

EXCELLENCE THROUGH
EDUCATION AND TRAINING

Code of Practice for the Governance of Education and Training Boards

Policy adopted by LOETB Board
28 February 2019

Preface

The first set of guidelines on corporate governance in State bodies entitled “State Bodies Guidelines” was published by the Department of Finance in March 1992. The guidelines were updated in October 2001 and May 2009. A further update was published by the Department of Public Expenditure and Reform in August 2016 to take account of governance developments, public sector reform initiatives and stakeholder consultations.

In light of the above and in compliance with the Corporate Governance Standard for the Civil Service, the Department of Education and Skills must ensure that there are robust and effective governance arrangements in place in bodies under its aegis, including in Education and Training Boards (ETBs).

It is intended that this Code will be a living document which will evolve in line with good practice.

Background to Governance in the ETBs

The ETB sector (previously Vocational Education Committees) has been subject to sectoral Codes of Practice for Governance. Following the establishment of ETBs through the Education and Training Board Act 2013, the 2005 Code of Practice for the Governance of Vocational Education Committees (VECs) was replaced by the 2015 Code of Practice for the Governance of Education and Training Boards.

The 2015 Code was based on the Department of Finance’s 2009 Code of Practice and took into account the specific legislative arrangements for ETBs as well as developments in the interim in good practice in corporate governance.

This Code of Practice should be primarily considered as a set of standards for members and staff of ETBs who are expected to ensure that their activities in relation to the ETB are governed at all times by these standards, in letter and in spirit.

It should be noted that:

- this Code should be read in conjunction with the legislative provisions which govern the ETB sector and the Public Sector generally. Existing legislative provisions on matters that are also the subject of this Code continue to apply and for the avoidance of doubt, in the event of any conflict or inconsistency, the legislative provisions prevail;
- provisions contained in this Code may be amended from time to time by the Minister for Education & Skills;
- the Minister for Education & Skills or the Minister for Public Expenditure and Reform may issue circulars and/or guidance notes, from time to time, in relation to this Code or related matters;

This Code is effective from the 30th January 2019.

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Introduction

Corporate governance comprises the systems and procedures by which organisations are directed and controlled. As with all State bodies, Education and Training Boards (ETBs) should serve the interests of Government as shareholder, the taxpayer, and all other stakeholders, and pursue value for money in their endeavours, including managing risk appropriately. ETBs should act prudently, ethically and with transparency as public entities and should conduct their activities consistent with their statutory responsibilities.

High standards of corporate governance in ETBs are critical to ensuring a positive contribution to the State's overall economic efficiency, competitiveness, social cohesion and regional development.¹

The Board (being elected and appointed members of the ETB) and Management of the ETBs are accountable for the proper management of the organisation. Board members and employees of ETBs should be strongly guided by the principles set out in this Code in meeting their responsibility to ensure that all activities, whether covered specifically or otherwise in this document, meet the highest standards of corporate governance.

Good governance in ETBs encourages better informed and longer term decision-making as well as the efficient use of resources. It strengthens accountability for the stewardship of resources and is characterised by robust scrutiny of relevant issues, having regard to executive and reserved functions as appropriate, at Board meetings and places ongoing emphasis on improving public sector performance.²

The corporate governance framework for ETBs comprises elements of legislation, regulation, self-regulatory arrangements, voluntary codes, commitments and business practices that have evolved within the organisation.

The "tone at the top" is an important factor in establishing good corporate governance practices. Good organisational tone can be set through policies, codes of ethics, the development and promotion of good internal controls along with effective governance. This involves a commitment by the Board and management to creating and exemplifying a culture of honesty and ethical behaviour which can be reinforced by an active oversight by those charged with governance.

In accordance with ETB legislation the functions of an ETB are defined as reserved (performed by the Board) and executive (performed by the Chief Executive, in accordance with the policies of the ETB, and who is accountable to the Board for the due performance of his/her functions).

The organisational structure of ETBs includes a senior management tier below Chief Executive level in three directorate areas: Schools, Further Education and Training and Organisation Support and Development. This management structure provides support to the Chief Executive in the performance of his/her functions and contributes to the overall objective that ETB functions are managed effectively and in line with Code of Practice requirements. The presence of this senior management tier allows for formal delegation of roles and tasks from the CE to the directorate with a view to effective management of the demands of the organisation along with promotion and implementation of good governance practices.

About this Code

The Code of Practice provides a framework for the application of good practice in corporate governance by ETBs. ETBs should demonstrate their commitment to achieving the highest possible standards of corporate governance.

This Code does not address academic governance matters as these issues are governed and managed by the Department and its agencies. Where professional codes of conduct apply to staff employed in ETBs, such codes remain the appropriate conduct standard for those employees. It is intended that this Code will supplement and not replace those professional standards.

¹ Adapted from the "Guidelines on Corporate Governance of State-Owned Enterprises" (OECD, 2015) page 11

² "International Framework: Good Governance in the Public Sector" (IFAC/CIPFA, July 2014) page 6

Boards are required to confirm to the Minister for Education and Skills in both the Annual report and the Chairperson's Statement that they comply with the up-to-date requirements of the Code in their governance practices and procedures.

Board members and staff of ETBs should be guided by the principles set out hereunder in meeting their responsibility to ensure that all of their actions, whether covered specifically or otherwise in this document, meet the highest standards of corporate governance.

The Code concerns both the internal practices of ETBs and their external relations with the Government, the Minister for Education and Skills, the Minister for Public Expenditure and Reform, their respective Departments, other relevant Departments and/or agencies, including SOLAS, as appropriate as well as parents and students. The Code also makes reference to the ethics in public office obligations that apply to all designated members and designated office holders.

The provisions of the Code do not override the specific statutory provisions relating to ETBs, existing statutory requirements and other obligations imposed by Ethics in Public Office legislation and any other relevant legislation (e.g. equality legislation, employment legislation). Accordingly, a Board must follow the statutory provisions as set out in the Education and Training Boards Act 2013 and other relevant legislation, whether these are identified in the Code or otherwise.

Oversight Agreements

Clear accountability underpins effective relations between Government Departments and the State bodies under their aegis. Effective accountability depends upon respective roles and responsibilities being clearly defined and understood on both sides of the agreement. Further detail regarding Oversight Agreements is set out at pages 41 and 42 of this Code.

Compliance Requirement

All State bodies have a responsibility to implement good corporate governance standards.

The 2016 Department of Public Expenditure and Reform Code requires Departments to engage with aegis bodies to determine the extent to which that Code should be suitably adapted to the particular body or agency. In the case of ETBs, the 2016 Department of Public Expenditure and Reform Code, together with the relevant sections of the existing 2015 ETB Code, form the basis of this 2018 ETB Code.

Comply or Explain

Exemptions from the specific provisions in this code may be justified in certain situations provided the objectives of those provisions can be achieved by other governance measures. Should a board intend not to follow a provision of the Code, this decision and a detailed explanation must be:

- (a) included in the minutes of the relevant Board meeting;
- (b) promptly provided to the Chief Executive;
- (c) promptly provided to the Minister for Education and Skills;
- (d) included in the Chairperson's report.

Governance Framework

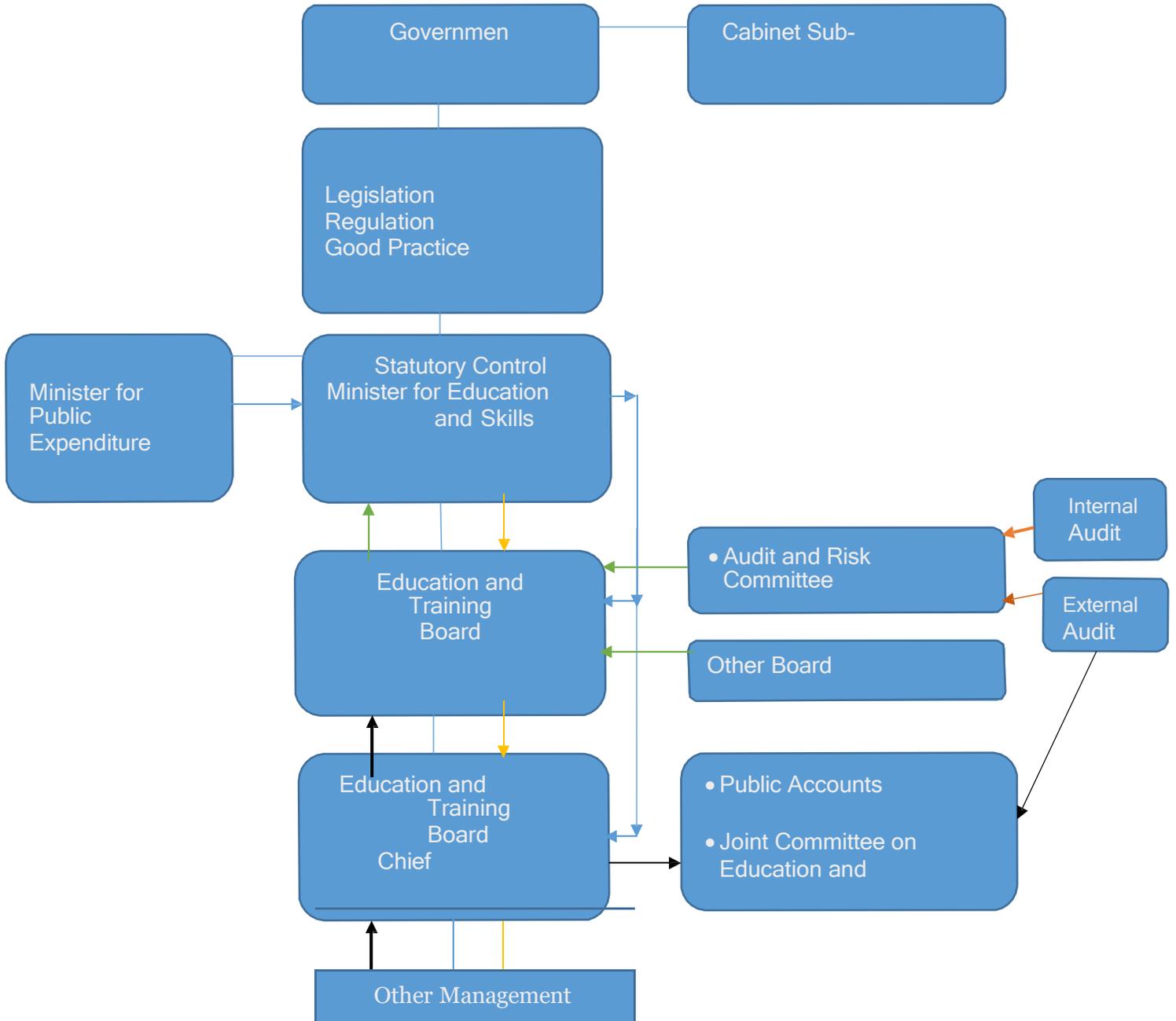
ETBs have governing legislation which provides for, inter alia, the election and appointment of the Board and the Chairperson, for the approval of the form of the annual report and financial statements, for the appointment of auditors and for the furnishing of such information as the Minister may require. The Board is ultimately responsible to the Minister (who is responsible to Government) for the operation and proper functioning of the ETB.

The governing legislation makes the Chief Executive of the ETB accountable to the Public Accounts Committee (PAC) of the Oireachtas. The financial statements of the ETB are audited by the Comptroller and Auditor General and laid before the Oireachtas in accordance with the governing legislation.

The Chief Executive is accountable to the Public Accounts Committee (Section 25, Education and Training Boards Act, 2013) and to other Oireachtas committees (Section 26, Education and Training Boards Act, 2013). The accountability of the Accountable Person to the Oireachtas is differentiated from that of the Board's general responsibilities.

ETBs receive significant funding from SOLAS which has specific statutory responsibility to assess whether or not education and training boards, and other bodies engaged in the provision of further education and training programmes, to whom moneys have been advanced for provision of further education and training programmes perform their functions in an economic, efficient and effective manner. Accordingly, ETBs are required to report to SOLAS in respect of funding provided by it.

Governance Framework



1. Role of the Education and Training Board

Principles

Each ETB should be clear about its mandate and from that identify the various functions, roles and responsibilities entailed in the delivery of that mandate.

The Board is collectively responsible for approving the ETB's activities. The Education and Training Boards Act specifies a range of functions as "reserved functions" which must be performed by resolution of the Board.³ In addition the Act specifies other functions to be performed by the Board including holding the Chief Executive to account for the effective performance of his or her functions in the management of the ETB, in accordance with the legislation, Department and SOLAS guidelines, the Strategy and Implementation Plan of the DES and the Service Plan. The members of the Board must not become involved in the executive functions of the ETB.

The Board should act on a fully informed and ethical basis, in good faith, with due diligence and care, and in the best interest of the ETB, having due regard to its legal responsibilities and the policies of the Minister and Government, as relevant.

The Board should promote the development of the capacity of the ETB including the capability of its leadership and staff.

Code Provisions

- 1.1 **Leadership:** The Board's role is to provide leadership and direction of the ETB within a framework of prudent and effective controls which enables risk to be assessed and managed. The Board should agree the ETB's strategic aims in line with the sectoral approach developed through Education and Training Boards Ireland (ETBI) in accordance with the Minister's and Department of Education and Skills' policies and priorities, to the extent relevant, and ensure optimal use of resources to meet its objectives.⁴
- 1.2 **Ethical Standards:** The Board has a key role in setting the ethical tone of the ETB, not only by its own actions but also in overseeing senior management and staff. High ethical standards are in the long term interests of the body and a key means to make it credible and trustworthy.⁵ It is important that the Board sets the correct culture and 'tone from the top'. The Board should lead by example and ensure that good standards of governance and ethical behaviours permeate all levels of the organisation.
- 1.3 **Compliance:** The Board should review the controls and procedures adopted by the ETB to provide itself with reasonable assurance that such controls and procedures are adequate to secure compliance by the ETB with its statutory and governance obligations.
- 1.4 **Collective Responsibility:** The collective responsibility and authority of the Board should be safeguarded. All Board members should be afforded the opportunity to fully contribute to Board deliberations, and where necessary to provide constructive challenge, while excessive influence on Board decision-making by one or more individual members should be guarded against.
- 1.5 **Statutory obligations:** The Board is responsible for compliance with all statutory obligations applicable to the ETB that are set out in the Education and Training Boards Act or in other relevant legislation. The Board should satisfy itself that all such obligations are identified and made known to it.

³ Section 12 of the Education and Training Boards Act, 2013

⁴ Under the Education and Training Boards Act 2013, Education and Training Boards Ireland (ETBI) is defined as; "An association established to collectively represent education and training boards and promote their interests, which is recognised by the Minister for the purposes of this Act."

⁵ Adapted from "G20/OECD Principles of Corporate Governance" (OECD, September 2015) page

- 1.6 **Board Oversight Role:** The management of the ETB has a duty to provide the Board with all necessary information to enable the Board perform their duties to a high standard. The Board of the ETB should take all necessary steps to make themselves aware of any relevant information and access all information as necessary.

