

**Independent Review of Certain  
Matters and Allegations  
Relating to the University of  
Limerick**

Dr Richard Thorn  
October 2017

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# Chapter 1

## 1. Introduction

### 1.1. The Review and Terms of Reference

1.1.1. On 12 May 2017, the Minister for Education and Skills, Mr Richard Bruton TD, announced details of an independent review (**'the Review'**) into governance, HR and financial practices and procedures at the University of Limerick (**'the University' or 'UL'**). The Higher Education Authority (**'the HEA'**) was given responsibility for overseeing the Review and appointed Dr Richard Thorn (**'the Reviewer'**), President Emeritus of Institute of Technology Sligo, to conduct the Review itself. Prior to the announcement of the Review, the President of the University, Professor Des Fitzgerald, had advised the Department of Education and Skills (**'the Department'**) that it was his view that an independent review of these matters was warranted and that it was appropriate for the Department to arrange for the establishment of the review.

1.1.2. The terms of reference<sup>1</sup> of the review, as agreed by the Department of Education and Skills (**'the Department'**) and HEA, are as follows:

*"The reviewer will receive details of the allegations from the disclosers and any other persons who feel that there are matters of concern or of public interest relating to the University of Limerick that need to be addressed.*

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<sup>1</sup> The full terms of reference are available in Appendix 1 to the Report.

*Where appropriate, the reviewer will interview or consult with the disclosers, other persons and relevant members of staff in the University in relation to the matters identified. The reviewer may revert to any party if further clarification or information is required.*

*On the basis of the information received, the reviewer will:*

- Determine whether the allegations require further examination and whether, on the balance of probabilities, the allegations are well-founded;*
- Where allegations have been determined as well-founded, prepare a report that shall make findings or recommendations on the steps to be taken by the University including governance, HR, financial and administrative processes as well as overall organisational culture;*
- Examine the application of wider HR policies and processes in the University. This will cover the governance arrangements and practices around the use of severance payments.*
- Consider specifically and report on the recommendations in the Mazars report which have yet to be implemented.*

*The reviewer will consult with the Department and HEA as required and provide regular updates to them.*

*The reviewer will present his/her final report, including any findings or recommendations, to all parties (the disclosers and other persons, the University, the Department and the HEA)."*

## 1.2. Background

- 1.2.1. The decision to carry out the review arose from several protected disclosures and other complaints made by employees and former employees of the University of Limerick to the HEA and/or the Department. Because of these disclosures, in October 2015 the HEA commissioned a firm of consultants, Mazars, to conduct a review of the processes employed by UL to inquire into the allegations made by serving and former members of staff in the Accounts Payable Office of the Finance Department in UL. As part of its review Mazars also received submissions from other serving and former members of staff in the University. The Mazars report<sup>2</sup> which forms part of the terms of reference for this Review was published by the HEA in February 2016.
- 1.2.2. Arising from the publication of the Mazars report, there followed a process of engagement between the HEA, the Department, the disclosers and UL. In May 2016 the HEA wrote to the University requesting that it agree to the appointment of a person to conduct a full review into the allegations made. However, such agreement was not forthcoming. The HEA subsequently appointed Ms Jane Williams of Sia Partners to establish whether a facilitated intervention might offer a way out of the difficulties caused by disputes at the University and for the parties concerned. Ms Williams concluded that such an intervention would be highly unlikely to be successful.
- 1.2.3. In addition to the above, in 2015 the Department was made aware of unapproved severance payments made by UL to two members of staff in 2012. These payments came to light in the context of the Comptroller and Auditor General's (**'the C&AG'**) special report<sup>3</sup> on severance payments in the public sector.

