should and rather than spending hours the day before going through minutes not now being signed off, that the Board should have been informed in advance.

The Chair stated he would like to have a discussion about what should be in minutes at the next meeting. He stated that under Standing Orders only resolutions should be in minutes. Cllr McLoughlin Healy stated that that was incorrect and that resolutions are the minimum that should be in minutes not the only thing. The Chair agreed

No. 2 Agenda - Philip Lee Invoices

- The Chair, Noel Merrick stated that he had found out last week that the fees had been paid and handed over to the Acting CE to explain.
- The Acting CE Rory O Toole stated that we were all agreed it was an unusual situation. He stated that Sean Ashe had issued an instruction on the 24th of December regarding any accruals or expenditure and was of the opinion that payment of the fees was necessary
- The Acting CE stated it was down to him to ignore or rescind the order and given the potential damage that could be done to the organisations reputation a decision to pay the bill had been taken and he had issued instruction to pay.
- Cllr Reada Cronin stated she had huge concerns including that proper procedures were not following in the engagement of the legal advisors
- Cllr Cronin stated her concerns that there was no reference in the legal invoices to the letter written by Tony Lenehan requesting that no further work be done or costs incurred on the Boards behalf. She asked why this instruction had not been complied with by Philip Lee. She further asked had the Chair and Vice Chair overturned this decision of the Audit Committee Chair.
- Cllr Cronin asked were the Dept going to come up with the money to pay the bill or what services were going to be cut to pay the bill. She stated she was absolutely shocked and outraged that the bill was paid. The legal advice had been engaged, continued and paid without our consent.
- The Chair, Noel Merrick stated it is an executive function to pay the bill. He stated he had spoken to Jim Ruttle briefly
- Vice Chair, John McDonagh stated he and Noel Merrick has spent a long time trying to get to the bottom of the bill. He stated he shared all the objections of the Board and referring to a motion proposed by Cllr McLoughlin Healy to send the bill to the Taxing Master, stating he had himself proposed the same at the previous meeting.
- John McDonagh stated that on legal advice we had no way out of the bill.
- The Vice Chair stated that the former Chair and former Vice-Chair had acted honourably in getting advice and that we were now trying to close the door after the horse had bolted.

- He stated that Jim Ruttle had been uncontactable
 - Chair, Noel Merrick stated it was his understanding from Cllr Weld that on advice from the CAG, the legal advisors were selected from a legal panel
 - Cllr McLoughlin Healy and Cllr Cronin stated that wasn't proper procedure . Cllr McLoughlin Healy asked the Chair was it the case or not that the Board cannot hire professional services without resolution.
 - Cllr McLoughlin Healy asked why were the Board asked for direction at the previous meeting
 - Cllr McLoughlin Healy asked the Acting CE what legal advice had he taken when he knew the controversy surrounding the bill, that we could not access the legal files and that the Board had not passed the required resolution to engage the legal advisors
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- Cllr McLoughlin Healy stated that we could not be taken to court if the bill had been sent to the Taxing Master. She asked the CE to have respect the Board.
 - The Chair stated he had no part in payment of the legal fees that he was aware only after the event.
 - Cllr McLoughlin Healy stated the tax-payers were going to foot the bill. She stated that by the time the Board met for the first time regarding the investigation in September that a bill of €42,000 had already been racked up.
 - In response, the Chair stated he accepted Cllr McLoughlin Healy's statement.
 - Cllr Weld stated that the former Chair and former Vice Chair had been asked to meet the CAG. The CAG said the first thing to do was to get legal advice and to inform the Chair of the Audit Committee.
 - Cllr Weld stated that an official provided himself, Cllr Ruttle and Tony Lenehan with a list of 3 people from the framework.
 - Cllr Weld stated that Tony Lenehan recommended Philip Lee.
 - Cllr McLoughlin Healy stated that the Comptroller and Auditor general's instruction to get legal advice didn't trump the code of governance for this organisation
 - Cllr McLoughlin Healy stated that it was the Chair's jobs to come back to the board to get agreement to hire the legal advisors
 - In response, Chair Noel Merrick, stated that some people were asking that standing orders re people being named be followed but that he want to go down that road.
 - Cllr Weld stated that they acted in the best interest of the board and the people they represented. He stated that when he asked the former CE about it - he was told don't worry about it
 - Cllr Reada Cronin stated that the CAG would assume that proper procedures were to be following.
 - Chair, Noel Merrick asked the Cllr to direct him to the relevant section of the code. He stated that it was his opinion only that in the middle of summer, the Chair was entitled to seek the advice. He restated that it was only his opinion.
 - Cllr Weld stated that he informed the CAG that the Board had not been informed at that time and that he was seeking legal advice
 - The Acting CE stated I think we all agree it was a set of unusual circumstances, that the Chair and Vice-Chair had acted in good faith given the time constraints. He stated he could understand the board's questions.
 - The Acting CE Rory O Toole stated that from his perspective in terms of exposure to further costs that the advisors were engaged in good faith at an agreed rate, that they

did provide services and that while there was some delay in receiving invoices that things escalated towards the end of the financial year.

