Comptroller and Auditor General
Special Report

Handling of remuneration for certain senior staff in the University of Limerick and Institute of Technology Sligo

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Report of the Comptroller and Auditor General

Handling of remuneration for certain senior staff in the University of Limerick and Institute of Technology Sligo

I have, in accordance with the provisions of Section 9 of the Comptroller and Auditor General (Amendment) Act 1993, carried out an examination of the handling of remuneration for certain senior staff in the University of Limerick and Institute of Technology Sligo.

This report was prepared on the basis of information, documentation and explanations obtained from the bodies and persons named in the report. The Department of Education and Skills and the Higher Education Authority were asked to review and comment on the report. The University of Limerick, Dublin City University, Institute of Technology Sligo and the Department of Public Expenditure and Reform were asked to review and comment on relevant parts of the report. Where appropriate, the comments received were incorporated in the final version of the report.

The purpose of this report is to examine whether the resources of the University of Limerick and the Institute of Technology Sligo have been used and disposed of economically, efficiently, and on the most favourable terms reasonably obtainable with respect to the remuneration of certain senior staff. The sole and exclusive focus of this report is on the University of Limerick and the Institute of Technology Sligo, and not the staff members concerned. For the avoidance of any doubt, this report does not make any criticism or comment or present any view, whether express or implied, with respect to the staff members concerned and should not be understood as doing so.

I hereby submit my report for presentation to Dáil Éireann in accordance with Section 11 of the Act.

Seamus McCarthy.

Seamus McCarthy

Comptroller and Auditor General

29 August 2018

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Summary

Summary

1 This report is about remuneration of certain senior staff members in the University of Limerick and the Institute of Technology Sligo. Issues examined include the award of professional added years for pension purposes in the University of Limerick, the admission of staff of a subsidiary company to the University of Limerick's pension scheme and the handling of severance payments at both the University of Limerick and Institute of Technology Sligo.

Award of professional added years

2 Certain public sector pension schemes provide, in exceptional circumstances, for discretionary awarding of 'professional added years' for pension purposes. These provisions are designed to compensate for the inability of certain professional or technical staff to qualify for a full pension based on 40 years service by mandatory retirement age.

3 Professional added years are a form of remuneration, which for universities is subject to the sanction of the Department of Education and Skills and the Department of Public Expenditure and Reform.

4 For historical reasons, professional added years in the five 'older' universities are approved on a case-by-case basis by the Minister for Education and Skills and the Minister for Public Expenditure and Reform. Up to late April 2018, the newer universities — Dublin City University and the University of Limerick — operated separate, independent frameworks for the award of professional added years.

5 Based on the analysis of awards in those two universities between 2012 and 2016, this examination has found that the University of Limerick awarded more employees more generously in that regard than was the case in Dublin City University.

6 In Dublin City University, professional added years were awarded only to academic staff. In the University of Limerick, 18% of the awards were to non-academic/ managerial staff.

7 Following circulation of a draft of this report, the Higher Education Authority wrote to inform both universities that all applications for professional added years awards for the benefit of university employees will now be approved by the Pension Unit of the Department of Education and Skills, with effect from 30 April 2018.

Admission of senior staff of subsidiary to university pension scheme

8 The Exchequer funds universities to allow them to meet their obligations under statutory defined-benefit pension schemes for their staff.

9 In general, subsidiary companies are used by third level education institutions as a means of managing non-core functions in a manner that separates their business affairs from those of the institution. This allows the non-core functions to be run on commercial lines, and subsidiary employees to be remunerated on competitive market terms. Subsidiary companies usually provide for employees to receive pension entitlements on a defined-contribution basis.

10 An arrangement put in place in late 2012 in the University of Limerick resulted in two executives employed by a subsidiary company being admitted to a University defined-benefit pension scheme that was about to close for new entrants. This resulted in the executives being granted additional pension benefits including professional added years for pension purposes. Those benefits have been valued actuarially at over €1.2 million.

11 Claims that the two executives had been promised benefits equivalent to those of employees recruited to the University at the same point in time were not documented.

Handling of severance cases

University of Limerick

12 In November and December 2011, the University of Limerick agreed with two senior managers that their employment would cease on 29 February 2012 on a severance basis, and severance payments were made on that date.

13 However, prior to their severance, arrangements were put in place with each of the senior managers to continue to make their services available to the University on a consultancy basis. Separate contracts for service were put in place in late 2011 between limited liability companies owned by each senior manager and the University.

14 Relative to what the two managers would have received had they continued in employment to the standard minimum retirement age, the combined severance/ consultancy arrangement put in place resulted in additional costs to the University of Limerick (including recurrent pension payments) estimated at €310,000 in net present value terms.

15 The process involved in implementing the two severance deals in the University of Limerick was reported on in a previous special report. In the course of the earlier examination, the University misrepresented the circumstances around the severance deals to the Office of the Comptroller and Auditor General and, in particular, failed to disclose that consultancy contracts had been put in place by the University with both managers at the same time that the severance deals had been implemented. Subsequently, certain matters related to the two cases were also misrepresented to the Department of Education and Skills and at a hearing of the Committee of Public Accounts.

Institute of Technology Sligo

16 A severance arrangement by Institute of Technology Sligo in 2016 significantly exceeded the sanction received from the Department of Education and Skills, when account is taken of a sum incorrectly classified as payment related to sabbatical leave.

Handling of remuneration for certain senior staff in the University of Limerick and Institute of Technology Sligo

1 Introduction

1.1 The Minister for Education and Skills has responsibility, subject to the consent of the Minister for Public Expenditure and Reform, for approving remuneration levels for employees in the third level education sector.[1]

1.2 The Higher Education Authority (HEA) has a statutory responsibility, at central government level, for the effective governance and regulation of higher education institutions and the higher education system.

1.3 In accordance with agreed sectoral governance codes, chairpersons of governing bodies of third level institutions are obliged to provide an annual statement to the HEA confirming, *inter alia*, that Government pay policy is being complied with.[2]

1.4 This report deals with the manner in which the University of Limerick and Institute of Technology Sligo remunerated certain senior staff members. It relates to

- professional added years awards for pension purposes at the University of Limerick (Chapter 2),
- admission of certain subsidiary company staff into a University of Limerick defined-benefit pension scheme (Chapter 3), and
- severance payments at the University of Limerick and Institute of Technology Sligo (Chapters 4 and 5 respectively).

1.5 A consultant actuary was engaged to provide valuations for a number of pension and net present value scenarios. Appendix A outlines the methodology used and assumptions made by the actuary.

1.6 The purpose of this report is to examine whether the resources of the University of Limerick and the Institute of Technology Sligo have been used and disposed of economically, efficiently, and on the most favourable terms reasonably obtainable with respect to the remuneration of certain senior staff. The sole and exclusive focus of this report is on the University of Limerick and the Institute of Technology Sligo, and not the staff members concerned. For the avoidance of any doubt, this report does not make any criticism or comment or express any view, whether express or implied, with respect to the staff members concerned and should not be understood as doing so.

1 Section 25(4) of the Universities Act 1997 and section 11(6) of the Institutes of Technology Acts 1992 – 2006.

2 In the context of this report, the relevant codes were: *Governance of Irish Universities* 2012; *Code of Governance of Irish Institutes of Technology* 2012. An updated governance code for institutes of technology was issued in January 2018 and an updated governance code is currently being finalised for the university sector.

2 Professional added years awards for pension purposes at the University of Limerick

2.1 Certain public sector pension schemes provide, in exceptional circumstances, for discretionary awarding of ‘added service years’ for pension purposes. These provisions are designed to compensate for the inability of certain professional or technical staff to qualify for a full pension based on 40 years service by mandatory retirement age. For example, individuals may be unable to qualify for a full pension where

- minimum professional, technical or specialist qualifications and/or a minimum number of years of essential experience were required for initial appointment as an employee of a public body, or
- the minimum entry age specified in a recruitment competition was 25 or over (where mandatory retirement age was at age 65).

2.2 Generally, the award of professional added years is based on the requirements of the recruitment position as advertised, rather than in response to individual employee circumstances.

Added years a feature of university pensions

2.3 Discretionary awarding of added service years is a feature of the pension schemes of all seven Irish universities. As reported previously, there was uncertainty about the extent to which some additional payments resulting from awards of added years have become *de facto* entitlements of staff.[1]

2.4 Five universities — NUI Galway, Maynooth University, Trinity College Dublin, University College Cork and University College Dublin — are required to obtain sanction from both the Ministers for Education and Skills and for Public Expenditure and Reform prior to awarding professional added years.[2] That requirement derives from the Financial Measures (Miscellaneous Provisions) Act 2009, which provided for the transfer of the assets of university pension funds to the (then) National Pension Reserve Fund and the assumption by the State of liability for the related pension entitlements.

2.5 By contrast, the two ‘newer’ universities — the University of Limerick and Dublin City University (DCU) — make awards of significant value without seeking external sanction. Unlike the ‘older’ universities, both universities always operated unfunded pension schemes based on the standard public sector ‘pay-as-you-go’ model, and were accordingly not brought within the provisions of the 2009 Act.

2.6 Both ‘newer’ universities operate under general public service circular letters related to professional added years.[3] Since December 2011, DCU has a documented decision making process in place. It has also built an independent/external assessment process into its decision-making procedures for the award of professional added years. This is not the case in the University of Limerick. As a result, there are differences in the award rates and average values between the two institutions.

1 See Chapter 5 of Comptroller and Auditor General Special Report 75, *Irish Universities – Resource Management and Performance*, September 2010.

2 Both ministers have delegated the authority to approve professional added years to their respective departments. Ministers are only required to consider appeals, of which there have been 30 in the period 2012-2016.

3 Department of Finance Letter (Ref P18/145/04) and Department of Finance Circular Letter 8/2005 (Ref P18/153/04) govern the award of professional added years to professional, technical or specialist posts in the civil and public service.