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<sup>2</sup> *Review of the processes employed by the University of Limerick to inquire into allegations made by Persons A, B and C*, January 2016. Available at: <http://hea.ie/assets/uploads/2017/09/Mazars-review-final.pdf>

<sup>3</sup> *Comptroller and Auditor General Special Report No. 91 - Management of Severance Payments in*

- 1.2.4. The issues of protected disclosures, severance payments and other governance and HR issues in UL were discussed in detail at meetings of the Dáil's Committee of Public Accounts (**the PAC**) on 30 March 2017<sup>4</sup> and 22 June 2017<sup>5</sup>. These meetings were attended by representatives of UL, the HEA, the Department and, in the case of the meeting on 22 June, by Dr Richard Thorn as well. They were also briefly mentioned at a PAC hearing attended by the HEA on 24 September 2015<sup>6</sup>.
- 1.2.5. A previous C&AG report<sup>7</sup> on Irish universities, published in 2010, also examined the circumstances in which three persons employed by the University of Limerick were paid the salary of President contemporaneously through the University's payroll during the 2007 and 2008 financial years. These matters were subsequently discussed at a meeting of the PAC on 23 September 2010<sup>8</sup>.
- 1.2.6. On 25 May 2017, RTÉ broadcast "RTÉ Investigates: Universities Unchallenged". The programme<sup>9</sup> investigated and reported on governance, HR and financial practices in several Irish higher education institutions. A substantial portion of the programme

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*Public Sector Bodies*, December 2015. Available at

[http://audgen.gov.ie/documents/vfmreports/Management\\_of\\_Severance\\_Payments\\_in\\_Public\\_Sector\\_Bodies.pdf](http://audgen.gov.ie/documents/vfmreports/Management_of_Severance_Payments_in_Public_Sector_Bodies.pdf)

<sup>4</sup> Transcript available at

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/ACC2017033000001?opendocument>

<sup>5</sup> Transcript available at

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/ACC2017062200001?opendocument>

<sup>6</sup> Transcript available at

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20150924~ACC/\\$File/Daily%20Book%20Revised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20150924~ACC/$File/Daily%20Book%20Revised.pdf?openelement)

<sup>7</sup> *Comptroller and Auditor General Special Report – Irish Universities, Resource Management and Performance*, September 2010.

[http://www.audgen.gov.ie/documents/vfmreports/75Irish\\_Universities\\_Resource\\_Management.pdf](http://www.audgen.gov.ie/documents/vfmreports/75Irish_Universities_Resource_Management.pdf)

<sup>8</sup> Transcript available at

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/ACC2010092300003?opendocument>

<sup>9</sup> Programme available at

<https://www.rte.ie/player/ie/show/rte-investigates-30003696/10730932/>

concentrated on the University of Limerick and the issues that form part of this Review's terms of reference.

1.2.7. It is against the backdrop of these reports and discussions as they relate to governance, HR and financial practices and procedures at the University of Limerick, that the Department of Education and Skills and HEA decided that the matters in question were an ongoing cause of concern and required further review.

1.2.8. In May 2017, the President of UL, Professor Des Fitzgerald (the "President"), advised the Secretary General of the Department that an independent review of these matters was warranted. On this basis, on 12 May 2017, the Minister for Education and Skills announced details of an independent review into governance, HR and financial practices and procedures at the University of Limerick and the appointment of Dr Richard Thorn to carry out the Review.

### 1.3. Structure of Report

1.3.1. Chapter 2 outlines how the Review was conducted. It includes details of persons who made submissions, those who were interviewed, the information sought and obtained from these persons and the University. Investigation methodology and the approach taken by the Review in considering individuals' submissions and their experiences is described in this chapter.

1.3.2. Chapter 3 contains a listing, description and links to policies and procedures that are deemed relevant to the work of the Review. Appendix Two contains links to copies of several UL policies that are of direct significance to the Review.

1.3.3. Chapter 4 recognises that the Review is dealing with a multiplicity of matters, people and events by chronicling the matters considered of interest to the Review.

1.3.4. Chapter 5 includes personal (and some group) narratives, including observations/findings and recommendations<sup>10</sup>. A small number of personal/group narratives are dealt with in Chapter 6 as matters of public interest.