While the Board of an ETB must establish an Audit and Risk Committee to assist with its consideration of issues relating to audit, governance and risk management, the Board of the ETB maintains responsibility for and makes the final decisions on all of these areas.⁶

- 1.7 **Advice to Minister:** The Board should ensure that the Chairperson and/or the Chief Executive as appropriate keep the Minister for Education and Skills advised of matters arising in respect of the ETB.
- 1.8 **Establishment of Committees:** Specifically, under Section 45 of the Act, ETBs must establish: (1) a Committee to examine and report to the Board on financial matters (a “Finance Committee”) and (2) a Committee to assist the Board in discharging its internal audit functions (an “Audit Committee”). For the purposes of this Code, and in accordance with the remit of an audit committee, good practice would suggest that Boards will delegate their risk management oversight function to the Audit Committee; accordingly this Committee is referred to in this Code as an “Audit and Risk Committee”.

Composition of the Board

- 1.9 The composition of the Board must be in accordance with Section 30 of the Education and Training Boards Act, 2013.
- 1.10 The Education and Training Boards Act sets out that each ETB must have 21 board members (Section 30 of the ETB Act 2013) and it sets the process for appointment of members of the Board (Section 31). It specifies that at the first meeting of the Board after each local Authority election, those members elected by the relevant local authorities and staff members must appoint 2 parent representatives. In turn those members must appoint 5 members from among the bodies specified by the Minister. (Section 31 of the ETB Act 2013).
- 1.11 While the legislation does not specify a maximum number of terms which individual board members should serve, good corporate governance practice suggests an upper limit of two full terms, or a maximum of 10 years, of appointment on a board.
- 1.12 The selection of the Chairperson is a matter for the Board, in accordance with the governing legislation. However, it is considered good practice that to maintain a clear division of responsibility between the running of the Board and the day to day management and operation of the ETB, the Chairperson should not be a member of staff of the ETB or a person connected to a member of staff of the ETB.

⁶ The Education and Training Boards Act 2013 provides for ETBs to establish an Audit Committee. Every reference in this Code to an Audit and Risk Committee is a reference to an Audit Committee as provided for in the legislation

Matters for the Board

- 1.13 The Board's functions are restricted to those specified in Section 12 of the Education and Training Boards Act 2013 and to other functions as specified in that Act. Accordingly, the members of the Board must never become involved in the executive functions of the ETB. Executive functions are carried out by the Chief Executive who is accountable to the Board for the performance of these functions (Section 15 Education and Training Boards Act, 2013) and requirements of this Code of Governance.
- 1.14 The Board should have a formal schedule of matters specifically reserved to it for decision and approval to ensure that it undertakes its role effectively. This schedule should refer to the reserved functions as set out in Section 12 [the Education and Training Boards Act 2013] along with other responsibilities of the Board as set out in that Act, and necessary consequential actions having regard to Departmental policies. Reserved functions of the Board, other statutory functions and a range of other obligations.
- 1.15 **Annual Confirmation:** The Board has responsibility for ensuring that effective systems of internal control are instituted and implemented. The Board is required to confirm annually to the Minister for Education and Skills that the ETB has an adequate system of internal control operating.
- 1.16 **Expenditure and Performance:** Where there are specific approval requirements set by funders such as the Department of Education and Skills, SOLAS or other funding bodies as appropriate, this should be obtained. Decisions on other major items of expenditure should be aligned with medium to long-term strategies as outlined in the Statement of Strategy so as to ensure that such expenditure is focused on clearly defined objectives and outcomes. A performance measurement system should be put in place to assess the effectiveness/outcome of such expenditure and this should be reported to the Board.
- 1.17 **Post Resignation/Retirement:** The Board should, in a manner most effective to the ETB, deal with the issue of post resignation/retirement employment, appointment and/or consultancy of its Board members and employees by the private sector and should ensure that any procedures that it may have put in place in this regard are monitored and enforced to guard against conflicts of interest or inappropriate disclosure of information that might otherwise arise. Such procedures should include the appropriate management of Board materials in line with relevant legislation including GDPR.
- 1.18 **Conflicts of interest:** The Education and Training Boards Act specifies that a board member who has a potential conflict of interest in any matter being discussed at a board meeting must;
- (a) disclose to the board at the meeting the fact of that interest and its nature,
 - (b) not influence (or seek to influence) a decision to be made in relation to the matter,
 - (c) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed,
 - (d) take no part in any deliberation of the board relating to the matter, and
 - (e) not vote on a decision relating to the matter

The Board should have procedures to identify, monitor and manage actual, perceived and potential conflicts of interest of Board members and Executive Management. Agendas for Board and Committee meetings should remind members to consider, having regard to the agenda, whether any item for discussion causes them a conflict. At the beginning of each meeting, members attending should sign a declaration to confirm that they do not have a conflict of interest regarding any item on the agenda.

- 1.19 **External Auditors:** The Board should establish procedures for maintaining an appropriate relationship with the Comptroller and Auditor General as designated external auditors of the ETB.
- 1.20 **Written Charters:** The Audit and Risk Committee, Finance Committee and any other Board committees as well as the internal audit unit should each have written charters which include their Terms of Reference. The Board should agree the intervals within which the charters should be reviewed by the Board and updated as appropriate.
- 1.21 **Donations to third parties:** The Board is not empowered to make donations to third parties.
- 1.22 **Legal Action:** Public funding should not be used to instigate a legal action on behalf of an

individual who is a member of an ETB.

Statement of Strategy

1.23 Section 27 of the Education and Training Boards Act, 2013 sets out a range of statutory requirements with which ETBs must comply in relation to the preparation of Strategy Statements.

1.24 The Chief Executive must submit a strategy statement to the board for a period of 5 years every fifth year or as directed by the Minister. The statement should be aligned to the objectives in the Strategic Implementation Plan for the Department of Education & Skills to the extent relevant and should be consistent with any Government policies for the reform and modernisation of the Public Service as well as the statutory responsibilities of the ETB.

The Statement of Strategy should contain a mission statement, high level objectives and target outputs and outcomes in the key strategic areas of body activity, as well as a statement on the resources to be deployed as provided to meet the targets.

1.25 Strategy statements should specify the objectives of the board, the priorities of the specified objectives and the strategies to be employed in achieving the objectives. They should be prepared following consultation with a range of stakeholders as set out in the Act and having regard to policy directions of the Minister and to likely available financial resources. While final responsibility for the content of the plan rests with the Board in each case, the views of the Minister and consideration of the public interest should be carefully weighed by the Board.

1.26 The board must adopt the submitted strategy statement but it may make any amendments which it considers appropriate following consultation with the Chief Executive.

1.27 Following adoption of the strategy statement by the board, the Chief Executive must give a copy of the strategy statement to the Minister, to Boards of Management of ETB schools and to other persons or bodies performing similar functions identified by the Act.

1.28 ETBs must publish a strategy statement on the internet after the board has adopted it.

1.29 **Implementation:** Implementation of the strategy by the management of each ETB should be supported through an annual planning and budgeting cycle. The Board of each ETB should approve an annual plan and/or budget and should formally undertake an evaluation of actual performance by reference to the plan and/or budget on an annual basis.

1.30 **Annual Service Plan:** Within one month of being notified of the provisional expenditure limit of the board, the Chief Executive must prepare, and submit to the board, an annual service plan which sets out the services which the board proposes to provide along with an estimate of income and expenditure of the board for that financial year (Section 47, Education and Training Boards Act, 2013).

The board must adopt the annual service submitted by the Chief Executive on the basis of its provisional expenditure limit not later than 1 March of each year, it may make any amendments which it considers appropriate following consultation with the Chief Executive during that timeframe. (Section 47, Education and Training Boards Act, 2013).

In the event of variation in the expenditure limit, the board may request the Chief Executive to submit an amended annual service plan to take account of the variation or the Minister may direct the board to modify the annual service plan. The Minister may also direct a board to amend the annual service plan to bring it into accordance with the policies or objectives of the Government or the Minister, in so far as they relate to the ETB concerned. Where the board receives a direction from the Minister to modify or to amend an annual service plan, it must comply with that direction (Section 47, Education and Training Boards Act, 2013).

Following adoption of the annual service plan or the amended annual service plan by the board, the Chief Executive must give a copy of the Annual Service Plan to the Minister, to Boards of Management of ETB schools and to other persons or bodies performing similar functions identified by the Act and ETBs must publish the annual service plan on the internet after the board has adopted it (Section 47, Education and Training Boards Act, 2013).

- 1.31 **Annual Report and Financial Statements:** The Board should explain in the annual report their responsibility for the preparation of the annual report and financial statements and whether, based on the information available to it, it considers that the financial statements properly present the income and expenditure of the Board and the state of affairs of the Board.

Protected Disclosures Legislation

- 1.32 **Protected Disclosures Act 2014:** Section 21 of the Protected Disclosures Act 2014 requires that every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures. Written information in relation to those procedures must be provided to workers employed by the public body.
- 1.33 **Guidance:** The Minister for Public Expenditure and Reform has published guidance for the purpose of assisting public bodies in the performance of their functions under section 21(1) of Protected Disclosures Act 2014. Chief Executives of ETBs should draw-up protected disclosures procedures in line with this guidance. Such procedures should be approved by the Board and implemented by the Chief Executive.
- 1.34 **Annual Report:** ETBs are required to publish a report on protected disclosures in accordance with section 22 of the Protected Disclosures Act, 2014 not later than 30 June in each year.

Division of Responsibilities

Principle

There should be a clear division of responsibility between leading and managing the board and the executive responsibility for running the ETB. No-one individual should have unfettered power of decision.

Code Provision

- 1.35 **Separation of Roles:** It is not possible under ETB Legislation for the same person to simultaneously hold the role of Chairperson and Chief Executive of any ETB. The division of responsibilities between the Board and Chief Executive are set out in the Education and Training Boards Act, 2013.

2. Role of the Chairperson

Principle

The Chairperson is responsible for leadership of the Board and ensuring its effectiveness in all aspects of its role. S/he should display high standards of integrity and probity and set expectations regarding culture, diversity, values, and behaviours for the ETB and for the tone of discussions at Board level. To ensure consistency and continuity of oversight, good practice suggests that the Chairperson should continue in his/her role as chairperson for the duration of the Board, in so far as this is practicable.

Code Provision

- 2.1 **Board's Agenda:** The Chairperson is responsible for the effective management of the Board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. The Chairperson and the Chief Executive or his/her nominee should consult in advance of the Board meeting to agree the agenda.
- 2.2 **Openness and Debate:** Essential to the effective functioning of the Board is dialogue which is both constructive and challenging. The Chairperson should promote a culture of openness and debate by facilitating the effective contribution of all Board members. As appropriate, management and staff may be invited to attend and contribute at meetings.
- 2.3 **Timely Information:** The Chairperson is responsible for ensuring that the Board receives accurate, timely and clear information. The Chairperson should ensure effective communication with all relevant stakeholders. The Chief Executive and his/her staff should support the Board in the exercise of its functions and should provide administrative and other supports to the Board and to the Chairperson in carrying out his/her role.
- 2.4 **Board Skills:** Section 30 of the 2013 ETB Act specifies the composition of ETB boards to include representatives from local authorities, ETB staff, business representatives, learners, school management and parents to ensure an appropriate diversity and skill mix in board members. To ensure a balance of new skills, boards will ideally include a mix of members who have experience serving on previous Boards and new members who bring a fresh outlook.
- 2.5 **Information flows:** Under the direction of the Chairperson, administrative support is provided to boards to ensure good information flow within the board and its committees and between senior management and board members.
- 2.6 **Comprehensive report to the Minister:** The Chairperson of each ETB should furnish to the Minister for Education and Skills, in conjunction with the annual report and financial statements of the ETB, a comprehensive report covering the ETB – see paragraphs 6.8 and 6.9.
- 2.7 **Statement of Internal Control:** The Chairperson's report to the Minister regarding the statement of internal control should be included with the annual financial statements of the ETB.
- 2.8 **Oireachtas Committee:** Chairpersons of ETBs are expected to make themselves available to the appropriate Oireachtas committee as required.

3. Role of Board Members

Principle

Each ETB should be headed by an effective Board which is collectively responsible for the leadership of the Education and Training Board and no one individual should have unfettered powers of influence.

Board members should bring an informed independent judgement to bear on issues of strategy, performance, resources and standards of conduct.

Code Provisions

3.1 **Fiduciary Duty:** All Board members have a fiduciary duty to the ETB in the first instance (i.e. the duty to act in good faith and in the best interests of the ETB).

3.2 The principle fiduciary duties are to:

- act in good faith in what the Board member considers to be the interest of the ETB;
- act honestly and responsibly in relation to the conduct of the affairs of the ETB;
- act in accordance with the ETB's purpose and exercise his or her powers only for the purposes allowed by law;
- not to benefit from or use the ETB's property, information or opportunities for his or her own or anyone else's benefit unless the ETB's procedures permits it
- Not to agree to restrict the Board member's power to exercise an independent judgement
- avoid any conflict between the Board member's duties to the ETB and the Board member's other interests
- exercise the care, skill and diligence which would be reasonably expected of a person in the same position with similar knowledge and experience as a Board member.

A member who inadvertently breaches this principle should be so informed by the Chairperson. A member who knowingly breaches the duties outlined above should be required to engage with the Chairperson before attending any further board meetings. Failure to engage appropriately with the Chairperson could see the member excluded, following a resolution of the Board, until the matter is resolved.

3.3 **Non-compliance:** If a Board member finds evidence that there is non-compliance with any statutory obligations that apply to the ETB, he/she should immediately bring this to the attention of their fellow Board members, through the Chairperson, with a view to having the matter rectified. The Chairperson must liaise with the executive on the issues raised.

If the Board member remains dissatisfied, s/he should engage with the Chairperson on the Audit and Risk Committee to liaise with the Chairperson of the Board of the ETB and the executive to have the matter rectified.

The matter should also be brought to the attention of the Minister for Education and Skills by the Chairperson indicating (i) the consequences of such non-compliance and (ii) the steps that have been or will be taken to rectify the position. It is the Chairperson's responsibility to make such issues known to the Minister.

3.4 **Professional Advice:** The Board should, in a Board resolution, lay down formal procedures whereby Board members, in the furtherance of their duties, may take independent professional advice, if necessary, at the reasonable expense of the ETB where they judge it necessary to discharge their responsibilities as Board members. The Board should have in place a procedure for recording the concerns of Board members that cannot be resolved, expressed at a board meeting, in the minutes.

- 3.5 **Confirmation of Appointment:** The ETB should issue to each new board member a letter including but not limited to the following:
- role of the Board and that of a Board member;
 - duration of appointment and renewal provisions;
 - support and training to be provided;
 - the time commitment involved;
 - conflict of interest rules;
 - termination arrangements; and
 - rules on confidentiality.