2.7 Figure 2.1 compares the number of professional added years awarded by DCU and the University of Limerick to those retiring during the years 2012 to 2016.

2.8 The award of 324 professional added years in the University of Limerick between 2012 and 2016 cost the exchequer an actuarially estimated €1.27 million by increasing the amount of lump sums paid out to retirees upon their retirement. In addition, there will be an associated ongoing annual cost to the exchequer estimated at €0.4 million per year, in paying increased annual pensions to those retirees.

2.9 In DCU, professional added years were awarded only to academic staff. In the University of Limerick, 18% of the awards were to non-academic/managerial staff.

2.10 During the years 2012 to 2016, 89% of applications received by the University of Limerick for professional added years were successful. The success rate of applications in Dublin City University for the same period was 52%.

Figure 2.1 Awards of professional added years, 2012 to 2016

Source: University of Limerick and DCU. Analysis by the Office of the Comptroller and Auditor General.

Pensions committee

2.11 The University of Limerick established a Pensions Committee (the Committee), on foot of a proposal approved by the Governing Authority in 1992. The original proposal recognised the function of the Committee as essentially a personnel function. The current composition of the Committee, as approved by the Governing Authority in 2013 is

- a chair, nominated by the University President
- an external expert, nominated by the President
- three members, nominated by the President
- one member of the University Governing Authority
- the Director of Human Resources, and
- a pensions officer from the University's Department of Human Resources.

2.12 The composition of the Committee since 2012 has remained relatively stable with eight members. The member representing the Governing Authority is also a staff member of the University. The only external member of the Committee is the external expert nominated by the President.

2.13 The terms of reference of the Committee — adopted in 1993 — state it "will examine and adjudicate on all issues relating to the administration of the University's superannuation schemes." It also notes that "most pension queries and problems would be solved in the Personnel Department", but that "matters requiring adjudication would be submitted to the Committee".

2.14 In relation to professional added years, the Committee's terms of reference note only that "proposed amendments to the provision for the award of professional added years scheme discussed at a meeting [in 1993] between staff governors, the Registrar and the Personnel Manager have not been finalised". No evidence has been provided of subsequent consideration of the Committee's remit in that regard.

2.15 The minutes of the Committee for the years 2012-2017 show that little else other than the award of professional added years or related matters was discussed or decided by the Committee.

2.16 The DCU Pensions Committee is an approved Sub-Committee of the University's Governing Authority made up of the University President, the Director of Finance and the Director of Human Resources.

Professional added years approval process

2.17 The primary differences between the award processes in the universities are

- professional added years are pre-awarded in the University of Limerick,[1] and
- the process in DCU includes a review by an external expert who is not a member of DCU's Pension Committee.

The approval process in both universities is set out in Figure 2.2.

Figure 2.2 Professional added years approval process in both universities

Dublin City University	o **On confirmation of planned retirement, a staff member can apply for professional added years, providing full details of employment history. This is assessed by the University's Department of Human Resources pension's team by reference to the job advert and description for the relevant post.** o **Following internal consideration, the assessment is reviewed by an external expert.** o **Once the external review has been completed, a recommendation for an award is forwarded to the University's Pension Committee for consideration and approval.**
University of Limerick	o **A staff member can apply for professional added years at any time.** o **Following discussion at a meeting of the Pensions Committee, applications are either approved or refused.** o **The pre-award of an estimated (or projected) maximum number of professional added years is notified to the employee.** o **At retirement, the University's Department of Human Resources considers the pre-award estimate, which is either confirmed or may be reduced in limited circumstances.**

Source: University of Limerick and DCU. Analysis by the Office of the Comptroller and Auditor General.

Professional added years awards

2.18 The Office of the Comptroller and Auditor General wrote to the secretaries general of the Department of Education and Skills and of the Department of Public Expenditure and Reform in October 2016 to draw their attention to the different processes being applied in relation to professional added years as between the 'old' and 'new' universities and between the two new universities. It was suggested that an approval approach in line with the five older universities would ensure greater consistency in the application of professional added years awards across all university employees.

2.19 The Department of Education and Skills subsequently wrote to the Department of Public Expenditure and Reform in November 2016 agreeing with the proposal to treat the University of Limerick and DCU in line with the other five universities.

1 The University has stated that awards of professional added years can only be formally made at the time of retirement. The term pre-awards in this report is used to refer to the estimate figure, applied for by University employees and approved by the University Pension Committee. The University states on its website that these pre-awards are 'expected to give an indication of the award'.

2.20 The Higher Education Authority (HEA) has stated that it is of the view that professional added years applications for University of Limerick and DCU should be subject to the same approval process as the other universities and will work with the Department of Education and Skills to implement this.

2.21 The Department of Public Expenditure and Reform took the view that it would not be appropriate to extend the central approval procedure that applies in the five older universities to DCU or the University of Limerick. Instead, the Department of Public Expenditure and Reform suggested that the approach which operates in DCU (external assessment) should be applied in the University of Limerick.

2.22 The Department of Education and Skills and the Department of Public Expenditure and Reform have now agreed a process to ensure consistency in the sector, whereby applications for professional added years in DCU and University of Limerick will have to be approved directly by the Department of Education and Skills.

2.23 The departments have also agreed that appeals of decisions of the Department of Education and Skills where they arise will be considered by both that Department and the Department of Public Expenditure and Reform.

2.24 Following circulation of a draft of this report, the HEA wrote to both DCU and University of Limerick informing both universities that all applications for professional added years awards for the benefit of university employees should be submitted for approval to the Pension Unit of the Department of Education and Skills, with effect from 30 April 2018.

2.25 The Secretary General of the Department of Education and Skills has stated that his Department has recently commenced a review of previous awards of professional added years in the University of Limerick.

Conclusion

2.26 The professional added years regime in the University of Limerick was significantly more generous than in Dublin City University and available to more grades of staff. Steps have recently been taken by the Department to bring the arrangements in the University of Limerick into line with those applied in other universities.

3 Admission of certain senior subsidiary company staff into the University of Limerick Pension Scheme

3.1 The Universities Act 1997 sets out the objects and functions of a university and allows for the establishment of subsidiaries for the purpose of promoting or assisting a university, or in connection with its functions. The Act does not deal with employment conditions or remuneration arrangements for employees of university subsidiaries.

3.2 All the universities (and many institutes of technology) have established subsidiary companies for a variety of purposes including the operation of certain campus services (such as catering) within a commercial environment, or to benefit from tax supported schemes such as those pertaining to the provision of student accommodation for rent. Subsidiary companies have also been established for the provision of commercial academic services and research commercialisation.

3.3 The governance code in place for the university sector (*Governance of Irish Universities,* 2012) provides that the establishment of new subsidiaries requires the approval of a university's governing body. The code states that in such cases, the governing body should consider the full implications, including any financial or other risks for the university. The code does not provide any guidance on remuneration within subsidiary companies but does require universities to confirm in their annual governance statement sent to the Higher Education Authority (HEA) that a code of governance is in place in respect of trading subsidiaries with annual statements provided to the governing authority and confirmation that the governing authority has received a formal annual report of compliance from the chairperson of the board of each subsidiary.

3.4 The governance codes for the university and institute of technology sectors both state that the requirements of the codes should, in general, be applied in all operating subsidiaries. The representative body for Irish institutes of technology developed (in consultation with the HEA) a governance code for subsidiaries in 2015. The code for governance of subsidiaries states that remuneration policy for subsidiary company staff should be approved by each company's board. The code acknowledges that subsidiary companies often operate in commercially competitive environments and consequently there is a requirement for pay and conditions to be based on market rates. The code does not refer to pension arrangements for subsidiary company staff.

3.5 Notwithstanding that subsidiary companies are more prevalent in the university sector, there is no similar code of governance in place for university subsidiaries. However, the Department of Education and Skills has stated that a revised code of governance for the university sector, based on the Department of Public Expenditure and Reform's 2016 *Code of Practice for the Governance of State Bodies*, is currently being finalised. The Department intends that the revised Code will include a requirement that all universities will provide confirmation that an appropriate code of governance is in place in respect of any trading subsidiaries via their annual governance statements.

Plassey Campus Centre

3.6 Plassey Campus Centre (PCC), trading as Campus Life Services, was established by the University of Limerick in 1985 with a 'self-funding ethos', to support the development of student accommodation, sporting facilities and conferencing, through its subsidiaries including Plassey Campus Arena Ltd and University Concert Hall Limited. PCC has a code of governance approved by the Board which is based on the 2012 University code.

Secondment of subsidiary senior executives to the University

3.7 Pension benefits for employees of PCC are funded by way of employer and employee contributions to a separately administered defined-contribution fund.

3.8 Up to the end of 2012, staff recruited by the University were admitted to a defined-benefit pension scheme.[1] Since 1 January 2013, new recruits join the Single Public Service Pension Scheme.

3.9 Two PCC senior executives were admitted to the University of Limerick Superannuation (Amendment) Scheme in December 2012. Previously, they had been members of the PCC's defined-contribution pension scheme.

3.10 In one of the senior executive's original contract of employment, there is no mention of any pension provision. In the second case, only an unsigned copy of the original contract could be provided by the University. This contract — purportedly between PCC and the employee — merely states that the senior executive will make (the standard) employee contributions of 6.5% to the PCC pension scheme.

3.11 There is evidence that, in addition to their work for PCC, these individuals also undertook some work for the University.

Proposal to PCC

3.12 In June 2007, the (then) Vice President of Finance of the University, who was also a member of the Board of Directors of PCC, wrote to the Board of PCC stating that the two senior executives had been employed by the company on the understanding that they would attain similar conditions to employees of the University.

3.13 The memo to the Board states that "Following a review[2], with the assistance of Marsh Ireland, PCC pension consultants, of the pension provision for the senior executives, the pension provision as provided presents a large deficit to their respective pension expectations as against what would be provided in UL [under the University's pension scheme]. The review consisted of comparing the benefits of both the UL scheme and the PCC scheme and then providing alternatives and costings to allow the PCC pension to be more comparable with the UL pension."