1.3.5. Chapters 6, 7 and 8 consider analyses, observations/ findings and recommendations of the Review under three headings;

- Matters of public interest (Chapter 6)
- Matters of institutional significance (Chapter 7)
- Matters of higher education significance (Chapter 8)

1.3.6. Chapter 9 reports on implementation of the Mazars recommendations.

1.3.7. The report contains the following appendices:

Appendix 1: Terms of Reference

Appendix 2: Links to policies and procedures deemed relevant to the work of the Review

#### 1.4. Acknowledgements

1.4.1. Dr Thorn wishes to thank all persons who contacted and made submissions to the Review and subsequently agreed to meet the Review team. The Review is also grateful to those people who were contacted by the Review and assisted it in its work. For many

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<sup>10</sup> Recommendations are located in the text close to the relevant findings. Where no observation or finding was made, it was because the matter was considered and, in the view of the Review, requiring of no comment.



of the persons concerned, the issues they raised are matters of deep personal distress and discomfort. The Review wishes to acknowledge their candour and openness in approaching the Review and in helping it with its work.

1.4.2. Dr Thorn wishes to thank the President of the University, Professor Des Fitzgerald, for his unqualified support of the Review. Dr Thorn is particularly grateful to Professor Mary O’Sullivan and Mr Eamonn Moran, who were designated by the President, to assist the Review by providing documentation, access to relevant files and, where necessary, contacts and contact details within the University.

1.4.3. In addition, Dr Thorn thanks officials in the Department of Education and Skills for their assistance, including the provision of background documentation.

1.4.4. Finally, Dr Thorn wishes to thank Mr Neil McDermott and Ms Deborah Walsh of the System Funding section of the HEA who provided administrative support to the Review and who attended meetings with persons who met the Review.

#### 1.5. Sub Judice Matters

1.5.1 This Review has been informed that a number of the controversies considered by it are the subject of legal proceedings. This Review is a stranger to all such proceedings and unaware of their precise subject matter and status. However, the Review is cognisant of the need to avoid any act or omission that would amount to a contempt of court in relation to matters that are *sub judice*. If and to the extent therefore that this Report is circulated beyond the Higher Education Authority, as is envisaged by the Review’s Terms of Reference, then consideration should be given to the redaction of sections of this Report the publication or circulation of which might infringe the *sub judice* rule.

## 1.6. Reviewer Statement

1.6.1. At the Public Accounts Committee hearing on 22 June 2017, Dr Thorn was questioned about potential conflicts of interest by Ms Mary Lou MacDonald TD. For the purposes of clarity, the Review wishes to note the following matters:

- In 2009, Dr Thorn chaired an Institutional Review of St. Patrick's College, Thurles (incorporated with Mary Immaculate College and with degrees awarded by the University of Limerick since September 2011) on behalf of the Higher Education and Training Awards Council. Arising from the review, Dr Thorn was invited to join a newly established Board in St. Patrick's College in June 2010 to help implement the Institutional Review recommendations. Dr Thorn left the board in mid-2011 when it became clear that his work on implementing the National Strategy for Higher Education might conflict with his role on the Board.
- Between 2009 and 2012, a research team in UL, led by Professor Eamonn Murphy, provided technology support to a project being led by Dr Thorn on behalf of Institutes of Technology Ireland. The project, funded from the Strategic Innovation Fund, used the research team to develop an applications system for part-time students akin to the CAO process for full time students. The system is currently in use to support Springboard and Springboard Plus programmes and was in use for the Science Without Borders programme run in conjunction with the Brazilian government.
- In 2016 Dr Thorn prepared a Case Study on behalf of the OECD and EU examining the relationship between governance, leadership and regional development in the Limerick region. The Case Study, which is available at <https://heinnovate.eu/en/resource/shared-governance-leadership-and-regional-development-case-study>, involved interviews with several staff in the University

of Limerick and Limerick Institute of Technology. None of the persons interviewed for the Review were interviewed as part of the Case Study research.

## Chapter 2

### 2. Conduct of Investigation

#### 2.1. Introduction and Commencement

2.1.1. The Terms of Reference for this independent review of allegations relating to the University of Limerick were announced on 12 May 2017 by the Minister for Education and Skills, Mr Richard Bruton TD. The initial phase of the investigation involved a call for submissions to the public and a request to the University of Limerick for a range of documentation believed to be pertinent to the work. The public call for submissions was made via Press Release and posting on the HEA website<sup>11</sup>. Persons interested in making a submission were requested to do so to a dedicated and confidential email address. The closing date for submissions was 9 June 2017, and this date was subsequently extended by a week. Most of the submissions were received by the deadline. However, the Review considered submissions and information received to the point at which the Review was completed in mid-September 2017.