Briefing for new Board Members

- 3.6 The Chief Executive should ensure that new board members are provided with the following information:
- a statement that the Board (i.e. the elected and appointed members of the ETB) is responsible for the proper direction and control of the organisation and in that regard holds the Chief Executive accountable for the performance of his or her functions;
 - a listing of the statutory requirements relating to the ETB;
 - a copy of the Education and Training Boards Act 2013 and any other relevant legislation (or excerpts thereof);
 - procedures for obtaining information on relevant new laws and regulations;
 - Code of Practice for the Governance of ETBs 2019;
 - a formal schedule of matters reserved to the Board for decision or approval;
 - procedures to be followed, when, exceptionally, decisions are required between board meetings;
 - a statement explaining the Board Members' responsibilities in relation to the keeping of the accounts, the ETB's system of internal control and audit;
 - a statement setting out the role and responsibilities of the internal audit unit and its reporting arrangements;
 - a copy of the Charter for Internal Audit, including the terms of reference of the Internal Audit Unit
 - Education and Training Boards (IAU-ETBs);
 - a statement setting out the role of the external auditor (the Comptroller and Auditor General) and the relevant reporting arrangements;
 - a schedule detailing the composition of all ETB committees, their terms of reference, roles, responsibilities and reporting arrangements to include Audit & Risk Committee and Finance Committee;
 - a copy of the Code of Conduct for Board Members, including requirements for disclosure of members' interests and procedures for dealing with conflict of interest situations;
 - a statement informing Board members that they have access (collectively or individually) through the Chairperson) to the advice and services of the administrative support for the Board, to ensure that Board procedures are followed and that these procedures comply with applicable rules and regulations;
 - A copy of the ETB Standing Orders.
- 3.7 **Independent judgement:** Board members should bring an independent judgment to bear on matters for decision and approval which come before the board. Section 5 of this Code sets out the approach to dealing with any business or other interests of a board member that could affect the board members' independence.
- 3.8 **Attendance Requirement:** Board members bring a range of specific knowledge, skills, experience and expertise to the deliberations of the Board and its committees and this is only possible if members attend all meetings and contribute as appropriate. The board should clarify an expectation of 100% attendance at all board meetings. Records of attendance of Board meetings are disclosed in the annual accounts and will be made available to nominating bodies should re-appointment of an existing board member be proposed.

4. Board Effectiveness

Principle

Board members need to be able to allocate sufficient time to discharge their responsibilities effectively.

All members should receive a formal induction on joining the Board and should regularly update and refresh their skills and knowledge.⁷

The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.⁸

The board should undertake a self-assessment annual evaluation of its own performance and that of its board committees.

The Chairperson should act on the results of the performance evaluation by addressing any weakness identified through the board self-assessment evaluation.

A Board Self-Assessment Evaluation Questionnaire is contained at Appendix 15(a) of CL0002/2019. This evaluation should be completed every 2-3 years.

Code Provisions

- 4.1 Matters relating to the composition of the Board of ETBs to include number of board members, diversity and terms of appointment are determined by Sections 30, 31 and 32 of the Education and Training Boards Act, 2013.
- 4.2 **Skills and Knowledge:** Board members should be encouraged to develop and update appropriate skills and knowledge regarding the activities of the ETB, to enable them to discharge their respective duties and responsibilities effectively. This should include the identification by the Board of any gaps in competencies and ways these gaps could be addressed.

Board Meetings

- 4.3 The Board should meet in accordance with the provisions of the Education and Training Boards Act 2013 and sufficiently regularly to discharge its duties effectively, subject to a requirement to hold at least one meeting every 2 months between October and May (inclusive) and one meeting between July and September (Inclusive). A quorum of 12 is required for a meeting of an ETB.
- 4.4 The collective responsibility and authority of the Board should be safeguarded by the members.

⁷ Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 13

⁸ Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 13

- 4.5 Education and Training Boards, as public bodies, have a duty to operate in an open and transparent manner. Minutes of each meeting must be prepared (Schedule 3, Paragraph 9(2) Education and Training Boards Act 2013) and these minutes should be published on the website of the Education and Training Board. Board meetings shall not be held “in-camera” except in exceptional circumstances where there may be certain items that a Board feels it is obliged to consider “in-camera”. In such cases the minutes of the public meeting should record the nature of the item being discussed, the reason why the Board considered that the matter had to be discussed “in-camera” and the decision taken. A supplementary minute book should be maintained for “in-camera” meetings.
- 4.6 The Chief Executive of the ETB has the right to attend and take part in discussions at ETB meetings but is not entitled to vote at these meetings. (Schedule 3, Paragraph 8(1) Education and Training Boards Act 2013) and a Chief Executive must attend any meeting of the board if requested to do so having regard to the due performance of his or her functions (Schedule 3, Paragraph 8(1) Education and Training Boards Act 2013).
- 4.7 The frequency of meetings of the Board and its Audit and Risk and Finance committees along with a record of attendance of each Board Member at Board meetings should be reported in the Annual Report.
- 4.8 **Support to Board:** The Chief Executive is required to assist the members of the board in the performance of their functions in such manner as those members may require.

ETB Committees

- 4.9 ETBs are empowered in accordance with Section 44 of the Education and Training Boards Act, 2013 to establish committees to perform functions on its behalf or to advise the Board in relation to the performance of its functions.

A Committee of the Board should have written Terms of Reference provided by the Board and the Board should agree the intervals within which these terms of reference should be reviewed by the Board and updated as appropriate. ETBI will assist boards by providing template documents for this purpose.

- 4.10 The Education and Training Boards Act, 2013 provides that it is a function of the Board to appoint Chairpersons of Committees. Compliance with good practice in this area requires ETBs to apply relevant assessment criteria for the appointment of Committee Chairpersons and other Committee members. In addition, members of Committees of the Board should be facilitated in having or acquiring as soon as possible after their appointment, an understanding of:
- the functions of the ETB (Section 10 of the Education and Training Boards Act, 2013);
 - organisational culture, objectives and challenges;
 - organisational structure including key relationships e.g. the ETB’s relationship with the Minister and Department; and
 - the Education and Training Boards Act, 2013, the Further Education and Training Act, 2013 and relevant Departmental circulars.
- 4.11 Further details of the work of the Finance Committee and of the Audit and Risk Committee are contained within the body of this Code.

Finance Committee

Principle

While the Board has reserved functions in relation to financial matters including the keeping of accounts, the adoption of an annual service plan and the power to borrow money, the Finance Committee has a particular role in supporting the Board in this work by examining and reporting to the Board on financial matters.

Code Provisions

Finance Committee: Each ETB is required in accordance with Section 45 of the Education and Training Boards Act, 2013 to establish a Finance Committee to report to the Board on financial matters. The Finance Committee must report to the Board a minimum of 4 times in each year. The Finance Committee should have at least 3 and not more than 7 members.

The Finance Committee should have members drawn from outside the Board. The Finance Committee should be empowered to recommend that the Board appoint (subject to maximum number of members) additional members to provide specialist skills, knowledge and experience where necessary at a particular time and to procure specialist advice at reasonable and approved expense to the ETB to assist the Committee with specific areas of its business.

Terms of Reference: The roles and responsibility of the Finance Committee should be set out in a written terms of reference which should be communicated to all members of the Committee.

The terms of reference for the Finance Committee should be set by the Board and should include provisions regarding:

- membership;
- reporting requirements;
- authority;
- meetings – timing, conduct, frequency;
- information requirements; and
- reviewing its own effectiveness.

Terms of Reference will be set by the Department in conjunction with the Sector. A template Terms of Reference is included at Appendix 14 of CLO002/2019 to be used by each ETB.

Appointments: Appointments to the Finance Committee will be made by the Board.

The Chairperson of the Board may be a member of, but not chair of, the Finance Committee.

A person with an executive function in any ETB, including the Chief Executive, should not be a member of a Finance Committee, or an Audit and Risk Committee of that ETB.

The Finance Committee should include at least one member who is external to the ETB and who has relevant financial experience.

Duration of Appointment: The duration of appointment of Finance Committee members is for the term of the Board.

Relevant Skills and Experience: The Finance Committee should collectively possess an appropriate range of skills to perform its functions to the required standard. Members should have a thorough understanding of the role of the Finance Committee and financial experience. In this regard, the Finance Committee Chairperson and members should be provided with initial induction and continuing training in relevant matters as appropriate.

Competencies: In addition to the skills outlined above, members should have, or acquire as soon as possible after their appointment, an understanding of;

- the functions of an ETB;
- organisational culture, objectives and challenges;
- organisational structure including key relationships, e.g. the ETB's relationship with the Minister, the Department of Education and Skills and other funding agencies/Departments; and
- relevant legislation and other rules governing the financial operations of the ETB.

Letter of Appointment: There should be a standard letter of appointment for each new Finance Committee member, where appropriate, including:

- role of the Finance Committee;
- duration of appointment and renewal provisions;
- support and training to be provided;
- the time commitment involved;
- level of remuneration (where appropriate);
- rules regarding conflict of interests;
- performance management arrangements; and
- termination arrangements.

4.12 **Conflict of Interest:** The process for recording declarations of conflicts of interest in the Finance Committee should be the same used at Board level. Each member of the Committee should take personal responsibility to declare any potential conflict of interest arising in relation to any items on the agenda for Finance Committee meetings.

4.13 **Register of Members Interests:** A register of Finance Committee members' interests should be maintained by the Board. Members should be required to declare any potential conflict of interest with any of the business items on the agenda for the Finance Committee meeting. The Committee should specify its procedures where a conflict of interest arises including the requirement that the relevant member brings this to the attention of the Chairperson and, where necessary, leaves the room for the duration of the discussion and not take part in any decisions relating to the discussion. Similar arrangements should apply in relation to meeting documentation, where such documentation is not made available to the member. This should be noted in the minutes of the meeting.

4.14 **Training and Development:** There should be a formal induction process in place (including individually tailored training) for new Finance Committee members. The Finance Committee and Chairperson should make recommendations to the Board on the Committee's and individual member's training needs. The Finance Committee should keep up to date with good practice and developments in financial management and reporting.

4.15 **Frequency of Meetings:** The Finance Committee should meet at least four times a year and invite outsiders with relevant experience to attend meetings if necessary.

4.16 **Authority to query:** The Finance Committee should have explicit authority to query any matters within its terms of reference, as well as having the resources it needs to do so, and full access to information. Where professional advice is deemed to be required, the approval of the Department of Education and Skills should be sought in advance of obtaining the outside professional advice.

4.17 **Relationships:** As the business of the Finance Committee requires, the Chief Executive and/or the Director of Organisation Support and Development, should attend for specific meetings or agenda items at the Committee's request. Executive members of the organisation should be invited to attend Finance Committee meetings to participate in discussions and provide information as required. Executive members of the organisation should maintain an appropriate relationship with the Finance Committee.

4.18 **Communications:** The Finance Committee should ensure that it communicates effectively with the Board. The approved minutes of each Finance Committee meeting should be submitted to the Board as the formal record of each meeting held and items discussed.

4.19 **Reports:** The Finance Committee should report to the Board on:

- the draft Service Plan;
- whether the Chief Executive is implementing the Service Plan, as adopted by the Board, and within the expenditure limits set by the Minister and other funding bodies, as appropriate. This is done by considering the monthly accounts and other financial reports provided to the Board by the Chief Executive;
- whether to accept the annual accounts/draft financial statements as presented by the Chief Executive and to recommend whether they should be signed by the Chairperson. In doing this, the Finance Committee should establish that in the view of the Committee and based on the information available to it, the financial statements properly present the income and expenditure of the Board and the state of affairs of the Board; and
- its view of its own effectiveness with advice on how it can be strengthened and developed.

4.20 **Draft Financial Statements:** The Finance Committee should review the draft financial statements before recommending their adoption by the Board and submission for audit, and taking account of public accountability and the special considerations which attach to ETBs in relation to their management and operation, consider whether the annual report and financial statements, taken as a whole, is fair, balanced and understandable and provides the information necessary for an assessment of the ETB's financial position and financial performance, business model and strategy.⁹

- (a) For Accounts to properly present the income and expenditure of the Board and the state of affairs of the Board", they should
 1. comply with Accounting Standards applicable to the ETB;
 2. incorporate judgement as to valuation, disclosure and materiality aimed to give a True and Fair View;
 3. be prudent in making judgements especially where there is uncertainty; and
 4. reflect the commercial substance of transactions and not the legal form.
- (b) The Finance Committee should review the draft Financial Statements before recommending their adoption by the Board and consider whether;
 1. accounting policies, completeness of financial statements, anti-fraud policy and losses are properly recorded and accounted for;
 2. suitable processes are in place to ensure that regularity, probity and propriety are achieved;
 3. issues raised by the external auditor have been comprehensively and appropriately dealt with; and
 4. the financial statements present fairly the financial position of the ETB.
- (c) As part of this process the Finance Committee will;
 1. review the summary report of the Audit and Risk Committee to the Board to ascertain that the ETB has an adequate System of Internal Control that ensures transactions are conducted, recorded and presented with integrity;
 2. establish that prior period difficulties have been resolved;
 3. consider whether the Statement on the System of Internal Control (SIC) and Letter of Representation are comprehensive, meaningful and consistent with its knowledge of the ETB; and
 4. seek any confirmations/assurances it deems reasonable from the Chief Executive.

Where the internal auditor has stated that, in his/ her opinion, s/he is reasonably assured, having regard to the scope of any audit carried out, that management is operating an adequate system of internal control, the Board and the Finance Committee can have confidence that all information provided by executive management is reliable, provided the control systems continue to operate and are not overridden.

⁹ Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 18

- 4.21 **Chairperson of the Finance Committee:** The Chairperson of the Finance Committee has particular responsibility for ensuring:
- that the Finance Committee is appropriately resourced;
 - that reports to the Committee contain relevant information and are provided at the right time in an appropriate format;
 - absent Committee members are briefed on meetings and attendance records are maintained and reviewed annually;
 - that they report at Board meetings and submit regular written reports to the Board containing relevant information;
 - that matters arising are reported on at each subsequent meeting; and
 - that they are involved in the appointment of new Committee members.
- 4.22 **Appraisal:** Appraisal of the Chairperson of the Finance Committee, to ensure that the responsibilities outlined at paragraph 4.21 above, should be overseen by the Chairperson of the Board.
- 4.23 **Finance Committee Administrative support:** The Chief Executive should assist the members of the Finance Committee in the performance of their functions in such manner as those members may require.

5. Codes of Conduct, Ethics in Public Office, Additional Disclosure of Interests by Board Members and Staff

Principles

To ensure continued integrity and transparency, and to avoid public concern or loss of confidence, the Board should ensure that appropriate policies are in place so that members and staff take decisions objectively and steps are taken to avoid or deal with any potential conflicts of interest, whether actual or perceived.

These policies should ensure that any potential or actual conflicts of interest arising in the case of decision making by board members and employees of the ETB are addressed.

The Ethics in Public Office Acts 1995 to 2001 set out statutory obligations which apply to board members and employees separately from the provisions of this Code. The Protected Disclosures Act 2014 provides a statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace.