3.14 The Board was further advised that

- PCC should look into setting up a 'target pension benefit' for the senior executives and
- the cost to PCC was estimated at €27,000 in the first year and would vary annually depending on investment returns.

1 The University of Limerick Superannuation (Amendment) Scheme

2 It is unclear who instigated the 2007 review, but the cost of the review was met by PCC.

3.15 The proposal was discussed at the June 2007 meeting of the PCC Board. The Board agreed that as not all directors were present at the meeting, the proposal should be put to the full Board at a future meeting. A request was also made to obtain details from the University's previous Director of Finance about the claimed commitment regarding the pension made to one of the senior executives.

3.16 The matter was raised at two subsequent meetings of the Board of PCC. At the April 2008 meeting, it was noted that the (then) Vice President of Finance of the University was reviewing the position and that it would be resolved at the next meeting.

3.17 The matter is not mentioned again in the minutes of the Board of Directors of PCC until December 2011. In November 2011, the Managing Director of PCC, who is also the Director of Finance in the University, sent a memo to the Board of PCC stating that the University had considered the matter and that the individuals' employments were to be re-structured, and that they would be employed directly by the University. The memo states that this restructuring would address the pension claims without involvement, commitment or cost to PCC. Those Board minutes do not record that the Board gave any consideration to the pensions of other staff within PCC — only the two senior executive pensions were considered.

3.18 In November 2011, the Director of Finance also sent a memo to the Director of Human Resources proposing the re-structuring as outlined in his memo to the Board of PCC be implemented.

3.19 The proposal as minuted at the PCC Board meeting was not implemented. Instead, a second memo — sent by the Director of Finance of the University to the Director of Human Resources of the University in November 2012 — recommending a secondment (rather than a transfer of employment) was acted upon in December 2012. The University can offer no explanation as to why the transfer of employment proposal (as presented to the Board of PCC) was changed to a secondment by the University. The minutes of the PCC Board do not mention the matter again until September 2017 where an outline of the secondment position is given and a note that the matter will be the subject of a special examination by the Comptroller and Auditor General.

3.20 Both senior executives are recorded in the company's Board minutes as being in attendance at all Board meetings where the pension matter was discussed. The University has stated that the two senior executives were not in attendance for the matter when it was discussed by the Board from December 2010 onwards. This is not reflected in the minutes of the Board meetings. The University has stated its practice is to show those present at a meeting in minutes and not to record those who absent themselves from a meeting for certain agenda items.

Consideration by the University

3.21 The University has provided some documentary evidence that, in October 2009, the University's Director of Finance met with his predecessor who held the position between 1983 and 2006. Part of this meeting dealt with the details on the claimed pension commitments made to the PCC senior executives.

3.22 Handwritten notes from this meeting, taken by the Director of Finance, include the phrases "pensions for PCC employees" and "move them into UL". This note also states that the Director of Human Resources was looking into the matter.

3.23 As outlined above, the University Director of Finance sent a memo to the Director of Human Resources in November 2011 proposing that the two PCC senior executives' employment be "re-structured such that they are employed directly by UL". The memo presents the rationale for the move as being that both individuals' roles have expanded into specified University of Limerick areas. A second memo was sent from the Director of Finance to the Director of Human Resources in November 2012, this time recommending implementation of secondment arrangements between PCC and the University, rather than direct employment by the University.

3.24 Neither of the two memos, from the University's Director of Finance to the Director of Human Resources

- refer to any approval at Governing Authority level of the University or the Board of Directors of PCC for secondment of the staff
- refer to the assurances about pension entitlements allegedly given to the individuals on originally taking up employment with the PCC
- indicate any projected cost of the move for the University
- indicate that both senior executives would automatically be entitled to join the University's pension scheme on secondment
- make any reference to the senior executives applying for professional added years under the University's pension scheme or
- make any reference to how the senior executives' existing PCC pensions would be treated.

3.25 While there is no formal record of a decision by the Governing Authority of the University in regard to the secondment, the University has noted that four of the members present at the PCC Board meeting in December 2011 were also members of the Governing Authority of the University.

3.26 The minutes of the Recruitment Committee of the University in May 2012 include a reference to the secondment. The secondment is mentioned as a cost neutral way of completing a restructuring of the University's Finance Department, submitted by the Director of Finance for consideration by the Committee.

3.27 Ancillary contracts of indefinite secondment from PCC to the University, commencing 1 December 2012, were signed by the two senior executives and an officer from the University's Department of Human Resources. However, the arrangement is that

- between 1 Dec 2012 and respective retirements, salary costs, including employer's PRSI and an employer's pension contribution, are borne by PCC
- on retirement, standard pension lump sum and standard pension payments are borne by University
- the element of pension related to professional added years is recovered from PCC on an ongoing basis.

Pension transfer impacts

3.28 Both executives had become members of the PCC pension scheme when it was established in March 1998 and had contributed at the rate of 6.5% of salary. Employer pension contributions paid by PCC were at the rate of 10% of salary.

3.29 In comparison, a University employee enrolled in the (pre 2013) pension scheme pays 6.5% of salary[1] to access pension at retirement on a pro-rata basis, receiving 1/40th of the pension rate for each year worked. Because pensions are funded on a ‘pay-as-you-go’ basis, the University does not pay employer contributions.

3.30 On becoming recognised as University employees in December 2012, the accumulated value of both the two individuals’ employees’ and employer’s contributions (€708,000) was transferred from the PCC pension fund to the University, ceasing any entitlement of the two senior executives to any further payments from the PCC pension fund.

3.31 The University became liable to pay superannuation scheme pensions when it received the private pension fund, while the beneficiaries in effect remained employees of the subsidiary, PCC.

Professional added years award

3.32 Following the secondment, both senior executives applied to the University’s Pensions Committee for the award of professional added years to their pension entitlement.

3.33 In one case, a maximum possible award of just over five years has been approved but that employee has not yet retired and therefore the final award has not yet been made by the University.[2]

3.34 In the second case, approval for a maximum possible award of 9.42 years was given by the University’s Pension Committee in March 2014 with the standard caveat that the value of preserved benefits be reviewed three months prior to retirement. (The final award was 8.29 years.) This award was based on all years spent studying in third level education and in various private sector employments prior to taking up employment with PCC.

3.35 There was no evidence of costing or projected costs attached to either the application put before the Pensions Committee or the approval given by the Committee.

3.36 Neither the application form, nor the approval, considered the usual requirements of a professional added years scheme i.e. that the original job advertisement included either a specified minimum number of years relevant experience required for appointment, or a minimum entry age of 25 or over.

3.37 The examination team requested evidence of minimum entry requirements set for the positions in PCC. One job description could not be located. The second job description, which was recently located by the University, did not require either a specialist qualification or specify a minimum number of years’ experience.

1 For employees recruited on or after 6 April 1995, (PRSI Class A), the contribution is 1.5% of salary, plus 5% of adjusted salary (with an amount equal to twice the State pension deducted).

2 The ‘maximum possible’ award is contingent on the employee working a projected number of years.

3.38 The examination team also queried the justification for the award of professional added years in the case of administrative roles. The University stated that the revised (2005) scheme for professional added years states in section 3 that "professional and technical posts are those for which third level degrees and/or diplomas are required for appointment". Its interpretation of this part of the scheme was that the two posts in question qualified on the basis that they were professional managerial posts, and as such, were eligible for consideration for professional added years.

Value of pension benefits

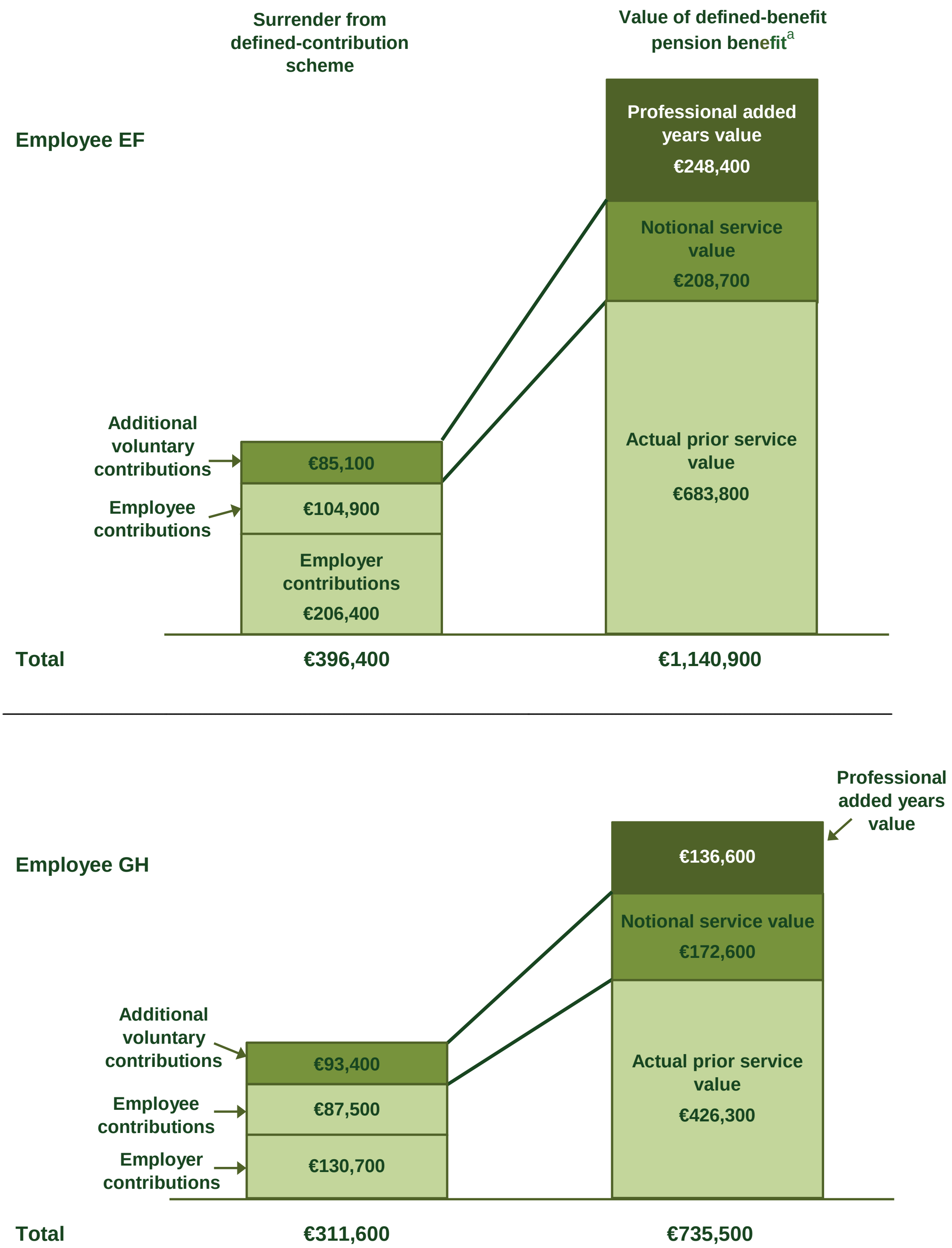
3.39 Figure 3.1 shows the value of the private PCC pension fund and the value of the corresponding benefits for the senior executives (referred to as EF and GH) under the University's Superannuation Scheme.