#### 2.2. Submissions and Contacts

2.2.1. 28 submissions were received that ranged in length from single page emails to multi-page documents. All material received was stored on a secure drive hosted by the HEA. Access was provided only to the Reviewer and the two HEA staff assigned to the Review.

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<sup>11</sup> Available at: <http://hea.ie/2017/05/09/university-of-limerick-review/>

In addition to the formal submissions received, the Reviewer received oral communications from several people. In addition to those who came forward, the Review sought and contacted several people who had been identified as potentially being able to contribute to the Review's deliberations.

### 2.3. Meetings

2.3.1. An initial round of meetings was held in Dublin and Limerick during the weeks beginning 3, 10 and 17 July 2017. A second round of meetings in Limerick was held during the weeks beginning 21 and 28 August 2017. During the second round of meetings, a small number of people who had been previously met in July were invited to attend for further clarification. In total, between the meetings in July and August, 34 individuals were met including the former President of the University, Professor Don Barry, and current Chancellor, retired Chief Justice John Murray, representatives of University management and representatives of Unite (the union representing staff in UL). A small number of individuals declined to attend a meeting or, having expressed a desire to contribute, later withdrew. The Review is satisfied that the non-attendance by these individuals has not diminished the capacity to make findings. Where it was believed individuals could make a specific contribution, these matters were identified in advance of the meeting (this was most cases). In all cases, individuals were given the opportunity to raise any additional matters they wished to be discussed.

2.3.2. At each meeting, either one or both HEA staff attended and took notes. The note of the meeting was sent to the individual concerned and, when agreed, formed part of the information available to the Review.

## 2.4. Attribution

2.4.1. Many of those who made submissions did so on condition of anonymity. In these cases, the individual has been assigned a letter which has been used throughout the Review. A second group of people confirmed that they could be identified either by title or name and this is reflected in the Review report.

## 2.5. Approach to Investigation

2.5.1. For each individual (or group of individuals), who made a submission in which an allegation or complaint was made a short narrative of their experience was prepared. The narratives, accompanied by observations/findings, where deemed necessary, specifically considered the individual's interactions with the University and each is included in Chapter 5. Where an individual's experience warranted further investigation, this was undertaken in follow-up interviews or by seeking additional documentation from the University. For the Review, these narratives and individual experiences have helped contribute to an overall understanding of the issues of concern.

2.5.2. The analyses were subsequently considered to determine the level of generalisability, if any, of the patterns of engagement with the University. Where the analysis of individuals' experiences raised matters that were of wider systemic importance, these were considered in the light of various University policies and procedures and administrative, management, leadership and governance arrangements. Recommendations, where made, are in respect of the University as an institution. The report of this Review is not an attempt to adjudicate or mediate disputes between parties. These must be dealt with under normal dispute resolution procedures or University policies.

2.5.3. The Review considered several reports that had been prepared prior to the Review commencing, including the Mazars report and three internal audit reports conducted by Deloitte<sup>12</sup> on behalf of UL. In addition, a further internal audit report by Deloitte became available to the Review during the investigation. This audit, undertaken by Deloitte as well, specifically considered the matters raised in the RTÉ Investigates programme including severances, further study, conflict of interest and procurement and correspondence between the University and key stakeholders. At an early stage in its work, the Review was informed by the University that this audit was to be carried out by Deloitte. Given the short timeframe and wide brief of this Review, it was decided to prioritise the issue of severance payments (and associated correspondence) for investigation leaving the other matters to be considered by the Deloitte audit. This Review believed that analysis of the severance agreements and the events leading to them was more likely to be of assistance in meeting the Review's requirement to consider HR policies and procedures in the context of institutional culture.

2.5.4. The Mazars and Deloitte reports and their findings, where relevant, are considered in Chapters 5 to 8; the Mazars recommendations are considered specifically in Chapter 9. Further, the C&AG prepared reports in 2010<sup>13</sup> and 2012<sup>14</sup> of relevance to this investigation, as did the PAC in 2017<sup>15</sup>.