Code Provisions

- 5.1 **Codes of Conduct:** All ETBs should have separate written codes of conduct for members and employees. The Codes should be prepared via a participative approach, and should be approved by the Board. The Codes of Conduct for Board Members and members of staff should be made available on the ETB's website and all members made aware of its importance and availability.
- 5.2 **Scope of Application:** Codes of Conduct should contain a description of the nature, intent and scope of their application and a statement of the guiding principles and obligations.
- 5.3 **Compliance Requirements:** Codes of Conduct should refer to the need for members and staff to comply with any relevant legislative and regulatory requirements. It should set out procedures for addressing conflicts of interest and potential conflicts of interest.
- 5.4 **Ethics in Public Office:** Each member of the Board of an ETB and each person holding a designated position of employment within an ETB must comply with the relevant provisions of the Ethics in Public Office Act, 1995 and the Standards in Public Office Act, 2001. Appendix 5 of CLO002/2019 contains an outline of the obligations under the above Acts.
- 5.5 **Conflicts of Interest:** The Code of conduct should set out procedures for addressing conflicts of interest. The Code should recommend that the acceptance of further employment where the potential for conflict of interest arises should be avoided during a reasonable period of time after the exercise of a function in the ETB has ceased. This should be brought to the attention of Board Members on their appointments to the Boards.
- 5.6 **Non-disclosure of information:** The Code should make clear that certain ethical obligations to the ETB regarding, in particular, the non-disclosure of privileged or confidential information do not cease when Board membership or employment in the ETB has ended. This should be brought to the attention of employees and of Board members on their appointment to the Board. Former Board members should treat commercial information received while acting in that capacity as confidential.
- 5.7 **Document Retention:** Board members should not retain documentation obtained during their terms as board member and should return such documentation to the administrative support for the Board or otherwise indicate that all such documentation in their possession has been disposed of in an appropriate manner in line with relevant legislation including GDPR. In the event that former board members require access to board papers from the time of their term on the board, this can be facilitated by the administrative support.
- 5.8 The Board should regularly review the operation of the Code of Conduct for the Board Members and Staff.
- 5.9 Framework Codes of Conduct are provided in Appendices 9(a) and 9(b).

Additional Disclosure of Interests by Board

Members Code Provisions

5.10 Disclosures of interests by board members:

- i) **Periodic Disclosure of Interest:** On appointment and annually thereafter, each board member should furnish to the Chairperson a statement in writing of:
 - 1) the interests of the board member;
 - 2) interests of which the board member has actual knowledge; of his/her spouse or civil partner, child or child of his/her spouse or civil partner;

which could materially influence the board member in, or in relation to, the performance or his/her official functions by reason of the fact that such performance could so affect those interests as to confer on, or withhold from, the board member, or the spouse or civil partner or child, a substantial benefit.

For the purpose of this disclosure interests has the same meaning as that contained in the Ethics in Public Office Act 1995. The statement of interests form used for annual statements under the 1995 Act could be utilised for this purpose on an administrative basis.

- ii) **Disclosure of interest relevant to a matter which arises:** In addition to the periodic statements of interest required under (i) above, Board members are required to furnish a written statement of interest at the time where an official function falls to be performed by the Board member and he/she has actual knowledge that he/she, or a connected person as defined in the Ethics Acts, has a material interest in a matter to which the function relates. For the purposes of this disclosure, material interests has the same meaning as that contained in the Ethics in Public Office Act 1995.
- iii) **Doubt:** If a Board member has a doubt as to whether an interest should be disclosed pursuant to this Code, he/she should consult with the Chairperson of the Board and/or the nominated person in the ETB for dealing with such queries.
- iv) **Confidential Register:** Details of interests disclosed under this Code should be kept by the administrative support to the Board or other nominated person in a special confidential register. Access to the register should be restricted to the Chairperson and senior administrative support person to the Board and other members of the ETB executive and board members on a strictly need to know basis.
- v) **Chairpersons' Interests:** Where a matter relating to the interests of the Chairperson arises, the other members attending the meeting shall choose one of the members present at the meeting to chair the meeting. The Chairperson should absent himself/herself when the Board is deliberating or deciding on a matter in which the Chairperson or his/her connected person has an interest.
- vi) **Documents Withheld:** Board documents on any deliberations regarding any matter in which a member of the Board has disclosed a material interest should not be made available to the Board member concerned.
- vii) **Early Return of Documents:** As it is recognised that the interests of a Board member and persons connected with him/her can change at short notice, a Board member should, in cases where he/she receives documents as part of the work of the Board relating to his/her interests or of those connected with him/her, return the documents to the senior administrative support person of the Board at the earliest opportunity.
- viii) **Absent:** A member should absent himself/herself when the Board is deliberating or deciding on matters in which that member (other than in his/her capacity as a member of the Board) has declared a material interest. In such cases consideration should be given as to whether as separate record (to which the board member would not have access) should be maintained.

- ix) **Uncertainty:** Where a question arises as to whether or not an interest declared by a Board member is a material interest, the Chairperson of the Board should determine the question as to whether the provisions of this Code apply. Where a Board member is in doubt as to whether he or she has an obligation under the Ethics in Public Office Acts 1995 and 2001, he or she should seek advice from the Standards in Public Office Commission under section 25 of the Ethics in Public Office Act 1995.

Disclosure of Interests by ETB members of staff: Additional Requirements

- 5.11 In addition to the requirements under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001, where a member of staff (including family members as set out in the local authority requirements) of an ETB has a pecuniary interest or other beneficial interest in, or material to, any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which the board is a party, that person shall:
- (a) disclose to the Chief Executive concerned his or her interest and the nature thereof;
 - (b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by members of staff of the board, as the case may be, in relation to it, or
 - (c) not influence, or seek to influence, a decision to be made in the matter or make any recommendation in relation to the contract, agreement or arrangement.

Non-disclosure of Information

- 5.12 It is an offence to disclose confidential information obtained while performing functions as a member of the Board without the authorisation of the Board (Schedule 3, Paragraph 13 Education and Training Boards Act 2013). Boards should have procedures to guard against any inappropriate disclosure of information that might arise.
- 5.13 A person who discloses confidential information in contravention of subparagraph (1) of paragraph 13 is guilty of an offence.
- 5.14 Paragraph 13 of Schedule 3 of the Act is set out at Appendix 3 of CL0002/2019.

6. Business and Financial Reporting

Principles

Taking account of public accountability and the special considerations which attach to State bodies in relation to their management and operation, the annual report and financial statements, taken as a whole, should be fair, balanced and understandable and provide the information necessary for an assessment of the ETB's financial performance, financial position, business model and strategy.¹⁰

A fundamental duty of the Board is to ensure that a balanced, true and fair view of the ETB's financial performance and financial position is made when preparing the annual report and financial statements of the ETB and when submitting these to the Minister.

The Board should ensure that timely and accurate disclosure is made to the Minister on all material matters regarding the ETB, including the business context, financial performance and position, and governance of the ETB.¹¹

Code provision

The publication of an annual report and financial statements is a primary expression of public accountability for ETBs. The objective of financial statements is to provide information about the financial performance, position and cash flows of the ETB that is useful for economic decision-making for a broad range of stakeholders.¹²

The Board is ultimately responsible for the keeping of accounts of the ETB and the preparation of periodic reports and annual financial statements. The annual financial statements are prepared from the information contained in the ETB's accounting records and other relevant information and in accordance with the accounting standards applicable to the ETB sector.

The Board must present the ETB's financial statements that properly present the income and expenditure of the Board for the year and the state of affairs of the Board at year end and submit those accounts to the Comptroller and Auditor General within the period set out in the Education and Training Boards Act, 2013. Financial statements must comply with legislation, with the accounting policies laid down by the Minister for Education and Skills and with any relevant Department guidelines.

Reference to financial statements giving a "*true and fair view*" means in the case of an ETB, that the financial statements present fairly the income and expenses (financial performance), assets, liabilities and reserves (financial position), and cash flows of the ETB or group concerned.

In order for a set of financial statements to give a true and fair view they should:

- comply with the accounting standards applicable to the ETB;
- incorporate judgment as to valuation, disclosure, and materiality that aim to give a true and fair view;
- be prudent in the consideration of matters of judgment in the financial statements, especially where there is uncertainty; and
- ensure that the financial statements reflect the commercial substance of transactions, and not just their legal form.

An Education and Training Board may be required by the Minister for Education and Skills to furnish additional/periodic reports or returns from time to time (Schedule 3, Paragraph 9(5) Education and Training Boards Act, 2013).

¹⁰ Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 16

¹¹ Adapted from "G20/OECD Principles of Corporate Governance" (OECD, September 2015) page 41

¹² Adapted from "FRS 102" (Financial Reporting Council, September 2015) page 28

Education and Training boards may also be requested or required by other funding organisations to make periodic reports or to provide additional information in accordance with relevant funding and reporting arrangements and the provisions of D/PER Circular 13/2014.

The external audit of ETBs is carried out by the Comptroller and Auditor General. ETBs are required to forward their accounts to the Comptroller and Auditor General by 1 April in the year following the financial year to which the accounts refer.

Such an audit is an independent examination of the financial statements. The purpose of an audit is to enhance the degree of confidence of intended users in the financial statements. Having conducted an examination of the financial statements, the C&AG is required to report to the Oireachtas. In that report, the C&AG is required to form an opinion on a number of matters including, for example whether in the opinion of the C&AG, the financial statements properly present the income and expenditure of the Board for the year and the statement of affairs of the Board for the year and that the financial statements are in accordance with the accounting policies as laid down by the Minister for Education & Skills.

The annual report, comprising the financial statements and commentary thereon, is a comprehensive report of the ETB's activities throughout the preceding year. Annual reports are intended to give stakeholders information regarding the ETB's activities and financial performance.

Following the audit, the Comptroller and Auditor General will submit copies of the accounts to the Board and the Minister, together with his/her certificate outlining whether in his/her opinion;

- (a) the accounts properly present the income and expenditure of the ETB,
- (b) the statement of balances properly presents the state of affairs of the ETB at the end of the financial year concerned, and
- (c) the accounts are in accordance with any accounting policies laid down by the Minister for Education and Skills,

and report on

- (a) such matters arising from the audit as he/she considers it appropriate to report on, and
- (b) such matters as he considers it appropriate to report on arising from his examination of the system of internal control operated by the ETB.

The Minister for Education and Skills will cause copies thereof to be laid before each House of the Oireachtas. ETBs are then required to publish their audited financial statements.

The Chairperson of an ETB is required to submit a comprehensive report to the Minister for Education & Skills in accordance with the specific reporting requirements set out in paragraph 1.9 of *Code of Practice for the Governance of State Bodies – Business and Financial Reporting Requirements*. The Chairperson's comprehensive report to the Minister is a confidential letter from the Chairperson of the Board to the Minister of the parent Department. It includes items such as affirmation that Government policy is being complied with, significant post balance sheet events, a statement on the system of internal control and an outline of all commercially significant developments affecting the ETB in the preceding year.

Annual Reports and Financial Statements

6.1 **Audited Financial Statements:** All ETBs are required to publish audited financial statements. The financial statements of an ETB are a formal record of the financial performance and financial position of the ETB.

6.2 **Preparation of Annual Report and Financial Statements:** The Board of an ETB is responsible for the preparation of the annual report and financial statements in accordance with the accounting standards and formats for the ETB Sector.

Financial statements should be subject to audit by the Comptroller & Auditor General before inclusion in an ETB's annual report. It is important that every effort is made not to delay the presentation of the financial statements before the Houses of the Oireachtas while completing other elements of the annual report.

6.3 **Annual Report and Financial Statements:** In addition to disclosure requirements of the ETB's governing legislation, applicable accounting standards and other regulations applying to the ETB, specific elements to be disclosed in the annual report and financial statements include:

- A statement of how the Board operates, including a statement of types of decisions to be taken by the Board and which are to be delegated to management.
- The names of the Chairperson, the deputy Chairperson (if any), the Chief Executive and members of the Board and Board committees.

▪ **Termination and Severance Payments/Benefits**

- a) Termination benefits are defined as amounts incurred in exchange for the termination of an employment before the normal retirement date or due to redundancy agreements.

The remuneration note in the financial statement should provide details of the aggregate cost (to the State) on a programme by programme basis to the ETB and the number of cases involved in the financial year together with details of legal costs, if any, incurred in relation to concluding the settlement arrangement where the aggregate cost (to the State) of termination benefits exceeds €10,000. This includes severance/ termination payments, granting of added years for pension purposes or early retirement without normal actuarial reductions. The value of the latter can be determined in accordance with guidance to be issued by the Department of Public Expenditure and Reform from time to time.

- b) Termination benefits should include:
- severance/termination payments, and
 - the value attributed to enhanced pension arrangements (granting of added years for pension purposes or early retirement without normal actuarial reduction).
- c) Terminations and severance payments do not include pension lump sums paid in line with standard public sector pension arrangements, or payments in respect of untaken annual leave.
- d) This information is required to be outlined in the remuneration note in the financial statement as an ongoing requirement.

- **Legal Costs and Settlements**
 - a) Where total legal costs and settlements recognised as expenditure in a reporting period exceed €50,000, these amounts should be disclosed. This does not include costs paid to legal firms for general legal advice – these costs are disclosed under consultancy costs (see paragraph 6.5 below). It includes details of legal costs incurred by an ETB in relation to legal proceedings initiated by the ETB itself or legal proceedings taken against it and should include details, on a programme by programme basis, of:
 - The number of legal cases involved
 - Legal costs incurred directly by the ETB in relation to litigation/defending an action (i.e. procured by the ETB)
 - Legal costs awarded against the ETB (these are the costs incurred by the party taking the action that must be paid as part of a settlement)
 - Legal award/compensation awarded against the ETB in relation to litigation/defending an action
 - b) In some cases, the ETB’s insurance policy provides for reimbursement or payment of some or all of legal costs and settlements incurred. In these instances the disclosure should disclose the net cost to the ETB of such cases e.g. net of insurance proceeds. The disclosure should indicate that additional legal costs and settlements were paid by the ETB’s insurance company.
 - c) Additionally, where an ETB incurred legal costs in respect of matters involving proceedings against another state body, this disclosure should include the level of expenditure incurred in the year (where the expenditure exceeds €25,000) as well as details of the state body concerned.
 - d) Where there is expenditure in respect of conciliation and arbitration payments, these should be disclosed separately.
- **Confidentiality Agreements:** Given the policy underlying the Freedom of Information Acts, in concluding settlements an ETB should not enter into confidentiality agreements which preclude it from disclosing details of the settlement reached in the financial statements, save in exceptional circumstances and on foot of legal advice that they are necessary in the circumstances of the case. When, in those circumstances, confidentiality agreements are entered into, parties to the agreements should be given prior notice that they may be subject to disclosure in any case where an overriding public interest is identified or when required by law.
- **Travel and Subsistence** - The financial statements should disclose the total costs incurred in relation to travel and subsistence for the entity analysed between national and international travel.
- **Hospitality Expenditure:** The financial statements should disclose the aggregate total expenditure incurred in relation to hospitality in the period. Rules in relation to hospitality are governed by Department of Public Expenditure and Reform and the Department of Education and Skills as appropriate.
- The above list is not exhaustive and may be updated from time to time in accordance with any requirements issued by the Department of Education & Skills and/or the Department of Public Expenditure and Reform

6.4 **Reporting Requirements:** Reporting requirements should be adhered to as follows:

- i) **Unaudited Financial Statements:** Unaudited financial statements for each ETB should be furnished to the Comptroller and Auditor General and to the Department of Education & Skills not later than 1 April in the year immediately following the accounting period to which they relate.
- ii) **Publication of Annual Report:** Each ETB should submit to the Department of Education & Skills its annual report not later than one month following completion of the audit of the financial statements of the said body by the Comptroller and Auditor General and six months from the end of that body’s financial year end (whichever is the earlier). In the event that the audited financial statements are not finalised by the Comptroller and Auditor General in advance of 6 months from the end of the financial year, ETBs must submit their annual

report to the Department with confirmation that they are unable to submit their audited accounts. In that situation, ETBs should not publish the unaudited accounts, but must confirm in their annual report that they will publish the audited financial statements within one month of receipt from the Office of the Comptroller and Auditor General.