3.40 One of the two senior executives retired from the University at the end of September 2014 and is receiving benefits valued at just under €745,000 more than was transferred in to the University. The senior executive who has not yet retired will receive up to €424,000 in excess of the transfer amount, depending on when retirement is taken.

3.41 The senior executive who has retired was immediately re-engaged by PCC on a part time (one day a week) contract basis for one year. The contract was put in place by the Managing Director of PCC, who is also the Director of Finance in the University of Limerick, and was paid for by PCC. The amount paid under this contract exceeded the contracted amount by just over €43,000.

3.42 When the pension from the University and the contract payments from PCC are combined, the employee earned just over €13,600 more than the pre-retirement salary. As the contract payments are from PCC, the University is seeking clarification from the HEA if the normal pension abatement rules apply.

Figure 3.1 Value of pension benefit



Source: Office of the Comptroller and Auditor General

Note: a The values of professional added years, notional service and actual prior service were calculated by a consultant actuary. The methodology and assumptions are set out in Appendix A.

Conclusions and recommendation

3.43 In 2012, the University of Limerick put in place an arrangement whereby two senior executives in one of its subsidiaries were seconded to the University. The executives were then admitted to a University defined-benefit pension scheme, recognising their prior long service with the subsidiary as qualifying for pensions purposes. The scheme they joined was about to close for new members. Claims that they had been promised benefits equivalent to those of employees recruited to the University at the same points in time were not documented. As a result of the 2012 arrangement, they were awarded an entitlement to very significant additional pension benefits.

3.44 The University failed to keep adequate records in relation to the assessment of the claim, the decision to second the executives and to award University pension benefits.

Recommendation 3.1

The University should examine all its subsidiary companies to ensure correct contractual arrangements are in place, including superannuation entitlements of all company employees.

Response of the President, University of Limerick to recommendation

Agreed. This will be completed by the end of December 2018.

Overall response of the Secretary General, Department of Education and Skills

3.45 The Department and the HEA will work together to examine in further detail the circumstances relating to the two cases in question and will ensure corrective action is taken.

4 Severance payments to senior managers at the University of Limerick

4.1 Severance payments may arise where the role of an employee becomes redundant. They may also arise in a number of difficult situations, including cases where the employee's capacity to perform the role is or has become limited, or where the employment relationship has broken down irreconcilably. In such circumstances, severance payments may represent the most practical and cost-effective way of resolving an unsatisfactory or unworkable situation, and may be in the best interests of both the employer and the employee. A characteristic of such discretionary severance payments is that the amount is over and above what the employee is contractually or statutorily entitled to.

4.2 Severance payments can include cash amounts, non-cash elements (e.g. discretionary added years for pension purposes) or both. In the case of discretionary severance payments, the payment is usually the result of negotiations between the parties, or their legal representatives. Confidentiality agreements are a frequent feature of such settlements.

Cessation of employment and commencement of consultancy

4.3 The Financial Emergency Measures in the Public Interest (No. 2) Act 2009 (the Act) reduced salaries of public sector workers with effect from 1 January 2010. In addition, to incentivise reductions in the number of public sector employees, the Act provided that persons retiring up to 29 February 2012 could do so with their pension terms being based on the 2009 salary levels i.e. pre-reduction rates.

4.4 In November and December 2011, the University of Limerick agreed with two senior managers (referred to hereafter as AZ and BY) that their employment would cease on 29 February 2012, on a severance basis, and severance payments were made on that date.

4.5 However, prior to their severance, arrangements were put in place with each of the senior managers to continue to make their services available to the University on a consultancy basis. Separate contracts for service were signed with limited liability companies owned by each senior manager and, on the University's behalf, by the Director of Human Resources in late 2011.

4.6 The University engaged Price Waterhouse Cooper (PwC) to provide tax advice to both employees regarding the tax implications of the severance arrangements and consultancy contracts. The total cost to the University for this service, including the costs of establishing the two consultancy companies, was €6,000 plus VAT.

4.7 The University has stated that on instruction from both employees, PwC incorporated the limited liability companies. Registration details of the two consultancy companies indicate that both companies were established in February 2012.

4.8 The terms of the consultancy contracts are summarised in Figure 4.1.

Figure 4.1 Terms of consultancy contracts

	Person AZ	Person BY
Date on contract for services	2 Dec 2011	11 Nov 2011
Date of company formation	9 Feb 2012	20 Feb 2012
Contract period	1 Mar 2012 to 28 Feb 2015	1 Mar 2012 to 28 Feb 2015
Maximum payment per annum	€63,000	€60,000
Total payments	€189,000	€180,000

Source: University of Limerick and Companies Registration Office. Analysis by the Office of the Comptroller and Auditor General.

Assessment of consultancy arrangements

4.9 In response to a query from the examination team, the University stated that there have been a number of cases where employees have retired and have been re-engaged by either the University or one of its subsidiaries. Since 2012, at least six of these contracts have been put in place, with payments totalling between €48,000 and €189,000 per person.[1]

4.10 In January 2018, the Higher Education Authority (HEA) wrote to all higher education institutions, reminding them of the obligation to receive its prior approval for the re-employment of retired staff and advising that it will not give approval for the re-employment of any staff who previously received a severance payment from that institution.

4.11 The University did not run competitive tender competitions prior to signing the contracts for consultancy services with either Person AZ or Person BY as it considered the pieces of work were of a 'specialist nature'.

Person AZ's contract

4.12 In the contract with person AZ, the University nominated the Director of Human Resources as the person to whom monthly invoices were to be submitted for approval, and he signed off on the monthly payments.

4.13 Potential areas of work specified in AZ's contract include "develop finance projects as requested, develop student marketing as requested, project manage specific HR projects as determined by the HR Division and evaluate e-tenders and EU projects to position UL to competitively compete in these areas".

4.14 There is an indication that the consultant undertook some work on behalf of the University between June and December 2012. However, this examination has found little evidence of a meaningful business purpose for the University from the contract with AZ's company.

1 Two of the six contracts are discussed in this chapter and a third is discussed in Chapter 3.

Person BY's contract

4.15 In the contract with person BY, the University nominated the (then) Vice President Academic and Registrar (VPA&R) as the person to whom monthly invoices were to be submitted for approval. In the majority of cases, monthly invoices were approved by the VPA&R.

4.16 Potential areas of work specified in BY's contract include "develop the Eastern European market for life long learning, develop CPD projects/initiatives, project manage specific HR projects as determined by the HR Division and evaluate e-tenders and EU projects to position UL to competitively compete in these areas."

4.17 Supporting documentation attached to the invoices did not provide clarity on the specific work performed during the period. The descriptions supplied stated "Working on EU projects and related educational work", and there was no indication as to what the projects were.

4.18 The University stated four projects in particular were proposed and managed on its behalf by the BY consulting company. Evidence, including worksheets, invoices, project websites and reports with regard to these four projects, the individual's involvement and funds raised for the University, has been provided to the examination team.

Combined payments

4.19 As a result of the combined severance and consultancy arrangements, at the end of February 2012, both senior managers

- stepped down from their positions as employees
- received severance payments just over twice their annual salary
- commenced monthly invoicing as consultants to the University and
- preserved their pension benefits until they reached 60 years of age.

4.20 Figure 4.2 shows the total amounts paid by the University — under salary, severance agreements, consultancy contracts, pension lump sums and ongoing pension payments — to the two individuals, up to the end of 2016.

Figure 4.2 Amounts paid to AZ and BY by the University, 2012 to 2016

Person AZ	**2012**	**2013**	**2014**	**2015**	**2016**
	€	€	€	€	€
Severance payment	231,506				
Pay in lieu of annual leave	13,310				
Consultancy contract	52,500	63,000	63,000	10,500	
Pension lump sum			181,367		
Pension annual payments			43,312	57,135	57,535
Total	**297,316**	**63,000**	**287,679**	**67,635**	**57,535**
Person BY					
Severance payment	220,332				
Consultancy contract	50,000	60,000	60,000	10,000	
Pension lump sum				158,054	
Pension annual payments				45,022	54,233
Total	**270,332**	**60,000**	**60,000**	**213,076**	**54,233**
Combined total	**567,648**	**123,000**	**347,679**	**280,711**	**111,768**

Source: UL. Analysis by the Office of the Comptroller and Auditor General not discounted for present value.