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<sup>12</sup> It should be noted that the Deloitte reports referred to in this Report are, as is standard with many audit reports, subject to a number of reasonable limitations e.g. time available, reliance on management and staff reports, not a comprehensive statement of all weaknesses, etc.

<sup>13</sup> *Comptroller and Auditor General Special Report – Irish Universities, Resource Management and Performance*, September 2010.

[http://www.audgen.gov.ie/documents/vfmreports/75Irish Universities Resource Management.pdf](http://www.audgen.gov.ie/documents/vfmreports/75Irish%20Universities%20Resource%20Management.pdf)

<sup>14</sup> *Comptroller and Auditor General Special Report – Department of Education and Skills – Matters Arising out of Education Reports*, February 2012.

[http://www.audgen.gov.ie/documents/vfmreports/78 Education Report 2012.pdf](http://www.audgen.gov.ie/documents/vfmreports/78%20Education%20Report%202012.pdf)

<sup>15</sup> *Committee of Public Accounts Report – The Examination of Financial Statements in the Third-Level Education Sector*, July 2017. <https://www.oireachtas.ie/parliament/media/committees/pac/reports/thirdlevel/2017-07-11-ReportPACThirdLevelInstitutions.pdf>

## 2.6. Decision Process on Matters Considered in the Review

2.6.1. To manage the wide range of matters identified in the submissions, the Review, in its approach, has adopted a fourfold classification;

- Individual (and some group) experiences. (Chapter 5)
- Matters that are of ‘public interest’. In practice<sup>16</sup>, this includes many of those matters that have appeared in the public domain either via the PAC hearings on 30 March 2017<sup>17</sup> and 22 June 2017<sup>18</sup> or in the 25 May 2017 RTÉ broadcast “RTÉ Investigates: Universities Unchallenged” (Chapter 6).
- Those matters that, in the opinion of the Reviewer, are of institutional significance. In practice, these were matters in which the analysis of individual cases indicated areas for improvement in institutional processes. (Chapter 7).
- Those matters that have general higher education sector significance. In practice, these are matters of governance (Chapter 8).

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<sup>16</sup> At an early stage in the investigation the review was made aware by UL that it was undertaking an internal audit review of the various matters that arose in the RTÉ Investigates programme. Given the short timeframe and wide brief of this Review it was decided to prioritise the matter of the severance payments.

<sup>17</sup> Transcript available at

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/ACC2017033000001?opendocument>

<sup>18</sup> Transcript available at

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/ACC2017062200001?opendocument>



## Chapter 3

### 3. Policies and Procedures

#### 3.1. Policies and Procedures

3.1.1. The Review has identified several policies and procedures that have been deemed relevant to work of the Review and its areas of focus. These are a combination of internal UL policies and wider public sector policies.

#### 3.2. Policy and Procedures for Workplace Dignity and Respect

3.2.1. This policy covers the bullying, harassment, sexual harassment or victimisation of employees of UL by management, fellow employees, subordinates, service providers, customers, clients or other business contacts. The current policy was approved by UL's Governing Authority on 6 October 2016. Previous versions of the policy that are relevant to the work of the Review were approved by the Governing Authority on 27 June 2014 and 26 January 2010. A link to the current policy is included in Appendix 2 and is also available here<sup>19</sup>.

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<sup>19</sup><http://www.ul.ie/hr/sites/default/files/POLICY%20AND%20PROCEDURES%20FOR%20WORKPLACE%20DIGNITY%20AND%20RESPECT.pdf>

### 3.3. Grievance Procedure

3.3.1. This policy covers the handling of employee grievances and outlines the steps to be taken, both informally and formally, to address such grievances. The current policy was approved by the Governing Authority in January 2005.

### 3.4. Employee Disciplinary Matters and Termination of Employment

3.4.1. Employee disciplinary processes and termination of employment are governed by Statute No. 4 of the University which was approved by the Governing Authority on 26 November 2002 and covers the processes to be followed for the discipline, suspension and dismissal of employees. A link to the Statute is available here<sup>20</sup> and is included in Appendix 2.