- iii) **Committee Fees:** In the interests of transparency and good governance, ETBs are required to publish in their annual report and/or financial statement details of non-salary-related fees paid in respect of Committee members analysed by category of fees.
- iv) **Board Meetings and Attendance:** The number of meetings of the Board and its Audit and Risk and Finance committees and the attendance of each Board member at Board meetings should be reported in the annual report.
- v) **Disclosure of Key Management Personnel Compensation:** ETBs should disclose in their annual report and/or financial statements aggregate details of the compensation of their key management analysed by the following categories:
 - (a) Salaries and short term employee benefits;
 - (b) Post-employment benefits; and
 - (c) Termination benefits;

An ETB shall also disclose key management compensation in total. Compensation includes all employee benefits. Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly. Key ETB management personnel in this context is taken to mean the Chief Executive and persons at Directorate level.

The following arrangements should also apply:

- a) ETBs should disclose in their financial statements the aggregate amount of total compensation paid to employees including employee numbers in whole time equivalent format.
 - b) The aggregate total compensation paid to employees should be split between salary, overtime and allowances.
 - c) A separate note on Chief Executive salary and benefits (and termination payment if relevant) should also be included.
 - d) A separate aggregate note on termination benefits to all staff should be included. CE termination benefits should be kept separate, as set out above.
- vi) **Pay bill/No. of employees:** In addition to disclosing the aggregate pay bill and total number of employees, ETBs should publish details of the number of employees whose total employee benefits (excluding employer pension costs) for the reporting period fell between €0 and €59,999 and within each pay band of €10,000 from €60,000 upwards and an overall figure for total employer pension contributions in their annual report and/or financial statements.
 - vii) **Pension Liabilities:** Pension liabilities and corresponding pension assets will be shown in the accounts as set out in the Template Annual Financial Statement for ETB Sector.

6.5 Consultancy Costs:

- a) Consultancy is where a person, organisation or group is engaged to provide intellectual or knowledge-based services (e.g. expert analysis and advice) through delivering reports, studies, assessments, recommendations, proposals, etc. that contribute to decision-making or policy-making in a contracting authority. The engagement should be for a limited time period to carry out a specific finite task or set of tasks involving expert skills or capabilities that would not normally be expected to reside within the contracting authority.
- b) The information sought by this disclosure is to reflect the level of consultancy expenditure incurred by the ETB in the financial year on a programme by programme basis under appropriate headings. It is not intended to include expenditure on processes which have been outsourced under 'business as usual'.

- c) In procuring the services of external consultants, ETBs should comply with all applicable laws and Code guidelines regarding competitive tendering.

6.6 **Statement on Internal Control:** The Chairperson's report to the Minister regarding the system of internal control (paragraph 6.8) should be included in the annual report of the ETB. This statement should be reviewed by the external auditors to confirm that it reflects the audited ETB's compliance with the requirements of paragraph 6.8 and is consistent with the information of which they are aware from their audit work on the financial statements. The external auditors should include their report on this matter in their audit report on the financial statements.

6.7 **Web Publication:** Annual reports and minutes of ET Board meetings should be published on the website of the ETB.

Additional Reporting Requirements (Chairperson's Comprehensive Report to the Minister)

6.8 Chairperson's report

Together with the annual report and financial statements of the ETB, a comprehensive report, signed by the Chairperson, must be furnished to the Minister. The Chairperson's report must;

- (i) Outline all financially significant developments affecting the ETB in the preceding year, including relating to newly built or purchased schools or centres, the purchase and sale of land and/or buildings, new programmes and major issues likely to arise in the short to medium term;
- (ii) Affirm that all appropriate procedures for financial reporting, internal audit, travel, procurement and asset disposals are being carried out;
- (iii) Include a statement on the system of internal control in the format set out in Appendix 13 of CLOO02/2019, adjusted where necessary and including, in cases where a breach of this system has been identified, an outline of the steps that will be taken to guard against such a breach occurring in future;
- (iv) Provide summary details of all off-balance sheet financial transactions of the ETB that are not disclosed in the annual report and financial statements of the ETB, including information on the nature, purpose and financial impact of the off-balance sheet financial transactions. The contents and format of this section of the report should be agreed in advance with the Minister/designated Departmental officials;
- (v) Affirm that Codes of Ethics and conduct for Staff and Members of the Board have been put in place and adhered to;
- (vi) Affirm that Government policy on pay is being complied with;
- (vii) Affirm that Government guidelines on the payment of Board members' fees are being complied with;
- (viii) Outline significant post balance sheet events;
- (ix) Confirm that the appropriate requirements of the Department of Public Expenditure and Reform Public Spending Code are being complied with;
- (x) Confirm that written approval was received before capital expenditure was incurred;
- (xi) Confirm that procedures are in place for the making of protected disclosures in accordance with section 21(1) of the Protected Disclosures Act 2014 and confirm that the annual report required under section 22(1) of the Act has been published;
- (xii) Confirm that written approval was received from the Minister before any disposal of land/property took place and that, in such cases the correct disposal procedures were complied with;
In circumstances where a board has disposed of a gift to the Board, confirm, whether the giftor's approval was required and, if it was required, that it was received;
- (xiii) Confirm that the Guidelines for the Appraisal and Management of Capital Expenditure Proposals and the Capital Works Management Framework are being adhered to, where appropriate;
- (xiv) Identify and explaining any disposals of an asset or grant of access to property or infrastructure for commercial arrangements with third parties which have not been subject to auction or competitive tendering process;
- (xv) Confirm that written approval was received before any leases were entered into;
- (xvi) Confirm that the ETB has complied with its obligations under tax law;
- (xvii) Confirm that a Corporate Procurement Plan has been developed and is being implemented;

- (xviii) Identify incidents of non-competitive procurement in the ETB;
- (xix) Certify that Government travel policy requirements are being complied with in all respects and that the ETB travel policy is being implemented in full;
- (xx) Confirm that this Code of Practice has been adopted, the extent which it is being complied with and, where is not being complied with, furnishing an explanation;
- (xxi) Set out any other material matters which, in the opinion of the Chairperson, warrant the attention of the Minister;
- (xxii) Provide details of/information on legal disputes involving other State bodies;
- (xxiii) Provide an outline of significant commercially sensitive developments in the preceding six months and likely developments for the rest of the year;
- (xxiv) Confirm that the ETB has measures are in place to counter fraud and that any occurrence of irregularities, including suspected fraud, have been reported to the Department of Education and Skills;
- (xxv) Confirm that the appropriate procedures for child protection and safeguarding have been adopted for all aspects of the ETB's activities in line with DES guidelines and relevant legislation.

ETBI, in conjunction with the Sector, will develop templates for consistency of information to be provided by the executive to the Board for the purpose of informing the Chairperson's statement. All such documentation should be channelled through the ETB Directorate.

- 6.9 **Commercially Sensitive Developments:** The Chairperson should also provide an interim report to the Minister for Education & Skills on significant commercially sensitive developments in the preceding year and likely developments for the rest of the current year.

7 Risk Management, Internal Control, Internal Audit and Audit and Risk Committees

Principles

The Board should have formal and transparent arrangements for governance, risk management and internal control and for maintaining an appropriate relationship with the Internal Audit Unit and the Comptroller & Auditor General.

Risk management and internal control are important and integral parts of a performance management system and crucial to the achievement of outcomes. They consist of an ongoing process designed to identify and address significant risks involved in achieving an entity's outcomes.¹³

Advising on key risk is a matter for the Board. The Audit and Risk Committee should support the Board in this role.

Code Provisions

7.1 Risk Management Policy: Each ETB should develop a Risk Management Policy and the Board should approve the risk management framework and monitor its effectiveness. The Board should review material risk incidents and note or approve management's actions, as appropriate.

7.2 Risk Management

The Executive, led by the Chief Executive, should identify the following risk categories and then list the component elements of each.

- (a) The categories of non-compliance include;
 - i. Section 10 of the 2013 Act
 - ii. The other sections of the 2013 Act
 - iii. Other relevant legislation
 - iv. DES Circulars and Guidelines
 - v. Other Department Circulars and Guidelines
 - vi. Other Funders' Requirements and Guidelines
 - vii. Safeguarding of Assets, Integrity of transactions and Reliability of Records
 - viii. Code of Corporate Governance
- (b) The Chief Executive will then implement the necessary Internal Controls to ensure that there is compliance with the requirements in (a).
- (c) The Board will review the risks identified and the related internal controls to ensure risk is being reasonably managed. They can be assisted in this task by the Audit and Risk Committee.
- (d) Normally, the Board of an entity sets the Risk Appetite for the entity.

However, in the case of an ETB, the setting of the Risk Appetite in respect of activities applies largely to Agency Programmes, Self-financing Projects and/or new school provision as in the case of core programmes the level of service to be provided, the programme rules and related funds are determined by the DES and/or by SOLAS and other programme funders.

¹³ "International Framework: Good Governance in the Public Sector" (IFAC/CIPFA, July 2014) page 27

Key elements of the Board's oversight of risk management include:

- establishing an Audit and Risk Committee to give an independent view in relation to risks and risk management systems;
- making risk management a standing item on the Board meeting agenda and monitor changes in risk ratings at board meetings;
- the composition of ETB Boards is set by the Education and Training Boards Act. Accordingly, expert advice may be required from time to time;
- appoint a Chief Risk Officer or empower a suitable management alternative, to identify, measure and manage risk and promote a risk management culture in the organisation;
- approve the risk management policy, set the ETB's risk appetite taking account of funding bodies' requirements, and approve the risk management plan and risk register at least annually;
- review management reporting on risk management and note/approve actions as appropriate;
- require external review of effectiveness of risk management framework on a periodic basis; and
- confirmation in the annual report that the Board has carried out an assessment of the ETB's principal risks, including a description of these risks, where appropriate, and associated mitigation measures or strategies.

Internal Control

7.3 Internal Control: internal control comprises not only internal check and internal audit, but the entire system of controls, financial and otherwise, including risk management and corporate governance, which have been established by management to:

- ensure the ETB meets its Statutory Functions under section 10 of the 2013 Act;
- operate the ETB in accordance with the Board's risk appetite;
- ensure compliance with relevant legislation and funding obligations;
- safeguard the assets;
- secure the integrity of transactions; and
- secure as far as possible the accuracy and reliability of the records.

7.4 The Board has responsibility for ensuring that effective systems of internal control are instituted and implemented including financial, operational and compliance controls and risk management and the Board should review the effectiveness of these systems annually.

The following are the key internal control procedures designed to provide effective internal control including:

- i) the steps taken to ensure an appropriate control environment (such as clearly defined management responsibilities and evidence of reaction to control failures);
- ii) processes used to identify business risks and to evaluate their financial implications;
- iii) details of the major information systems in place such as budgets, and means of comparing actual results with budgets during the year;
- iv) the procedures for addressing the financial implications of major business risks (such as financial instructions and notes of procedures, delegation practices such as authorisation limits, segregation of duties and methods of preventing and detecting fraud); and
- v) the procedures for monitoring the effectiveness of the internal control system which may include; Audit and Risk Committees, management reviews, consultancy, inspection and review studies, the work of internal audit, quality audit reviews and statements from the heads of internal audit; and
- vi) confirmation in the annual report that there has been a review of the effectiveness of the system of internal control.

- 7.5 **Management Override:** Management override occurs where senior executive management, either carry out actions or instruct staff to carry out actions which contravene any of the following: legislation, prescribed guidelines or approved ETB procedures and internal controls.

Such conduct is detrimental to fostering a culture and tone of good corporate governance and can have a demoralising effect on staff.

Adequate procedures should be implemented to ensure that the threat of management or other override does not become a reality. Measures to counteract such management override include:

- the Board and management should remain vigilant of the possibility of management override;
- ensuring that ETB personnel are aware that they do not have the ability to operate outside of the internal controls;
- encouraging protected disclosures in this area and the promotion of a “speaking-up” culture whereby workers can raise concerns regarding wrongdoing in the workplace without fear of reprisal;
- annual confirmation from management that they have not engaged in this practice; and
- robust ethics/conflict of interest procedures and analysis at Board level of same.

- 7.6 **Fraud Prevention:** The responsibility for the prevention and detection of fraud or error rests with both those charged with governance of the ETB and ETB executive management. However, staff at all levels have a duty to be alert to the possibilities for fraud and to identify and report suspected fraud.

It is important that management, along with those charged with governance, place a strong emphasis on fraud prevention, which may reduce opportunities for fraud to take place, and fraud deterrence, which could persuade individuals not to commit fraud because of the likelihood of detection and punishment.

There are many factors that can lead to the occurrence of fraud, for example, the existence of opportunity, pressure to reach goals or meet expectations and financial incentive.

Measures to deal with fraud include risk assessment and determination of related internal controls, the culture and ethos of the organisation and staff training in this area and Protected Disclosures.

Note: While responsibility for the prevention and detection of fraud or error does not lie with the Internal Audit Unit of the Education and Training Boards (IAU-ETBs), in recording, evaluating and testing the systems the internal auditor will consider the possibility of fraud or error occurring. Where an internal auditor uncovers actual or suspected fraud or error he/she should probe this to the fullest extent.

Review of Effectiveness of Internal Control

7.7 **Effectiveness of Internal Control:** The existence of risk management policies and internal control systems do not on their own constitute effective risk management. Effective and on-going monitoring and review are essential elements of sound systems of risk management and internal control. Reviewing the effectiveness of internal control is an essential part of the Board's responsibilities. The Board is required to form its own view on effectiveness of internal control systems based on the information and assurances provided.

7.8 **Annual Review of Effectiveness of Internal Control:** The Board should undertake an annual review of the effectiveness of internal control systems to ensure that it has considered all aspects of risk management and internal control for the year under review and up to the date of approval of the annual report and financial statements.

To assist the Board, as early as possible in each year, and before the Finance Committee considers the annual accounts, the Audit and Risk Committee will carry out a review of internal controls for the previous year by undertaking the work outlined in its Terms of Reference, and by reviewing the minute books of the Board, the Audit and Risk Committee and the Finance Committee and other relevant factors, to ensure there are no inconsistencies in these with the assessment of internal control provided to the Audit and Risk Committee in Internal Audit Reports and management representations.