Pension payments

4.21 The University calculated the pension lump sum and pension rate on the basis of the 2008 salary level for person AZ and on the basis of the 2010 salary level for person BY. In both cases, professional added years were awarded.[1]

4.22 Figure 4.3 outlines the comparative actuarial cost to the University of the overall pension and severance packages put in place for the senior managers, and the arrangement they might otherwise have benefited from had they remained in employment and retired at age 60.

4.23 The figures, including amounts paid to each individual's consultancy company, when discounted to present value, show that the arrangements put in place cost the University an additional €310,000 approximately compared to the costs involved in the two individuals working to the normal minimum pensionable age (i.e. 60 years of age).

Figure 4.3 Comparison of estimated severance and pension costs to the University

Payment type	**Person AZ NPV[a]**	**Person BY NPV[a]**
	€m	**€m**
Actual severance/pension arrangements	1.93	1.74
Pension arrangements if normally retired at age 60	1.71	1.65
Difference (i.e. net additional cost to the University of arrangement)	**0.22**	**0.09**

Source: Analysis by the Office of the Comptroller and Auditor General.

Note: a The net present values (NPVs) were calculated by a consultant actuary. The methodology and assumptions used are set out in Appendix A.

1 The process by which the University awards professional added years is examined in Chapter 2 of this report.

Assessment of adherence to good practice

4.24 Figure 4.4 sets out a good practice framework for public bodies making discretionary severance payments, based on the principles of accountability, integrity and fairness.

Figure 4.4 Good practice framework when severance payments are proposed

Risks, costs and benefits

- The employer should consider its options and have a clear understanding of the risks involved, including both costs and benefits of terminating the employment. A written record of this rationale should be maintained.

Experienced advisers/legal advice

- Use experienced advisers and obtain legal advice in writing to develop appropriate terms for a negotiated exit, and to document the basis for a severance payment.

Delegated authority

- The person negotiating and signing the agreement on behalf of the employer must have formal delegated authority to do so. Consider the need for departmental approval, in line with relevant financial procedures and circulars, before a binding offer is made.

Severance value

- The value of the severance deal should be reasonable in the circumstances and justified as a proper use of public money. The amount negotiated should be based on an assessment of the merit of the position of the employer and employee.

Severance agreement

- The terms of the agreement should be clearly spelled out, and the obligations of both parties carefully defined. The nature of each type of payment should be specified, and the basis for the payment should be explained.

Confidentiality

- Agreements should not contain confidentiality clauses that create a perception that the employee cannot speak out about poor public sector practices or that prevent the employer from fulfilling its accountability obligations. Agreements should
  - acknowledge statutory override of confidentiality terms under the Protected Disclosures Act 2014
  - not interfere with employees' rights.

Disclosure

- Public entities generally have some form of obligation to disclose severance payments, either through governing legislation, accounting standards or government instructions/circulars. Statutory disclosure requirements of public bodies override any contractual undertaking in severance agreements.

Source: Special Report 91 *Management of Severance Payments in Public Sector Bodies*, Comptroller and Auditor General, December 2015.

The case for severance

4.25 The University has no written record of the manner in which it considered the options, risks involved or costs and benefits of terminating the employments. The respective line managers of the employees concerned are not on record with the University as indicating a requirement for termination of employment.

4.26 In both cases, a one page stepping-down agreement, setting out the calculation of the severance amount and the leaving date, was signed in late 2011, by the employee and the University's Director of Human Resources. Those agreements were dated the same day as the consultancy contracts for service in both cases.

4.27 There is evidence that the University subsequently sought legal advice in early February 2012, representing to the legal advisors that there were "performance issues" with both employees. This was after the contracts for consultancy service were signed. The University also sent their legal advisors a template severance agreement. Based on the presentation to them, the University's legal advisors endorsed the proposed severance and returned a 'marked up' version of the template for the severance agreements to the University. The advice contained in that letter stated it was essential that both individuals (in receipt of the severance payments) take independent legal advice in relation to their respective agreements and that each individual sign their respective agreement in the presence of their solicitor whose name should be printed and signed on the document.

4.28 The template included a statement that the severance agreement, once signed, would serve as "a settlement of all claims and demands made or which may be made by you arising from your employment and the termination of your employment with the University". A further clause stated that "This agreement comprises the entire agreement between the parties in relation to the termination of your employment. You hereby confirm that you are not entering into this agreement on reliance on any representation or warranties not expressly set out in this agreement."

4.29 However, the University did not use the template provided by the legal advisors, and the proposed severance payments were made to the two senior managers as outlined in the earlier stepping-down agreements.

Severance value

4.30 The University has stated that the values of the severance payments were based on the terms of the voluntary redundancy scheme for health sector employees contained in the Department of Health and Children Circular Letter 7/2010. The terms of that scheme include a payment of three weeks' salary per year of actual service, in addition to statutory redundancy. The overall payment under the scheme is subject to a limit of either two years' salary or, if less, one-half of the salary payable to pension age. There was no such scheme generally applicable in the education sector.

4.31 In fact, the University departed from the terms of the health sector scheme in two ways

- It did not use the number of years of actual service in its initial calculation of the amount due. For both individuals, the length of service recognised for the purpose of the calculation included added years, and consequently was in excess of the number of years actual service.
- It applied the limit of two years' salary to its initial calculation. However, given that both individuals were within four years of eligible retirement age, the University should have applied the other limit specified in the scheme i.e. one-half of the salary payable to pension age.

4.32 The combined effect of the variances from the health sector scheme was that the University paid total severance of approximately €452,000 instead of €286,000, a difference of over €166,000.

4.33 An examination of the tax-free element of the severance indicates there may have been a significant underpayment of tax in relation to one of the severance payments, due to a break in public sector employment.

Delegated authority

4.34 There is no evidence that the University's Governing Authority had delegated authority to the President of the University to negotiate and sign severance agreements. The University believes that this authority is delegated under a scheme approved under Section 25 (6) of the Universities Act 1997, which provides for the President to suspend or dismiss any employee.

4.35 There is no evidence that the President formally delegated such authority in writing to the Director of Human Resources who negotiated with the employees, and who signed the agreements on behalf of the University.

4.36 Notwithstanding the statutory requirement for Ministerial approval of remuneration terms, the University did not inform or seek formal approval from the Department of Education and Skills prior to making the severance payments.

4.37 When the examination team sought documentation indicating how the two severance payments were processed, the University provided a copy of an email (dated 20 February 2012) from the Director of Finance to a staff member in the Finance Unit, instructing the staff member to process both severance payments. That staff member was one of the recipients of the severance payments.

Disclosure

4.38 The amounts of both severance payments are disclosed in the University's financial statements for the year ended 30 September 2012.

4.39 The template severance agreement provided by the University contained a confidentiality clause. However, given that no signed agreement was in place for either employee, no confidentiality clause can be considered to be in place over the agreements.

Special report on severance payments

4.40 A previous Comptroller and Auditor General special report, published in December 2015, examined the processes employed generally by public bodies in making severance payments in the period 2011 to 2013.[1] Fourteen high-value discretionary severance payments were identified for the purposes of the examination. The cases included the severance payments made to the two ex-staff members by the University of Limerick during the period.

4.41 The focus of the special report was on the wider governance, approval and disclosure processes related to severance payments. Accordingly, the merits of each severance case were not examined at that time.

4.42 In all interactions with the examination team in relation to the two February 2012 severance cases, the University of Limerick

- represented that both severances were for performance-related issues and/or to facilitate restructuring
- failed to disclose the existence of contracts for service with the two individuals through companies established for that purpose
- represented that formal legal advice sought in advance of the agreements being implemented was acted on, and
- represented that contemporaneous signed severance agreements were in place for both severance payments.

4.43 Figure 4.5 shows the timeline of events surrounding collation of information for the special report, including contact with the University. The correspondence was addressed to the University President and both the Director of Finance and Director of Human Resources.

1 Special Report 91; *Management of Severance Payments in Public Sector Bodies*, December 2015.

Figure 4.5 Timeline requests and responses with University of Limerick 2015

OCAG requests	2015	University of Limerick responses
Copies of signed severance agreements for both individuals requested from the University.	January	
Further requests for copies of signed severance agreements.	February	University indicates it is having difficulty in locating the signed severance agreements and will revert when they are located.
Further request seeking either a copy of the signed severance agreements or an explanation on the difficulty in providing them.	March	University indicates it still cannot locate signed severance agreements and suggests that they may have been misfiled.
	April	
Relevant extracts from draft report sent to the University President (for confirmation of the facts, and a further request for copies of the two signed severance agreements) and copied to the Department of Education.	May	University response to draft report refers to the risk of breaching the confidentiality clauses in the severance agreements thereby compromising the University, particularly if the reason for the agreements being entered into were to be reported i.e. performance issues.
	June	
	July	
The University is informed that the failure to provide copies of the signed severance agreements could lead to the University being named in the special report.	August	
	September	Director of Human Resources indicates he will try to source a copy of the signed severance agreements from the two individuals ("not a position I appreciate").
	October	Director of Human Resources (copying the Director of Finance) sends one of the signed severance agreements (dated 11 November 2011), and indicates that the other will be provided when sourced.
Revised draft report (reflecting receipt of one of the signed agreements) sent to the University President for final comment; copy of the second agreement requested.	November	Director of Human Resources responds stating that "[severance] agreements were signed by both individuals".
Follow up request for a formal response from the President.	December	Director of Human Resources states that "the President requested me to respond."

Source: University of Limerick and the Office of the Comptroller and Auditor General. Analysis by the Office of the Comptroller and Auditor General

Reporting to Department of Education and Skills

4.44 The Department of Education and Skills became aware of the severance payments to AZ and BY by the University upon receipt of correspondence from the special report examination team in May 2015. The Department was concerned that, in both cases, the severance payments were significantly at variance with the terms of the HSE scheme, as they exceeded the limits provided for within that scheme.