- The Acting CE restated that he would have the authority to rescind but fully agreed it was necessary to pay.
- In response Cllr Cronin asked when did the Acting CE know it was necessary to pay, that the Board had attended the meeting expecting to discuss the bill only to be told it was paid
- Chair Noel Merrick, stated he found out when they met the previous Thursday

- Acting CE, stated the same. He then stated that he had issued the instruction for payment which was due to run this week.
- Cllr McLoughlin Healy and Cllr Cronin asked if that meant he could rescind. Acting CE stated he wouldnt be rescinding. He stated that he could but won't
- Cllr Whitmore stated her frustration at the board not being listened to throughout the whole process. That it had happened repeatedly
- Cllr Whitmore referred to Cllr McLoughlin Healys motion sent the night before to send the bill to the Taxing Master. She stated that she would have supported the proposal as the right and proper thing to do
- Cllr Whitmore asked Cllr Weld to confirm that all the work referred to in the legal documentation had actually happened
- Cllr Whitmore stated she had an issue with Tony Lenehan's role and was disappointed that he refused to provide the Board with a letter he had sent to the legal team asking them to provide no further legal advice
- Chair Noel Merrick suggested the Board come back next week and have all these questions answered.
- Cllr Whitmore asked if the legal advice would be made available to the Board. The Chair stated if it was on behalf of the Board , he couldn't see why they couldn't
- Cllr Cronin and Cllr McLoughlin Healy stated that several people had been requesting the legal advice, for months
- Cllr Cronin requested to see the legal information that Cllr Ruttle had decided in his role as Chair to keep from the Board
- The Chair read the letter from Tony Lenehan to the legal advisors. He stated that a whole load of documents had arrived to Tony Lenehan that he wanted to review. That Tony Lenehan had stated that in the meantime that no further work be undertaken until we undertaken our own analysis and deliberations
- Cllr Weld stated that Tony Lenehan did not consult with either the Chair or Vice Chair regarding this letter.
- Cllr Weld stated that he told Tony Lenehan he had no authority to send the letter. Cllr Weld stated that the advice they had gotten again was to continue with the legal advice
- Cllr McLoughlin Healy stated that she was on the Audit Committee and that nothing she had heard reconciled with her experience as a member of the committee.
- Cllr McLoughlin Healy asked the CE who advised him not to send the bill to the Taxing Master and what legal advice he had taken regarding the payment of the bill
- Acting CE, Rory O Toole stated he had not taken legal advice.
- Rory O Toole stated he took consideration from his financial advisor
- Cllr McLoughlin Healy asked for an organisation managing a €230 million budget was no one in the organisation able to advise that we had a right to send the bill to the

Taxing Master and that we couldn't be followed in court while with the Taxing Master

- The Acting CE stated there was no good reason not to pay the bill and that there were no question marks about the provision of the service
- Cllr McLoughlin Healy stated that that was not true, that she had questions about the service
- Cllr McLoughlin Healy stated that the Acting CE reports to the Board. She stated her annoyance that the Acting CE has taken a unilateral decision to pay the bill
- The Chair asked that Cllr McLoughlin Healy not use such language with the acting CE. She asked the Chair to tell that to the Tax-payer who will be paying the bill.
- Cllr McLoughlin Healy asked the Chair to read the Code of Governance
- The Chair Stated that the payment of liabilities was an executive function.
- In response, Cllr McLoughlin Healy asked why the bill had been brought to the Board at the previous meeting
- Cllr Annesley asked if we got a tender for the legal advice
- Cllr Annesley stated that he was very disappointed that the CE had paid the bill and that he didn't think he would have done so if it was his own money.
- Cllr Annesley stated his disappointment that it was not only that the acting CE couldn't discuss the bill but won't even discuss it. He stated that the CE should have respect for the Board
- Cllr Annesley stated that we should at least investigate the bill.
- Cllr Annesley state that he believed the acting CE should be trying to bring the Board together to do what we wanted to do. He stated that he was here to represent schools in Wicklow
- Cllr Annesley recommended that the bill be sent to the Taxing Master
- Cllr Darragh Fitzpatrick asked why we would send it to the Taxing Master now
- The Chair stated we can't now send it to the Taxing Master
- Cllr McLoughlin Healy explained that in sending the bill to the Taxing Master the Taxing MAster would be entitled to receive the section 68 letter and terms of engagement, together with the files that the Board were also entitled to but hadn't seen.
- Chair stated he was ending the conversion and concluded that we were all shocked at the cost of the bill
- Cllrs McLoughlin Healy, Cronin stated that they were shocked that the bill was paid