7.9 The annual review of effectiveness should consider the following:

- changes since the last review in the nature and extent of significant risks and the ability of the ETB to respond effectively to changes in its business and external environment;
- the scope and quality of management's ongoing monitoring of risks and the system of internal control and, where applicable, the work of its internal audit unit and other providers of assurance;
- the extent and frequency of the communication of the results of the monitoring to the Board, or Board committees, which enables it to build up a cumulative assessment of the state of control in the ETB and the effectiveness with which risk is being managed;
- the incidence of significant control failings or weaknesses that have been identified at any time during the period and the extent to which they have resulted in unforeseen outcomes or contingencies that have had, could have had, or may in the future have, a material impact on the ETB's financial performance or condition; and
- the effectiveness of the ETB's public reporting process.

7.10 The annual review of effectiveness should conclude on the extent to which controls are adequate, and were operating and should outline actions required to address any deficiencies arising.

7.11 **Timely Completion of Review:** Timely completion of the annual review is critical if it is to fulfil its objectives of providing assurance in relation to the operation of controls in the reporting period. The annual review should be conducted close to the end of the period under review or as soon as possible after the end of the financial period under review, and no later than three months after the period ends.

Internal Audit

Principle

Internal audit evaluates the integrity of all financial and operational performance indicators, including regulatory compliance, and gives an independent opinion to the Board through the Audit and Risk Committee, on the adequacy and effectiveness of the whole system of internal controls and assurance within the organisation, and the extent to which the Audit and Risk Committee, and subsequently the Board, may rely on these.

Internal auditing can also be defined as an independent, objective, assurance and consulting activity designed to add value and improve ETB operations. It helps an ETB accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

Code Provisions

7.12 **Internal Audit Unit:** An Internal Audit Unit for the ETBs (IAU-ETBs) is located within one ETB which provides audit services for the 16 ETBs in the sector.

7.13 **Independence:** The internal audit unit shall be independent of the activities it audits. This is to provide it with an environment in which it can make unbiased judgements and provide impartial advice to management.

7.14 **Internal Audit Universe:** The internal audit unit should have the right to review all the management and control systems both financial and operational. The internal audit unit shall have unrestricted access to all functional areas, records (both manual and electronic), property, and personnel in the performance of its audits.

Specifically, the internal audit unit shall be responsible for the effective review of both internal control and risk management.

7.15 **Annual Programme of Audits:** The head of the internal audit unit will propose the Audit Plan for approval by the Steering Committee for the IAU-ETBs taking into account the views of relevant stakeholders.

The internal audit unit shall demonstrate objectivity, comprehensiveness and relevance to management, the Audit and Risk Committee and the Board in respect of the areas to be audited and the respective priorities for these audits within the programme.

The existence of the internal audit unit does not relieve line management of its responsibility for effective control of the activities for which it is responsible.

7.16 The internal audit unit shall function professionally, adhering to the *Code of Ethics* and *International Standards* of the Institute of Internal Auditors or equivalent professional standards.

The operation of the internal audit unit should follow the principles below:

i) **Charter:** The internal audit unit should have a formal charter, including terms of reference, which has been approved by the Board. The reporting structure for internal audit should be clear and formally documented.

ii) **Director of Internal Audit:** The content of all internal audit reports should be entirely at his/her discretion. The Director of Internal Audit should report directly to the Audit and Risk Committee and should also have access to the Chairperson of the Board and the Chairperson of the Audit and Risk Committee.

iii) **Compliance Tests:** In carrying out its on-going work, the internal audit unit should assess, using a risk based approach, the areas within its terms of reference (as set out in the audit charter), and report its findings to the Audit and Risk Committee.

iv) **Resources:** The internal audit unit should be appropriately resourced consistent with its responsibilities under this Code with the necessary skills including the ability to deal with non-financial aspects.

v) **External Auditors and Internal Audit:** The internal audit unit should liaise with the external auditors so that the potential for co-operation between the two is maximised. The work carried out by these two entities can frequently be complementary and effectiveness can be increased through regular consultation.

vi) **Value for Money Auditing:** In planning, executing and reporting its work, the internal audit unit should ensure that value-for-money auditing receives adequate attention based on the principles and provisions of the Public Spending Code, where relevant.

vii) **Procurement and Disposal:** The internal audit unit should review compliance with procurement and disposal procedures as required by the Audit and Risk Committee, from time to time, and report to the Audit and Risk Committee on these matters.

Audit and Risk Committee

Principle

While the Board has a duty to act in the interests of the ETB, the Audit and Risk Committee has a particular role, acting independently of the management of the ETB, to ensure that the interests of Government and other stakeholders are fully protected in relation to business and financial reporting and internal control.

A number of the functions usually carried out by Audit and Risk Committees may, in the ETB Sector, be carried out by the Finance Committee.

Code Provisions

- 7.17 Internal Controls:** The Board is ultimately responsible for ensuring that the Chief Executive has instituted an adequate and appropriate system of internal control, including risk management and corporate governance, in the ETB. The Board should be supported by:
- an Audit and Risk Committee; and
 - an Internal Audit Unit operating to the International Standards of the Institute of Internal Auditors or equivalent professional standards.
- 7.18 Audit and Risk Committee:** Each ETB is required in accordance with Section 45 the Education and Training Boards Act, 2013 to establish an Audit and Risk Committee to assist the Board in discharging its internal audit functions. The Audit and Risk Committee must report to the Board a minimum of 4 times in each year. The Audit and Risk Committee should have 6 - 8 members.
- 7.19** Audit and Risk Committee should have members drawn from outside the Board. The Audit and Risk Committee should be empowered to recommend that the Board appoint (subject to maximum number of members) additional members to provide specialist skills, knowledge and experience where necessary at a particular time and to procure specialist advice at reasonable and approved expense to the ETB to assist the Committee with specific areas of its business.
- 7.20 Written Charter:** The roles and responsibilities of the Audit and Risk Committee should be set out in a written charter, including terms of reference which should be communicated to all members of the Committee.

The terms of reference for the Audit and Risk Committee should be set by the Board and should include provisions regarding:

- membership;
- reporting requirements;
- authority to query;
- meetings – timing, conduct and frequency;
- information requirements;
- value for money;
- governance; and
- responsibilities regarding:
 - risk management;
 - internal control;
 - internal audit;
 - External Audit; and
 - reviewing its own effectiveness.

A Template Charter including Terms of Reference for an Audit and Risk Committee is provided at Appendix 11 of CL0002/2019.

- 7.21** The Audit and Risk Committee should review on an annual basis their terms of reference and recommend any necessary changes to the Board. It is important that a balance is struck during Audit and Risk Committee meetings between governance, risk management, internal control.

- 7.22 **Chairperson of the Board:** The Chairperson of the Board may attend Audit and Risk Committee meetings and be a member of, but not chair, the Audit and Risk Committee.
- 7.23 **Appointments:** Appointments to the Audit and Risk Committee should be made by the Board in consultation with the Chairperson of the Audit and Risk Committee.
- The Chairperson of the Audit and Risk Committee will not be a member of the Board.
 - A person with an executive function¹⁴ in an ETB, including the Chief Executive, may not be a member of the Audit and Risk Committee of that ETB.
 - A member of the Finance Committee may be a member of the Audit and Risk Committee.
- 7.24 **Duration of Appointment:** The duration of appointment of Audit and Risk Committee is for the term of the Board.
- 7.25 **Relevant Skills and Experience:** The Audit and Risk Committee should collectively possess an appropriate range of skills to perform its functions to the required standard. All members of the Audit and Risk Committee should have a thorough understanding of corporate governance and the role of the Audit and Risk Committee. In this regard, the Audit and Risk Committee Chairperson and members should be provided with initial induction and continuing training in such matters as corporate governance and the role of internal and external audit.

The Board should satisfy itself that at least one member of the Audit and Risk Committee has recent and relevant governance experience, preferably in a public service organisation outside of the ETB Sector and other members should have recent relevant financial experience and experience in the core areas of its activities including risk management, internal audit, governance, relevant technical or specialist issues, an understanding of the public sector environment, in particular the accountability structures, and current public sector reform initiatives.

Where the Audit and Risk Committee members do not have sufficient knowledge or experience in a particular area, the Audit and Risk Committee may invite persons, other than the Chief Executive or another person with an executive function, with relevant expertise to attend meetings.

- 7.26 **Assessment Criteria:** There should be formal assessment criteria for the appointment of the Chairperson and other Audit and Risk Committee members. In addition to the skills mix issues outlined above, members should have, or acquire as soon as possible after their appointment, an understanding of:
- The functions of an ETB;
 - organisational culture, objectives and challenges;
 - organisational structure including key relationships e.g. the ETB's relationship with the relevant Minister and parent Department; and
 - relevant legislation or other rules governing the organisation.
- 7.27 **Letter of Appointment:** There should be a standard letter of appointment for each new Audit and Risk Committee member, where appropriate, including:
- role of the Audit and Risk Committee;
 - duration of appointment and renewal provisions;
 - support and training to be provided;
 - the time commitment involved;
 - level of remuneration (where appropriate);
 - rules regarding conflict of interests;
 - performance management arrangements; and
 - termination arrangements.

¹⁴ A person with an executive function has a contract of employment or service with the ETB.

- 7.28 **Conflict of Interest:** The process for recording declarations of conflicts of interest in the Audit and Risk Committee should be the same used at Board level. Each member of the Committee should take personal responsibility to declare any potential conflict of interest arising in relation to any items on the agenda for Audit and Risk Committee meetings.
- 7.29 **Register of Members Interests:** A register of Audit and Risk Committee members' interests should be maintained by the Board. Members should be required to declare any potential conflict of interest with any of the business items on the agenda for the Audit and Risk Committee meeting. The Committee should specify its procedures where a conflict of interest arises including the requirement that the relevant member brings this to the attention of the Chairperson and, where necessary, leaves the room for the duration of the discussion and not take part in any decisions relating to the discussion. Similar arrangements should apply in relation to meeting documentation, where such documentation is not made available to the member. This should be noted in the minutes of the meeting.
- 7.30 **Training and Development:** There should be a formal induction process in place (including individually tailored training) for new Audit and Risk Committee members. The Audit and Risk Committee and Chairperson should make recommendations to the Board on the Committee's and individual member's training needs. The Audit and Risk Committee should keep up to date with good practice and developments in corporate governance.
- 7.31 **Frequency of Meetings:** The Audit and Risk Committee should meet at least four times a year and invite outsiders with relevant experience to attend meetings if necessary.
- 7.32 **Authority to query:** The Audit and Risk Committee should have explicit authority to query any matters within its terms of reference, as well as the resources and outside professional advice it needs to do so, and full access to information.
- 7.33 **Relationships:** As the business of the Audit and Risk Committee requires, the Chief Executive, Director of Organisation Support and Development, Director of Internal Audit and external auditor should attend for specific meetings or agenda items at the Committee's request. Executive members of the organisation should be invited to attend Audit and Risk Committee meetings to participate in discussions and provide information as required. Executive members of the organisation should maintain an appropriate relationship with the Audit and Risk Committee.
- 7.34 **Communications:** The Audit and Risk Committee should ensure that it communicates effectively with the Board, the Director of Internal Audit, the external auditor and other stakeholders. Any internal audit or audit items that relate to the Board's areas of responsibilities should be communicated to the Board as soon as they are identified. The approved minutes of each Audit and Risk Committee meeting should be submitted to the Board as the formal record of each meeting held and items discussed.
- 7.35 **Internal Auditors:** The Audit and Risk Committee should liaise with the Internal Audit Unit where, from subsequent events/ disclosures, it appears to the Audit and Risk Committee that adequate and appropriate systems of internal control are not operating, so that it has a clear understanding of the situation. The Audit and Risk Committee should maintain an Audit Register. A sample Audit Register is contained at Appendix 12 of CLO002/2019.
- 7.36 **External Auditors:** The Audit and Risk Committee should, at least once a year, consult with the Comptroller & Auditor General regarding the work carried out by the Comptroller and Auditor General in relation to the ETB's compliance with the requirements set out in this document and audit findings. The informed views of the individual Audit and Risk Committees should be communicated to the Internal Audit Unit.

Taking account of the size of the ETB and the occurrence of weaknesses in internal controls or audit issues, the Audit and Risk Committee should meet with or otherwise engage with the Comptroller & Auditor General at least once a year without senior management present to ensure there are no unresolved issues of concern and to make the external auditor aware of any emerging risks or governance issues.

- 7.37 **Annual Report:** The Audit and Risk Committee's annual report to the Board should present a summary of the results of internal audit and management representations in respect of the management and internal control systems, and the sources of assurance to the Board.

The annual report should include;

- internal controls;
- financial reporting;
- compliance;
- governance; and
- quality of internal audit.

The Committee should also report its view of its own effectiveness with advice on how it can be strengthened and developed.

- 7.38 **Chairperson of the Audit and Risk Committee:** The Chairperson of the Audit and Risk Committee has particular responsibility for ensuring;

- that the Audit and Risk Committee is appropriately resourced;
- the Committee reviews Internal Audit Reports and management responses and ensures that actions are followed up;
- that reports to the Committee contain relevant information and are provided at the right time in an appropriate format;
- absent Committee members are briefed on meetings and attendance records are maintained and reviewed annually;
- that they report at Board meetings and submit regular written reports to the Board containing relevant information;
- that matters arising are reported on at each subsequent meeting; and
- that they are involved in the appointment of new Committee members.