4.45 The Department raised specific queries with the University. However, the University did not disclose all the relevant facts to the Department. It advised that there had been performance issues in relation to both staff members, and that the severance payments made represented extremely good value as, in addition to savings achieved on potential legal costs, the salaries of the individuals were saved as neither individual was replaced by the University and the posts were suppressed.

Compromise agreements

4.46 While the examination for Special Report 91 was in progress, the University arranged for Person BY to sign a severance agreement — in the form recommended by its legal advisors — in late 2015, but backdated to November 2011. The backdated agreement was also signed by the University's Director of Human Resources and witnessed by the University's Human Resources Manager, who reported directly to the Director of Human Resources. The back-dated agreement was provided to the examination team in October 2015, with the University's Director of Finance in copy, purporting to be a document signed four years previously.

4.47 In drawing up the back-dated document, the University used the marked up template provided by their solicitors in 2012 but amended one section. The following sentence was removed: "The sum of € [XX] (inclusive of VAT) will be paid by the University as a contribution towards your legal costs, which sum will be paid directly to your solicitors on receipt of your solicitor's invoice to you."

4.48 The University accepts that it was not correct to backdate the document and that correct information should have been provided to the Office of the Comptroller and Auditor General. However, the University has not provided an explanation as to why the agreement had been backdated, or why that fact was not disclosed to the examination team for Special Report 91.

4.49 The responses on behalf of the University in 2015 were made by the Director of Human Resources, copied to the Director of Finance and approved by the (then) President of the University. Separately, the Director of Finance had previously presented a memo to personnel from the Office of the Comptroller and Auditor General carrying out the financial audit of the University in which the compromise agreements were outlined along with the performance issue relating to one of the employees. These representations were accepted by the audit team as the Director of Finance was the line manager for the employee in question.

Reasons for severance

4.50 In response to a request from the Report 91 examination team, the University had stated that the severance agreements had “saved the salary for the individuals going forward as the individuals were not replaced.” This position was also represented by the University to the Department of Education and Skills in 2015.

4.51 During the course of the examination that resulted in Special Report 91, the University did not disclose the post-severance re-engagement of the two individuals as consultants.

4.52 The University also requested that reference to issues of poor performance be removed from the report, on the basis of purported confidentiality undertakings given by the University in the severance agreements with the individuals concerned.

4.53 The University accepts that the compromise severance agreements and the consultancy contracts were linked and part of the overall severance arrangements.

Appearance before the Committee of Public Accounts

4.54 Because the focus of Special Report 91 was on process, system learning and good practice, the University of Limerick was not identified in the special report. The report was examined by the Committee of Public Accounts in September 2016, focussing on the adequacy of the processes generally across the system. The University of Limerick was not called to give evidence at that meeting.

4.55 Officials representing the University appeared in March 2017 before the Committee of Public Accounts, following audit certification of its 2014/2015 financial statements.

4.56 As part of evidence presented, responding to a question from the Committee, the University stated that one of the two individuals who received a severance payment, had returned to the University to work as a consultant for three years following the severance payment, prior to receiving pension payments.

4.57 The Director of Finance of the University used the findings of Special Report 91 as confirmation for the Committee of Public Accounts that good practice had been followed in relation to the processing of the two severance payments, except to acknowledge that the University had not sought prior approval for the payments from the Department of Education and Skills.

Subsequent events

4.58 The University responded to a letter from the Department of Education and Skills in April 2017 providing details of the two consultancy companies engaged by the University.

4.59 In early May 2017, following inquiries from the '*RTÉ Investigates*' media team, the University's Director of Finance wrote a letter to the Committee of Public Accounts to correct the record of the March 2017 meeting, stating that there were, in fact, two issues where the University had not followed good practice. The letter did not specify the second area in which there was a departure from good practice.

4.60 The letter sent to the Committee in early May 2017 also corrected the record in relation to one of the severance payments where a consultancy contract was awarded. The letter outlined that the consultancy payment and pension had overlapped for a period of eleven months.

4.61 Soon after his appointment on 1 May 2017, the current University President wrote to the Department, requesting it to arrange for an independent investigation into matters of concern at the University. On 12 May 2017, the Minister for Education and Skills announced details of an independent review into governance, human resources and financial practices and procedures at the University of Limerick. The HEA was given responsibility for overseeing the review and appointed Dr Richard Thorn, former President of the Institute of Technology Sligo, to undertake it.

4.62 In late May 2017, the University engaged the services of Deloitte under an internal audit services contract. The report was commissioned to investigate termination payments, expenditure on further study, handling of conflicts of interest and correspondence to key stakeholders.

4.63 Further evidence was given in June 2017 to the Committee of Public Accounts when the University was recalled to discuss its financial statements and the media coverage regarding the severance payments.

4.64 In July 2017, the Committee of Public Accounts published a report on its examination of financial statements in the third-level education sector. This report makes a number of recommendations to both the Department of Public Expenditure and Reform, and the Department of Education and Skills regarding, *inter alia*, severance payments.

4.65 The Deloitte internal audit report issued to the University in August 2017. That report has not been published. The current University President informed this examination that it was not published because of an ongoing examination of the conduct of employees in relation to the matters reported on by Deloitte. A copy of the report was provided to Dr Richard Thorn, as well to the Department and the Committee of Public Accounts.

4.66 A redacted version of Dr Thorn's initial report was published on the HEA's website in November 2017. A follow-on investigation by Dr Thorn on severance and rehire arrangements was deemed necessary, arising from one of the recommendations. The HEA has decided not to publish this report as it has deemed its findings to be *sub judice*. The report was circulated to key stakeholders including the University and the Committee of Public Accounts.

Conclusions and recommendation

4.67 Despite receiving legal advice and a template compromise agreement, the University did not sign the proposed compromise agreements with the individuals at the time of their departure from the University.

4.68 The University withheld relevant and material information from

- the examination team of Special Report 91
- the Committee of Public Accounts
- the Department of Education and Skills and
- the company it engaged for its own legal advice.

4.69 In both cases

- consultancy contracts were awarded without any consideration of tender requirements
- the consulting contract is dated before the consultancy company had been formally established.

4.70 Taken together, the severance and contractual arrangements resulted in significant additional expense for the University and, by extension, the Exchequer. Evidence of work done in return for one of the consultancy contracts is limited. In that case in particular, it is difficult to conclude that the value obtained from the contract is commensurate with the payments made.

4.71 The reasons the University has advanced for the severance deals are not credible. Legal advice was obtained by the University on the premise that there were unspecified ‘performance’ issues with the two individuals, but the University was unable to provide any evidence to confirm this assertion.

4.72 The timing of the severance and contractual arrangements suggests that they may have been designed to circumvent certain effects of the FEMPI Act 2009.

4.73 In one case, it appears that tax deductions made may not have been correct, and that additional tax is due.

Recommendation 4.1

It is recommended that the University re-examine the calculations and clarify the matter with the Revenue Commissioners

Response of the President, University of Limerick to recommendation

Agreed. The calculations which were performed by external specialist advisors have been re-examined. The only area of doubt in the calculation relates to a break in service where it was assumed that the break did not impact on the eligibility of the thirty years service (e.g. if the break was a career break rather than a resignation and re-employment later, then the calculation is correct) and the Revenue Commissioners will be contacted to discuss this by end August 2018.

4.74 The University misrepresented the circumstances around the severance deals to the Office of the Comptroller and Auditor General on a number of occasions, and did not disclose the existence of the related contracts. This undermines the audit relationship between the University and the Office.

Overall response of the Secretary General, Department of Education and Skills

4.75 The Department notes the conclusions and recommendation reached in respect of this matter. The Department shares the concerns of the Comptroller and Auditor General in respect of the misrepresentation by the University of Limerick with regard to the circumstances around the severance deals. The Department intends to communicate with the University to highlight the importance of full disclosure and transparency in responding to any and all requests from the Office of the Comptroller and Auditor General. The Department also intends to request confirmation from the University of the specific action it proposes to take in response to the instances of misrepresentation which have been identified, including actions to be taken to ensure that such misrepresentation is not a feature of the University's relationship with the Office of the Comptroller and Auditor General in future.

4.76 Separately, the Department notes the findings made by Dr Richard Thorn in his examination of the severance payments to senior managers in the University of Limerick. The University of Limerick has accepted the recommendations made by Dr Thorn and is in the process of effecting those recommendations. In that context, the University has provided its first two quarterly reports to the HEA which shows significant progress in the implementation of the recommendations. The HEA and the Department will continue to work with the University of Limerick to ensure that all recommendations are fully implemented.

Overall response of the President, University of Limerick

4.77 At all times, I acknowledged that there were serious failures in the completeness and accuracy of information provided to the statutory bodies (this had been concluded from the internal audit). In particular, I acknowledged that the post severance contracts and pensions were part and parcel of the severance packages and that there was no evidence that the severances arose from poor performance.

4.78 Since coming into office in May 2017, I have put in place a new management structure, in particular the appointment of a Chief Operating Officer and Registrar to which Human Resources and Finance report. There is ongoing restructuring of the new portfolio including making changes in Human Resources and Finance. In addition, the subsidiary companies have been restructured. The Governing Authority has also been changed, resulting in a smaller membership and a more slimline committee structure. Finally, the University of Limerick has committed to and already implemented many of the recommendations of the Thorn and Deloitte reports and reports regularly to the Governing Authority and HEA on same.

5 Severance payment at Institute of Technology Sligo

5.1 In 2010, a senior member of management (the staff member) commenced employment with the Institute of Technology Sligo under a five year fixed term contract, set to expire on 22 August 2015. The contract was subsequently extended.

5.2 In January 2016, the Institute entered into a compromise agreement with the staff member which resulted in the termination of his employment in return for a package valued in excess of €200,000.