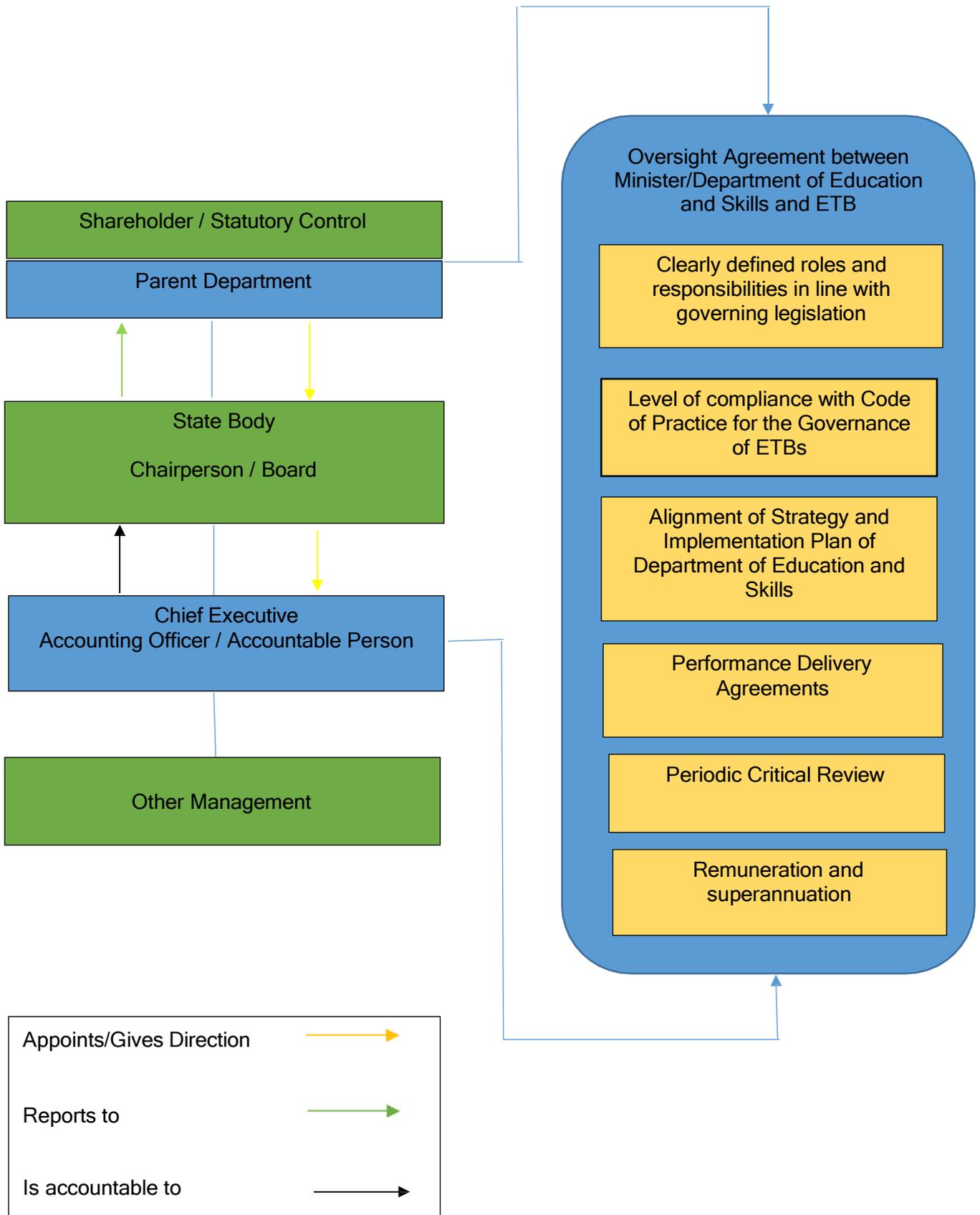
- 7.39 **Appraisal:** Appraisal of the Chairperson of the Audit and Risk Committee should be overseen by the Chairperson of the Board.

- 7.40 **Audit and Risk Committee Administrative support:** The Audit and Risk Committee requires support in;

- commissioning papers;
- circulating documents and minutes of meetings;
- documenting ownership of agreed actions and the follow-up/tracking of same;
- keeping the Committee abreast of developments in the ETB;
- arranging induction and training for committee members; and
- maintaining a record of members' appointments and termination/renewal dates and ensuring that appropriate appointment procedures are initiated when necessary, etc.

Administrative support should be provided, as necessary, to Audit and Risk Committee for the administrative tasks as outlined above. Centralised supports should also be accessed where required (e.g. through ETBI for training/induction).

Department Oversight Role



8. Relations with the Oireachtas, Minister and Department of Education and Skills

Principles

Good governance in the public sector is to ensure that entities achieve their intended outcomes as defined in their governing legislation and Statements of Strategy while acting in the public interest. This requires effective arrangements for defining outcomes in terms of sustainable economic, social, and environmental benefits which should be included in the ETB's oversight agreement with the Minister/Department of Education & Skills.

Good governance requires effective procedures for the definition of responsibility and accountability, allocation of budgets, defining expected outputs and outcomes and clear procedures for monitoring performance.

There should be an ongoing dialogue between the Department of Education & Skills and ETBs based on a common understanding of the objectives of the ETB and the actions through which it seeks to achieve those objectives.

Code Provisions

The statutory basis for ETBs set out in the Education and Training Boards Act 2013 defines the parameters for the level of operational autonomy and independence under which each ETB operates in pursuit of its objectives. ETBs must be subject to sufficient oversight and accountability to ensure that it is performing effectively and delivering its objectives to ensure that public resources are used efficiently and effectively.

Functional independence of an ETB is fully compatible with statutory and financial oversight by the Minister/Department and with proper and effective accountability. Effective accountability is strongly dependent on establishing and maintaining clearly defined roles and responsibilities in accordance with the Education and Training Boards Act, 2013 and other relevant legislation along with governing regulations and circulars which are clearly understood and observed in practice by both parties.

The Education and Training Boards Act, 2013 sets out the general functions of an Education and Training Board and specifies those functions which must be undertaken by the Board. Each ETB must be subject to sufficient oversight and accountability to ensure that it is performing effectively and delivering its objectives to ensure that public resources are used efficiently and effectively.

Department of Education & Skills Oversight Role

8.1 **Governance Arrangements:** The Department of Education & Skills must ensure that there are robust and effective governance arrangements in place in ETBs. This requirement is in accordance with the Governance Framework requirements for Government Departments and Offices regarding bodies under their aegis set out in the Corporate Governance Standard for the Civil Service.

SOLAS has specific statutory responsibility to “assess whether or not education and training boards, and other bodies engaged in the provision of further education and training programmes, to whom moneys have been advanced for the purpose of a further education or training programme perform their functions in an economic, efficient and effective manner”.

8.2 **Comply or Explain:** How this applies in ETBs is outlined on page 7 of this document.

Oversight Agreements

8.3 The Department of Education & Skills should have written oversight agreements with

each ETB. Oversight agreements should reflect the:

- purpose and responsibilities of the ETB;
- legal framework of the ETB;
- ETB's level of compliance with Code;
- details of the Performance Delivery Agreement; and
- arrangements for oversight, monitoring and reporting on conformity with the oversight agreement including those actions and areas of expenditure where prior sanction from the Minister/ Department and/or the Department of Public Expenditure and Reform is required. In the absence of clear authority to make payments, an ETB should seek prior sanction from the relevant area of the Department or from SOLAS or from other programme funders.

8.4 During the financial year, an ETB will draw funding from a number of areas within the Department of Education and Skills. Different oversight requirements may apply to individual funding streams available to an ETB, and ETB management and staff should be familiar and in compliance with their obligation for each funding stream.

8.5 Departmental oversight is an ongoing process which is achieved through regular interaction on key aspects of ETB activities between the ETB and the Department of Education and Skills. This is supported by the following actions:

- The annual letter of determination issued by the Department to each ETB as soon as practicable in the financial year will set out, in so far as possible, the expenditure limits under a range of programme headings for programmes directly funded by the Department of Education and Skills;
- An annual memorandum of funding will set out the expenditure limits of the adult and further education and training programmes funded by SOLAS.
- The annual Service Plan, in accordance with Section 47 of the Education and Training Boards Act, sets out the services that the ETB proposes to provide.
- Following the conclusion of an internal audit a copy of the internal Auditors opinion report is given to the Department together with full details of the item or items giving rise to this opinion.
- Regular reports in respect of income and expenditure are provided to the Department of Education and Skills and to SOLAS in addition to the unaudited accounts.
- In the event that losses have occurred, all such losses should be promptly reported to the Department by the Chief Executive together with a full explanation and confirmation that internal control issues identified have or will be addressed from a stated date.

Roles and Responsibilities

8.6 **Roles:** The respective roles of the board and the chairperson of the ETB are set out in Sections 1 and 2 respectively.

8.7 **Accounting Officer:** The Accounting Officer of the Department of Education & Skills will take the necessary steps to ensure that the requirements of this Code are being properly implemented and observed. In support of this role, the Department of Education & Skills may also request further information/evidence that the ETB is in compliance with the Code and the ETB should comply with all such reasonable requests.

If information available to the Department indicates that problems or difficulties exist, the Department will take appropriate action as soon as possible.

The Chief Executive is accountable to the Board for the due performance of his or her functions in the management of the ETB, in accordance with the legislation, Department guidelines and the Service Plan. (Section 15, Education and Training Boards Act, 2013). S/he is accountable to the Committee of Public Accounts (Section 25, Education and Training Boards Act, 2013) and to other Oireachtas Committees (Section 26, Education and Training Boards Act, 2013).

The Chief Executive, under Section 16 of the Education and Training Boards Act 2013, may formally delegate functions to other staff members. Any functions delegated under Section 16 should be clearly and unambiguously laid out in a document by the Chief Executive the Board should be informed at its next meeting.

Performance Delivery Agreements

Following the adoption of this Code by the ETB Sector, a performance delivery template which takes account of the complex reporting arrangements with which the Sector must comply will be developed. The template will be used by each ETB and the Department to finalise a performance delivery agreement for each ETB.

In relation to SOLAS, ETBS have a planning process through Service plan and FARR. In relation to ETBs, ETBs should agree Performance Delivery Agreements with the Department of Education & Skills and report to that Department on progress against targets. These agreements will act as a performance contract between the Department and the ETB in which an agreed level of performance / service is formalised and which will ultimately result in improved efficiency and effectiveness in the delivery of public services.

The agreements allow for the adoption of both annual and multi-annual targets, and the development of output and outcome indicators, including milestones to measure performance against targets.

8.8 Performance Delivery Agreements: The Department of Education & Skills will agree a Performance Delivery Agreement (reviewed annually) with the ETBs.

The Performance Delivery Agreement will include:

- high level goals and objectives;
- identify the key programmes of activity for ETBs including for each individual expenditure programme;
- set out the key outputs specified in quantitative, measurable terms;
- identify the targets for that output in annual and multi annual targets with clear milestones;
- identify the cost of delivery of that programme; and
- set out the process for the formal review of the performance agreement.

8.9 High Level Goals and Objectives: In stating High Level Goals and Objectives, the Performance Delivery Agreement will:

- set out relevant, quantitative metrics of impacts and/or results that will support examination of the effectiveness of the programme; and
- include annual and multi-annual targets that set out clear milestones to measure progress toward a goal.

8.10 Key Outputs: In stating Key Outputs, the Performance Delivery Agreement will:

- set out relevant, quantitative metrics of outputs that will support examination of the efficiency of the programme; and
- include annual and multi-annual targets that set out clear milestones to measure delivery.

8.11 Review of Performance Delivery Agreement: There will be at least one formal meeting per annum between senior Department officials and representatives of the Board and top management of the ETB to review the Performance Delivery Agreement and to strengthen the relationship between the two organisations.

Thematic Governance Review

Having regard to the output of audits of ETBs carried out by the Comptroller & Auditor General, including as appropriate special reports and value for money reports, and to the implementation by ETBs of department and/or government policy. The Department of Education & Skills will consider the roll out of appropriate thematic governance reviews. The overarching objective of these reviews would be primarily to secure improvements in accountability, efficiency and effectiveness. Any such reviews should be evidence based and where possible compare actual performance against targets and/or external benchmarks.

- 8.12 **Conduct of Review:** The Department of Education and Skills together with representatives of ETBs and ETBI will consider how best to conduct the reviews having due regard to the guiding principles which inform the Government's approach in this area.

Procedures for Procurement

Code Provisions

- 8.13 **Public Procurement:** It is the responsibility of the Board to satisfy itself that the requirements for public procurement are adhered to and to be fully conversant with the current value thresholds for the application of EU and national procurement rules.

The Board should satisfy itself that procurement policies and procedures have been developed and published to all staff. It should also ensure that procedures are in place to detect non-compliance with procurement procedures. Entities should have a contracts database/listing for all contracts/payments in excess of €25,000 with monitoring systems in place to flag non-competitive procurement. Non-competitive procurement should be reported in the Chairperson's comprehensive report to the Minister.

- 8.14 **Procedures:** It is Government policy that public bodies, where possible, should make use of central procurement frameworks and contracts that are put in place by the Office of Government Procurement (OGP). These central procurement frameworks and contracts are designed to optimise benefits to the public service through the strategic aggregation of its buying power.

Where public bodies do not utilise central procurement frameworks they should be in a position to provide a value for money justification.¹⁵ Value for money justifications should take into account the full costs of running a public procurement competition.

ETBs should follow the good practice guidelines set out in Appendix 7 of CLO002/2019 in relation to Contracts for the Provision of Goods and/or Services and requirement for Department Approval before providing non-core services.

Where local procurement is necessary, competitive tendering should be standard procedure in the procurement process of ETBs. ETB management, and ultimately the Board, should ensure that there is an appropriate focus on good practice in purchasing and that procedures are in place to ensure compliance with procurement policy and guidelines.

Before major items of expenditure are approved by the Board, written approval from the Department of Education and skills should have been obtained.

Department of Public Expenditure and Reform Circular 02/2016 must be complied with by State bodies including ETBs considering expenditure on IT and telecommunications projects, systems and infrastructures.

- 8.15 **Legal Obligations:** Public bodies must comply with their obligations under EU directives, national law and guidelines. EU Directives and national regulations impose legal obligations on public bodies including ETBs in regard to advertising and the use of objective tendering procedures for awarding contracts above certain value thresholds. Even in the case of procurement which might not be subject to the full scope of EU Directives, such as certain 'non-priority' services or service concessions, the EU Commission and European Court of Justice have ruled that EU Treaty principles must be observed.

- 8.16 **EU Treaty Principles:** The essential Treaty principles include non-discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide service and freedom of establishment. There is a strongly implied requirement to publicise contracts of significant value to a degree which allows parties in other Member States the opportunity to express an interest or to submit tenders.

¹⁵ OGP National Public Procurement Policy Framework, January 2018

- 8.17 **Corporate Procurement Plan:** The Office of Government Procurement Policy framework requires that all non-commercial State bodies complete a Corporate Procurement Plan. This plan is underpinned by analysis of expenditure on procurement and the procurement and purchasing structures in the organisation. The plan should set practical and strategic aims, objectives for improved procurement outcomes and appropriate measures to achieve these aims should be implemented.

The Chairperson should affirm adherence to the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement Plan in the comprehensive report to the Minister.

- 8.18 **Procurement Information:** Information on procurement policy and general guidance on procurement matters is published by the Office of Government Procurement. This can be viewed or downloaded from the Office of Government Procurement website. In addition ETBI provides a centralised support to ETBs in their procurement function.

Property Acquisition, Disposal of Surplus Property, Disposal of State Assets and access to Assets by Third Parties

Code Provisions

- 8.19 **Acquisition or disposal of assets** and use of educational assets: An ETB may not proceed to purchase or dispose of land, buildings or other material assets without formal written sanction from the Minister for Education and Skills. Where such sanction is given, an ETB must comply with any conditions contained in the sanction. This also includes long term leases or purchase of right to use (rather than own) an asset.

The rollout of the National Development Plan and the achievement of Project Ireland 2040 objectives requires maximum utilisation of all State properties and sites in the control/ownership of an ETB for the purposes of education or training provision including use of capacity within these properties and sites by other education service providers where this has been determined appropriate and necessary by the Department following a consultation process with the relevant ETB. Each ETB is required to cooperate with all parties deemed relevant by the Department in facilitating use of capacity within its properties and sites by other education service providers.

- 8.20 **Circulars and Guidelines:** Each ETB is required to comply with the statutory provisions and procedures, as set out in relevant Circulars, concerning the disposal of assets or the granting of access to property or infrastructure for commercial arrangements. The disposal of assets where such assets are surplus to general educational requirements, and where confirmation has been received that the property is not otherwise needed by the state should be by auction or competitive tendering process, other than in exceptional circumstances (such as a sale to a charitable body). In such circumstances, approval from the Department of Education & Skills is required. The method used should be both transparent and likely to achieve a fair market-related price. The reserve value of the asset being disposed of should be determined on foot of a professional valuation, normally by the Valuation Office, and recorded in advance in the ETB's records.
- 8.21 In addition to any specific guidelines which apply to an ETB as outlined above, all acquisitions, disposals or proposals to share property should be conducted in accordance with current Department of Public Expenditure and Reform circulars and guidelines as follows:
- 11/2015 – Protocols for the Transfer and Sharing of State Property Assets;
 - 17/2016 – Policy for Property Acquisition and for Disposal of Surplus Property;
 - 02/2016 – Arrangements for Digital and ICT-related Expenditure in the Civil and Public Service.

Acquisition of Land, Buildings or other Material Assets

- 8.22 **Procedures:** In addition the requirements set out in Department of Public Expenditure and Reform circulars, as amended from time to time, the following procedures should apply;
- (i) **Independent Valuation:** Where land or property is being considered for acquisition an independent valuation must be obtained. These valuations should be obtained before any decision is taken by the Board to purchase or sell lands. The valuations should be obtained from professional property valuation surveyors;
 - (ii) **Listing of Parties to Transaction:** All parties to land and property transactions should be clearly reported to the Board when transactions are being considered. Any Board resolution related to the purchase of land or property should state the party or parties the asset is being purchased from;
 - (iii) **Options by Others to Purchase:** Where a third party developer has obtained an option to purchase land and is selling this option to an ETB, any profit margin, where it can be determined, being charged by the developer should be reported to the Board;
 - (iv) **Board Resolutions:** Any Board resolutions regarding the purchase or sale of an asset should state the price the asset has been purchased or sold for;
 - (v) **Transparency:** Purchase of land or property should be conducted in as transparent a manner as possible without compromising the negotiating position of the ETB;
 - (vi) **Due diligence:** A full due diligence report should be prepared for land or property that are being considered for acquisition;
 - (vii) **Nominated Staff Member:** A staff member should be nominated to have responsibility for the acquisition, management and sale of land or property. This staff member should report directly to the Chief Executive regarding property issues;
 - (viii) **Legal Matters:** When dealing with the acquisition or sale of land or property there should be an active engagement with the solicitors involved and the nominated staff member shall ensure that the commercial and technical aspects of the transaction are fully addressed;
 - (ix) **Title Registration:** There should be a planned follow up with the solicitors involved to ensure that the title to any land or property acquired are properly registered with the Property Registration Authority;
 - (x) **Legal Obligations:** There should be a planned follow up to ensure that any undertakings, obligations and other matters are completed following the acquisition or sale of land or property. ETBs should instigate periodic (depending on the size of the property portfolio) reviews with their solicitors, and any internal staff dealing with property management, to audit the current status of title registration, way leave agreements, leases, bonds, planning permissions and any other matters which affect their property portfolios;
 - (xi) **Recording on State Property Register:** All land and property should be recorded on the online State Property Register managed by the Office of Public Works.

Capital Investment Appraisal

The Public Spending Code: The Public Spending Code is the comprehensive set of expenditure appraisal and value for money requirements and related guidance covering all public expenditure.

8.23 The Board should ensure that robust and effective systems and procedures are in place in the ETB concerned to ensure compliance as appropriate, with the relevant principles, requirements and guidelines of the Public Spending Code. The Chairperson of the ETB, following a formal resolution of the Board, should confirm in the annual report that the organisation is adhering to the relevant aspects of the Public Spending Code.

8.24 **Investment Appraisal:** In addition, the Board should ensure that the ETB concerned should have regard to appropriate models for investment appraisal in their sectors and seek to apply good practice financial and economic appraisal principles contained in the Public Spending Code for the appraisal and management of all investment proposals.

8.25 **Capital Projects:** ETBs must implement good practice in the management of significant capital expenditure proposals. In particular they must have regard to the Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector and the Capital Works Management Framework in the planning, appraisal and management of significant expenditure projects.

ETBs must also ensure that School Capital Projects comply with

- (a) the Department of Education and Skills Design Team Procedures and associated Practice Notes,
- (b) the Department of Education and Skills Technical Guidance Documents, and
- (c) the terms of any Service Level Agreement entered into with the Department of Education and Skills.

Diversification, Establishment of Subsidiaries and Acquisitions by ETBs

ETBs are not empowered to diversify beyond the specific statutory duties set out in the establishment legislation (Education and Training Boards Act 2013). ETBs cannot establish subsidiaries and the rules in relation to acquisitions by ETBs are set out above.

ETBs are reminded that in accordance with Appendix 7 of CLO002/2019, an ETB is required to obtain, in advance, the written approval of the Department before providing a new programme or activity:

- Which is not one of its core services (i.e. the provision of primary, post-primary, PLC, and further education and training), or
- Which it considers to be within its core services, or associated core services, but which is not already established and funded by the Department.

Compliance with use of Auction or Tendering Requirements

- 8.26 **Board Approval - Use of Competitive Process:** If an auction or competitive tendering process takes place and the highest bid is not the bid accepted, then specific Board approval is required before the disposal of the asset or granting of access to property or infrastructure for commercial arrangements with third parties can be completed. The Board must ensure that the provisions of the EU Commission Communication on State Aid elements in sales of land and buildings by public authorities are complied with fully and that DES approval has been granted where required. Any such approvals together with the reason why a lower bid was permitted to be accepted should be noted in the minutes of the Board.
- 8.27 **State Aid:** A measure constituting State aid shall not be implemented before it has been approved by the EU Commission. The EU Commission Guidance Paper on State aid-compliant financing, restructuring and privatisation of State-owned enterprises sets out EU State aid rules, which must be complied with when carrying out or financing, restructuring and/or privatisation of State-owned enterprises and provides clarifications on the way the Commission applies the main State aid principles.
- 8.28 **Board Approval – Non-Use of Competitive Process:** Where an auction or competitive tendering process is not used and the agreed price is €150,000 or more, then specific Board approval is required before negotiations start and also before the disposal of the asset or granting of access to property or infrastructure for commercial joint venture arrangements with third parties can be completed.
- 8.29 **Formal Certification:** No disposal of an asset or grant of access to property or infrastructure for commercial arrangements with third parties should be completed until the officer managing the disposal or grant of access has certified formally that specific Board and Department approval, where necessary, has been obtained.
- 8.30 **Disposal of Assets to Board Members, Employees or their Families:** Disposal of assets to Board members, employees or their families or connected persons should, as with all disposals, be at a fair market-related price. Where the Board is considering a proposal for any such disposal, the Board member connected to the potential purchase should absent him or herself from the Board deliberations on the issue. A record of all such disposals to such persons (to include details of the asset disposed of, price paid and name of the buyer) should be noted in a register kept for this purpose. This register should be available for inspection, if requested, by the Board or by any Board member. The Board may specify that any disposal above an approved threshold should be formally endorsed by the Board who may impose specific restrictions with regard to any such disposal.
- 8.31 **Compliance:** The Chairperson, in the comprehensive report to the Minister for Education & Skills, should affirm that the disposal procedures, as outlined, have been complied with.

Tax Compliance

- 8.32 **Tax Clearance:** It is the responsibility of the Board of the ETB to satisfy itself that any Tax Clearance requirements regarding the payment of grants, subsidies and similar type payments, and regarding Public Sector Contracts, are fully adhered to. Any individual or body must have a valid tax clearance certificate when a contract is entered into and should maintain a valid tax clearance certificate or, where the contract is a relevant contract⁴⁰, demonstrate satisfactory subcontractor tax compliance at the time of each payment.
- 8.33 **Taxation** ETBs should be exemplary in their compliance with taxation laws and should ensure that all tax liabilities are paid on or before the relevant due dates.

- 8.34 **Tax Avoidance:** ETBs, while availing of all legitimate taxation arrangements, should not engage in unacceptable tax avoidance transactions. In broad terms, tax avoidance is offensive if it involves the use of the tax code for a purpose other than that intended by the Oireachtas (including an unintended use of a tax incentive) with a view to reducing the amount of tax to be paid by the ETB or some other party to a transaction in which the ETB participates. Where a doubt arises in a particular instance, the ETB concerned should consult the Revenue Commissioners.

Where the approval of a Minister with the consent of the Minister for Public Expenditure and Reform is required under legislation for any financial transaction, the Chairperson should provide confirmation from the Revenue Commissioners that the tax treatment of the financial transaction is compliant with Irish tax law.

- 8.35 **Report to Department:** A report on the ETB's compliance with tax laws should be furnished each year to its Department of Education & Skills. The Chairperson, in the annual report to the Minister, should confirm that the ETB has complied with its obligations under tax law.

Legal Disputes Involving Other State Bodies

- 8.36 **Legal Disputes:** Where a legal dispute involves another State body or ETB, unless otherwise required by statute, every effort should be made to mediate, arbitrate or otherwise resolve before expensive legal costs are incurred. ETBs should pursue the most cost effective course of action in relation to legal disputes.

ETBs should inform the Department of Education and Skills of any such legal issues as soon as they arise together with an estimate of the legal costs incurred or likely to be incurred.

Service Level Agreements

- 8.37 In the same way as the Department of Education and Skills and ETBs have Oversight Agreements and Performance Delivery Agreements, ETBs should develop and introduce Service Level Agreements as part of the wider operating procedures of the Education and Training Board.
- 8.38 However, ETBs must be aware that if an issue regarding public funding arises in the third party, then the accountability lies with the ETB. Accordingly, before a service level agreement is entered into, an ETB must be satisfied as to the integrity of internal control and corporate governance in the third party organisation.

9. Remuneration and Superannuation

Principles

- 9.1 **Remuneration:** Terms of conditions of employment, rates of remuneration for approved staff employed in ETBs are determined by the Department of Education & Skills and other funding bodies as appropriate. ETBs are required to comply with all relevant circulars and other rules and directions as appropriate issued by the Department of Education & Skills, the Department of Public Expenditure and Reform and by other public funding bodies in this matter.

ETBs are reminded that Government pay policy (including procedures and systems in relation to travel and subsistence) must be implemented, as expressed from time to time, in relation to Board members, Committee members and staff and that the arrangements authorised from time to time cover total remuneration.

The Department of Education and Skills should be consulted in good time on any matters which could have significant implications for general Government pay policy.

Compliance with Government pay policy or with any particular Government decision should not be effected in ways which cut across public service standards, integrity or conduct, or involve unacceptable practices which result in a loss of tax revenue to the Exchequer.

The Board is not empowered in any circumstances to award additional payments (e.g. “top-up” payments, honoraria) to any member of staff of an ETB or to any member of an ETB.

- 9.2 **Superannuation:** Membership of a public sector pension scheme is a feature of the terms and conditions of employment and the position in relation to pension scheme membership should be reflected in the contract of employment. Relevant employees of ETBs should be members of the appropriate superannuation scheme which, in the ETB Sector, are the Education Sector Superannuation Scheme 2015, the ETB Teachers’ Superannuation Scheme 2015, the Single Public Sector Scheme 2012 and also the Schemes applicable to former staff members of FÁS/SOLAS who transferred to ETBs in accordance with the Further Education and Training Boards Act 2013.

Membership of each of the schemes is determined by the rules of the particular scheme. The Board is not empowered in any circumstances to award additional pension benefits to any member of staff outside of those provided in the rules of the relevant pension scheme.

Strict adherence to the criteria for entry to the various schemes must be adhered to and careful consideration in this regard should be applied at recruitment stage. The Department of Education & Skills is available as required to assist and advise ETBs on pension related issues.

Travel and Official Entertainment

- 9.3 ETBs should be cognisant of the need to achieve economy and efficiency in relation to expenditure on travel and official entertainment.
- 9.4 ETBs should adopt and comply in all respects with circulars/ instructions issued from time to time by the Department of Public Expenditure and Reform or the Department of Education and Skills regarding travel and subsistence, including foreign travel and official entertainment.
- 9.5 ETBs should develop and implement a travel policy. A travel policy template is provided in Appendix 8 of CLO002/2019.
- 9.6 Official Entertainment: Department of Finance Circular 25/2000: Official Entertainment sets out the entertainment allowances, the limits on expenditure on official entertainment, and the numbers that can be accommodated at any given event (dependent on the grade or position of the host).

10. Quality Customer Service

Principle

In their dealings with the public, ETBs should publish a customer charter which outlines the nature and quality of service which learners and other stakeholders can expect.

Code Provisions

- 10.1 **Customer Charter Cycle:** The 4 step cycle of the customer charter involves;
- Consultation with customers / stakeholders;
 - Commitment to service standards;
 - Evaluation of performance; and
 - Reporting on results.
- 10.2 **Display and Content:** Customer charters should be displayed prominently (on websites and at the points of service). The charter should state the ETB's commitment to providing services to its customers in accordance with the twelve Principles of Quality Customer Service for Customers and Clients of the Public Service (see Appendix 6 of CL0002/2019). The customer charter should define service standards in clear terms and simple language and should inform customers of contact and feedback mechanisms.
- 10.3 **Customer Action Plan:** The customer charter should be supported by a customer action plan, which describes in detail how the commitments and standards set out in the customer charter, and other customer service improvements, will be delivered and evaluated by the ETB.
- 10.4 **Customer Charters and Customer Action Plans:** Customer charters and customer action plans should be produced as part of the same process and have separate but complementary roles. While the customer charter is a short, easy to read, accessible document which acts as a public commitment to the customer on the level of service they can expect to receive when dealing with an ETB, the customer action plan is a more detailed document which describes how the customer charter commitments will be delivered and evaluated by the ETB. Both documents should share the same timeframe (ideally 3 years). The Principles of Quality Customer Service for customers and clients of ETBs are set out at Appendix 6 of CL0002/2019.

10.5 Complaints

All service delivery organisations may be subject to complaints at both the level of the official and the organisation. These may relate to the quality of the service itself or the manner in which the service was delivered. The scope for customer dissatisfaction can be reduced by provision of appropriate information to the customer regarding the available service and training to staff in how to deliver the service.

In setting up systems to deal with customer dissatisfaction ETBs should ensure that all complaints are dealt with objectively in a consistent, open and fair manner.

Some elements to be included in Comments/Complaints systems include;

- information regarding complaints procedures should be freely available to the public at all points of service delivery and should be publicised by organisations;
- complaints procedures should be straightforward and access should be conveniently available to customers and clients at no cost wherever possible;
- all complaints should be directed to, and acknowledged, by a named officer of appropriate grade;
- appropriate training should be provided to all staff dealing with complaints;
- complaints should be addressed as quickly as possible and the customer should be kept informed of progress;
- complaints procedures should be subjected to regular review; and
- provisions should be made for speedy correction of errors and, where required, the making of appropriate redress to the complainant.