5.3 This chapter examines the background to the agreement, the elements of the agreement and other relevant matters.

Background

5.4 Under the Redundancy Payments Act 1967 and the Protection of Employees (Fixed-Term Work) Act 2003, a fixed term employee is entitled to a statutory redundancy payment where

- a fixed term contract expires without being renewed under the same or a similar contract
- the employee has at least two year's service, and
- the employee is in insurable employment.

5.5 A fixed term employee may consequently be entitled to avail of the Collective Agreement for Redundancy to Public Servants. Under this agreement, an employee in addition to statutory redundancy may receive an *ex-gratia* payment of up to three weeks' pay per year of service. If an employee avails of the three weeks' *ex-gratia* payment they are restricted from returning to the public service for two years and only then with the express consent of the Minister for Public Expenditure and Reform. Sanction must be received from the Department of Education and Skills (the Department) and the Department of Public Expenditure and Reform to offer the terms of the collective agreement to an employee.

5.6 In July 2015, the Institute sought and received sanction from the Department for a redundancy payment in relation to the end of the fixed term contract.

5.7 The Department approved the Institute to offer the contract staff member enhanced redundancy.[1] This approval was for an envisaged redundancy arising upon the expiry of the five year fixed term contract in August 2015.

5.8 On 21 August 2015, the Institute wrote to the staff member outlining its intention to reform the current management structure and, as part of this restructuring, to merge the employee's role into a new role. However, the Institute offered the staff member a specific purpose contract, with effect from 23 August 2015, until such time as the appointment of a successful applicant under the newly established executive role.

1 The entitlement to enhanced redundancy was notified to all employers in the education and training sector by the Department of Education and Skills in May 2014.

5.9 The Institute states that it took the decision to offer a specific purpose contract in order to seek to resolve a dispute arising from the staff member's assertions regarding permanent status and to use the time to seek to resolve outstanding issues.

5.10 The staff member was offered a specified contract on 23 August 2015. He sought legal advice on the terms of that contract, and confirmed his acceptance of those terms to his employer on 5 October 2015. The employee continued to perform the role and to be paid by the Institute during the period for which no contract was in place.

5.11 The Institute states that since the role was to be made redundant following the restructuring exercise, it did not consider it necessary or practical to advertise for a replacement prior to offering the specific purpose contract. The Institute did not seek legal advice on the matter.

Compromise agreement

5.12 The Institute proposed mediation to resolve outstanding issues and a mediation meeting, chaired by an accredited mediator, took place on 25 January 2016. This resulted in the Institute signing a compromise agreement, with legal advice, in relation to the termination of employment of the staff member by reason of redundancy with effect from 28 February 2017.

5.13 Under the compromise agreement, the staff member received the following

- full salary for the month of February 2016 (almost €9,000 gross)
- 'sabbatical leave' for twelve months, from 1 March 2016 to 28 February 2017, and on the basis it would be recognised as pensionable service, at a cost of €107,798
- a redundancy payment, effective from 28 February 2017 calculated in accordance with the Department's redundancy scheme and amounting to €48,907[1]
- €10,329 in lieu of untaken holiday hours
- payment of €36,900 towards the employee's vouched legal costs (including VAT) and
- preservation of the staff member's pension rights.

Award of 'sabbatical leave'

5.14 The Institute has stated that its sabbatical leave policy is based on Circular Letter No. IT 18/04 issued by the Department in 2004, attached in Appendix B. The circular provides guidelines on eligibility and application procedures to implement a pilot project on sabbatical leave for academic staff in institutes of technology commencing in the 2004/2005 academic year.

5.15 The circular states that the pilot project would operate for two academic years (2004/2005 and 2005/2006) and would be reviewed during the course of the 2005/2006 academic year. In response to enquiries during this examination the Department has stated that a review was not carried out, and that, in the circumstances, the terms of the 2004 circular continue to be operational in institutes of technology.

1 This scheme is in accordance with the *Collective Agreement: Redundancy Payments to Public Servants* agreed in June 2012 by the Department of Public Expenditure and Reform.

5.16 Sabbatical leave aims to facilitate staff members to enhance their effectiveness as teachers and scholars. Under the Department's circular, sabbatical leave may be granted to members of academic staff who have completed a minimum of five year's continuous service at the Institute and where it provides the staff member with an opportunity for a programme of research and/or study thus enhancing the effectiveness of his/her contribution to the Institute.

5.17 Sabbatical leave is subject to the condition that any staff member granted such leave will return to the Institute for a period of at least two years following the completion of the sabbatical leave period.

5.18 In the event that a staff member does not return to the Institute for two years, the circular states that he or she will be required to reimburse the Institute the full amount of any financial support received while on sabbatical leave. Staff members are required to sign an undertaking to this effect prior to going on sabbatical leave.

5.19 The Institute's own written policy on sabbatical leave complies with the above circular and specifies that an application for sabbatical leave must be approved by the Governing Body of the Institute. The Governing Body has not approved any sabbaticals in the Institute since 2008 and no sabbaticals are currently in place.

5.20 This examination assessed the compliance of the arrangements set out under the compromise agreement with the Institute's sabbatical policy. It was noted that

- the senior staff member in question never served in an academic role in the Institute
- no application was made by the staff member for sabbatical leave
- the term first arose in the compromise agreement between the Institute and the staff member, and had the effect of bringing about the staff member's absence from the Institute
- the staff member did not return to the Institute following the 'sabbatical leave'
- no undertaking regarding reimbursement of financial support on non-return to the Institute was signed, and
- the absence described as 'sabbatical leave' was not explicitly approved by the Governing Body of the Institute.

Redundancy, holiday and legal cost payments

5.21 The sanction from the Department for a redundancy payment was based on five years' service. The actual redundancy was based on 6.53 years' service, which included the unworked 12-month 'sabbatical' period agreed under the compromise agreement.

5.22 Of three options originally outlined in the Institute's original application for sanction from the Department, the largest entitlement was awarded, which was statutory redundancy plus three weeks pay per year of service. The Department stated that this option was payable on condition that the staff member signed a form of undertaking waiving the right to work in the public sector for two years, which the staff member duly did.

5.23 During the sabbatical leave, the staff member received payment of just over €7,200 gross in respect of his Board membership with another educational State body.

5.24 As part of the compromise agreement, the staff member received a payment of €10,329 in lieu of holiday hours. Following queries raised by the examination team, the Institute has calculated that it mistakenly paid the staff member in respect of an additional three days — the Institute is seeking payment from the staff member.

5.25 In addition to the redundancy payment and the holiday hours' payment, the Institute paid the staff member's legal fees of €36,900, including VAT, as part of the compromise agreement. This payment also covered legal fees related to other disputed matters.

5.26 Figure 5.1 compares the original award approved by the Department to the amount actually paid by Institute of Technology Sligo.

Figure 5.1 Comparison of approved award with actual payments

	Approved	Paid
	€	€
Statutory redundancy	6,600	8,436
Enhanced option	30,988	40,470
Salary for February 2016		9,000
'Sabbatical leave'		107,798
Contribution towards legal costs		36,900
Total	**37,588**	**202,604**

Source: Institute of Technology Sligo. Analysis by the Office of the Comptroller and Auditor General.

Sanction and disclosure

5.27 In general, State bodies are required to consult with their parent departments before entering into any commitment to make a special payment. It is the responsibility of the parent department to ensure that entities comply with the requirements relating to special payments.

5.28 As already stated, the Institute contacted the Department in July 2015 seeking sanction for a redundancy payment for the contract coming to an end on 22 August 2015. The Institute did not seek revised sanction in either January 2016 when the compromise agreement was signed or in February 2017 when the redundancy payment was made.

5.29 The Institute of Technology Sligo was not, at the time, specifically required to disclose the payment in its financial statements as it was governed by the *Code of Governance of Irish Institutes of Technology 2012*.[1] The 2012 code reflects the Department of Public Expenditure and Reform's 2009 *Code of Practice for the Governance of State Bodies*. A general disclosure was made in the Institute's financial statements for 2015/2016 relating to disputes involving three employees, but no amounts were disclosed.

1 *Technological Higher Education Association Code of Governance for Institutes of Technology* issued on 1 January 2018 requires disclosure of severance/termination payments in excess of €10,000.

Conclusions and recommendations

5.30 Institute of Technology Sligo entered into a settlement worth over €202,000 with a former employee, when it only had sanction to pay just over €37,500.

Recommendation 5.1

Any authorisation for the payment of redundancy from the Department should include a specific time period of validity and maximum amount of redundancy payable after which employers in the Education and Training Sector must reapply for new sanction.

Response of the Secretary General, Department of Education and Skills

The Department accepts the recommendation.

5.31 There was no basis for describing part of the settlement (€107,798 pensionable) as sabbatical leave. Attempts by Institute of Technology Sligo to categorise it as such fall short of the levels of transparency expected of public bodies.

Recommendation 5.2

The HEA should review payments described as sabbatical leave across the sector to ascertain if similar control weaknesses are happening elsewhere.

Response of the Chief Executive, Higher Education Authority

The HEA agrees with the recommendation. As part of its programme of rolling governance reviews, the HEA is commissioning a review of pay practices in the higher education sector that also includes an examination of sabbatical leave. This element of the review also arose from a recommendation made in the Public Accounts Committee's report on the higher education sector published in July 2017. The HEA and Department of Education and Skills are currently finalising the terms of reference for the review.

5.32 The payment of legal fees of €36,900 (including VAT) is unlikely to have been necessary, had the original five year contract been adhered to and redundancy paid at that stage.

5.33 The staff member received a board fee of €7,200 for the year 2016 on the basis of no longer being employed in the public sector. However, since persons on sabbatical leave remain employees of, and are paid by, their parent institution, the principle of 'one person one salary' should have continued to apply in the year in question. No fee was paid for 2017.

5.34 A two-year pilot project on sabbatical leave for academic staff, introduced by the Department of Education and Skills in 2004/2005, continues to be operational in institutes of technology.

Recommendation 5.3

The Department of Education and Skills should review the current arrangements and issue updated guidance to institutes of technology in relation to sabbatical arrangements for academic staff.

Response of the Secretary General, Department of Education and Skills

The Department agrees to issue guidance to the institutes of technology in relation to sabbatical arrangement for academic staff.

Overall Response of the President, Institute of Technology Sligo

5.35 The negotiations, in which both sides were legally represented, resulted in the payment of the sanctioned severance lump sum supplemented by paid time off which was agreed to be, and characterised as, a sabbatical although it was not within the terms of the pilot project on sabbatical leave circular.

5.36 The Institute will no longer enter into termination/severance payments or confidentiality agreements which preclude them from disclosing details of the settlement reached in the financial statements unless they either get formal approval from the Department or on foot of legal advice.

5.37 The Institute is also amending its risk management policy to incorporate the guidance in the good practice framework in relation to severance payments.[1]

1 Set out in Figure 4.1 above.

Appendices

Appendix A Actuarial methodology and assumptions

A consultant actuary was engaged to calculate and assess, for certain cases reviewed during this examination

- the cost to the Exchequer (lump sums and annual pension costs) of awarding added years for pension purposes at retirement
- the process of admission for members of a private pension scheme into a public service pension scheme
- net present values (NPVs) of severance payments prior to retirement with other arrangements in place until the date of retirement compared to a scenario of NPVs of severance payments for individuals who remained in employment and retired.

The actuary's work was carried out in accordance with the requirements of *Actuarial Standard of Practice PA-2, General Actuarial Practice*. The methodology and assumptions are explained below for the purposes of the report.

Methodology and assumptions

Chapter 2 Professional added years

In calculating the additional cost to the Exchequer, in lump sums and annual pension costs for professional added years awarded at retirement, the pension benefits used were those under conditions laid out for Public Service Pension Scheme entitlement entrants pre 1995 and post 1995.

Chapter 3 Transfer of service

In order to calculate the cost of a transfer from a defined contribution scheme to the defined benefit superannuation scheme, the cost of buying notional service under tables two and six in the *Superannuation Handbook and Guidance Notes — Established Civil Service Scheme*, issued by the Department of Public Expenditure and Reform was used.

The cost in one case is based on pre-Haddington Road Agreement salary as this is the salary on which benefits paid were based. In the other case, post Haddington Road Agreement salary is assumed in the calculation of retirement benefits.

Chapter 4 Comparison of payment streams

NPVs were assessed under a comparison of actual severance payments made against severance payments if an individual remained in employment and retired at 60.

The following assumptions were used to calculate the NPVs

- a discount rate of 3.75% per annum
- a rate of pension increases at 2.5% per annum, plus a spouse's pension of 50%
- mortality pre-retirement is ignored
- mortality post retirement based on 62% of PNML00 for males and 70% of PNFL00 for females with an annual compound increase of 0.39% to the annuity value for each year between 2008 and the year of retirement.[1]

Assumptions for retirement at 60 are that pre 01/07/2013 salaries with Group 3 Public Service Pension Reduction for post February 2012 pensions apply (2% over €12,000 up to €24,000 and 3% over €24,000 up to €60,000).

1 PNML00 and PNFL00 are codes used in mortality tables produced for the purposes of actuarial calculations.

Appendix B

Circular Letter No. IT 18/04: Pilot Project on Sabbatical Leave

Rannóg an Ardoideachais (Coláistí),
An Roinn Oideachais agus Eolaíochta,
Sráid Maoilbhríde,
Baile Átha Cliath 1.

AN ROINN OIDEACHAIS AGUS EOLAÍOCHTA | DEPARTMENT OF EDUCATION AND SCIENCE

Higher Education (Colleges) Section,
Department of Education and Science,
Marlborough Street,
Dublin 1

File Ref: 92414

To: President, Dublin Institute of Technology
Director, each Institute of Technology.

Circular Letter No. IT 18/04
Pilot Project on Sabbatical Leave

1. I am directed by the Minister for Education and Science to refer to discussions at the Industrial Relations Forum for Academic Staff in Institutes of Technology regarding a Pilot Project on Sabbatical Leave for academic staff in the Institutes and to inform you that Guidelines for implementing such a pilot project have now been agreed.

2. Institutes may proceed to implement the agreed pilot project on Sabbatical Leave commencing in the 2004/2005 academic year in accordance with the enclosed Guidelines on Eligibility and Application Procedure.

3. Institutes should note that implementation of the pilot project is subject to compliance with Government policy on public service numbers.

4. It should also be noted that no additional funding is being provided for implementation of the pilot project and, accordingly, Institutes will have to meet any associated costs from within their existing budgetary allocations.

5. The pilot project will operate for two academic years 2004/5 and 2005/6 and will be reviewed during the course of the 2005/6 academic year.

6. Any queries in relation to this Circular Letter should be referred to Higher Education (Technology & Training) Section at (01) 889 2119 or (01) 889 2448.

Ruth Carmody
Principal Officer
5th November 2004.

c.c. Secretary/Financial Controller
Director of Finance DIT
Human Resources Manager
Mr. Joe McGarry, Secretary General Council of Directors
Mr. James Coyle, Senior Human Resources Executive, Council of Directors
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INSTITUTES OF TECHNOLOGY

ACADEMIC STAFF DEVELOPMENT

Pilot Project on Sabbatical Leave

Guidelines on Eligibility and Application Procedure

1. INTRODUCTION

In accordance with institute requirements, the Institute will endeavour to facilitate individual staff members to enhance their effectiveness as teachers and scholars, through the provision of sabbatical leave. Sabbatical leave may be granted where it meets the requirements of the Institute and where it will benefit the staff member by providing them with an opportunity for an intensive programme of research and/or study or an opportunity to gain experience in industry, thus enhancing the effectiveness of his/her contribution to the Institute.

2. ELIGIBILITY

Members of the academic staff who have completed a minimum of 5 years continuous service at the Institute are eligible to apply for sabbatical leave. Sabbatical leave may not exceed one year in seven.

3. DURATION AND CONDITIONS

Each application for sabbatical leave will be examined on its own merits. However, in general, sabbatical leave may be granted for periods of from one term/semester to 1 academic year. Sabbatical leave will only be granted in circumstances where alternative arrangements can be made so that there is no disruption or reduction in teaching programmes, examinations or research supervision.

Sabbatical leave will be granted subject to the condition that any staff member granted such leave will return to the Institute for a period of at least 2 years following completion of the period of sabbatical leave. In the event that a staff member does not return to the Institute for 2 years following sabbatical leave, s/he will be required to reimburse to the Institute the full amount of any financial support received while on sabbatical leave. Staff members granted sabbatical leave will be required to sign an undertaking to this effect prior to going on sabbatical leave. Such a requirement may be waived if any financial support given is reimbursed to the Institute.

Two arrangements are provided for in the scheme.

a) Sabbatical leave for one term/semester – no replacement required
Staff may apply for leave for one academic term/semester. Such leave may be granted where:

- the leave is for clearly defined research, study or industrial experience
- there is no disruption to or reduction in teaching programmes, examinations or supervision of postgraduate students and the applicant's duties are arranged so that no temporary appointment need to be made
- there is no additional cost to the Institute
- all conditions relating to any previous special leave taken by the applicant have been met.

b) Sabbatical leave for one term/semester or up to one Academic Year – replacement required
Staff may apply for sabbatical leave for one academic term/semester/or up to one academic year where the staff member is to be relieved of all duties except supervision of postgraduate students and temporary appointments may be required. Such leave may be granted where:

- the leave is for clearly defined research, study or industrial experience
- there is no disruption to or reduction in teaching programmes, examinations or supervision of postgraduate students.
- all conditions relating to any previous special leave taken by the applicant have been met.

4. REMUNERATION

Leave granted under a) or b) above – staff will receive full pay from the Institute. The period of sabbatical leave will be reckonable for superannuation purposes, subject to the deduction of the usual superannuation contributions from salary during the period of the leave.

Sabbatical leave will be considered reckonable for the purposes of incremental credit and will not alter normal statutory entitlements.

Staff must advise the Institute of all external funding associated with the sabbatical leave and any such funding (including any personal remuneration) received by the staff member, up to the level of their current remuneration must be transferred to the Institute.

5. APPLICATION FOR SABBATICAL LEAVE

A formal application for sabbatical leave must be submitted by the applicant. This application should be made in writing using the attached form. Applications must be made at least 3 months (preferably 6 months) before the proposed leave. An applicant may find it beneficial to discuss his/her application with the Human Resources Department and their Head of School/Faculty Director prior to making the formal application.

The application should be submitted by the applicant to the Head of School/Faculty Director for approval.

The Head of School/Faculty Director should forward the application to the Human Resources Department with a recommendation (whether positive, negative or modified). The Human Resources Department will then arrange a meeting with the applicant and the Finance Office to consider the financial details of the proposed leave, including e.g. superannuation, tax implications etc.

The application should then be submitted by the Human Resources Department to the Staff Development Committee/Executive (process will vary from institute to institute) together with full details of the cost implications and proposed financial arrangements. If approved by the Staff Development Committee/Executive, the application should be submitted by the Director/President to Governing Body for final approval or otherwise.

The Head of School/Faculty Director and the applicant will be advised in writing of the outcome of the application (including, where the application is unsuccessful the reasons why) and, where successful of the associated arrangements by the Human Resources Manager.

Unsuccessful applicants may appeal the decision to the Director/President.

On completion of the sabbatical leave, the staff member will be required to submit a detailed report outlining the purposes and benefits of their leave to the Head of School/Faculty Director and to copy same to the Human Resources Department.

6. REVIEW OF PILOT

This pilot project will operate for the two academic years 2004/5 and 2005/6 and will be reviewed during the course of the 2005/6 academic year.

5th November 2004