### 3.5. Travel and Subsistence

3.5.1. The processes for the management and payment of travel and subsistence claims in UL has been governed by several protocols and policies. For the purposes of the Review, the applicable policies date from prior to 2010:

- Pre-2010 Authorisation and Claim for Travel, Subsistence and other Out-of-Pocket Expenses
- Travel and Subsistence Protocol, October 2010
- Travel and Subsistence Policy, September 2013

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<sup>20</sup> [https://www.ulsites.ul.ie/corporatesecretary/sites/default/files/Statute%20No.4\\_0.pdf](https://www.ulsites.ul.ie/corporatesecretary/sites/default/files/Statute%20No.4_0.pdf)

- Travel and Subsistence Policy, June 2014
- Travel and Subsistence Policy, April 2016

### 3.6. Student Dignity and Respect

3.6.1. This policy covers the bullying of students by employees or other students and of employees by students. The current policy was approved by the Governing Authority on 29 November 2013. An earlier version of the policy was approved by the Governing Authority on 27 November 2007. A link to the current policy is included in Appendix 2 and is also available here<sup>21</sup>.

### 3.7. Student Complaints Procedure

3.7.1. The procedure relates to behaviour which occurs on the University campus or in the course of other University-organised activities such as field trips, placements, Co-operative Education, teaching practice and social events. The Review notes that this policy predates the Student Dignity and Respect policy, that the University admits to confusion with the Dignity and Respect Policy and that it is under review with legal advisors seeking how to best resolve the overlap. A link to the policy is included in Appendix 2 and is also available here<sup>22</sup>.

### 3.8. Public sector policy in relation to severance and redundancy agreements

3.8.1. In the C&AG's special report on severance payments in the public sector, the Department of Education and Skills confirmed that there is no approved scheme of severance in the education sector. The Department regards severance payments to be

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<sup>21</sup> <http://www2.ul.ie/pdf/184103083.pdf>

<sup>22</sup> <http://www2.ul.ie/pdf/306009609.doc>

a form of remuneration and therefore prior approval for such payments is required from the Minister for Education and Skills with the agreement of the Minister for Public Expenditure and Reform. The University has communicated to this Review its concern that the requirement to declare severance agreements to the Department was not clear and unambiguous.

- 3.8.2. Higher education institutions, such as UL, are subject to collective agreements in relation to redundancies. In May 2014, the Department notified employers in the higher education sector of changes to redundancy terms for redundancies occurring after May 2014. Previously, the Department of Public Expenditure and Reform and the Public Services Committee of the Irish Committee of Trade Unions (ICTU) had agreed a framework concerning *ex gratia* payments on the redundancy of public servants.

## Chapter 4

### 4. Chronology of Events

- 4.1. **July 2005:** Person D was appointed to a senior management position in UL.
- 4.2. **September 2006:** Person O was appointed to a senior management position in UL.
- 4.3. **April 2007:** Person O signed a settlement agreement, received a severance package and left the University on 31 August 2007.
- 4.4. **June 2008:** Person D commenced paid leave pending investigation of alleged gross misconduct.
- 4.5. **January 2009:** Person D signed a compromise agreement and received a severance package.
- 4.6. **September 2009:** Ms Leona O'Callaghan commenced working on expense claims in the Finance Department.
- 4.7. **October 2010:** The expenses processing system in the Finance Department moved from back office processing of claims, which involved the manual submission of claims by Finance Department staff to Agresso, to an online submission system by claimants to Agresso with automated workflow routing for approval.

- 4.8. **November 2010:** HR Manager approached Ms O’Callaghan with a suggestion of retirement on ill-health grounds following a period of sick leave.
- 4.9. **December 2010:** A new Travel and Subsistence protocol was introduced in the Finance Department which set out the University’s Travel and Subsistence policy in detail and replaced the previous protocol which gave only brief details of regulations governing the reimbursement of travel and subsistence expenses.
- 4.10. **September 2011:** Ms O’Callaghan wrote to then President, Professor Don Barry, in relation to concerns about irregularities in the processing and payment of expenses.

[REDACTED]

- 4.12. **December 2011:** Person K signed a stepping down agreement and received a severance payment from the University. Person K was immediately rehired under a contract for services as a consultant for projects in the areas of finance, student marketing and HR.
- 4.13. **February – March 2012:** Ms O’Callaghan wrote to members of the Oireachtas in relation to concerns about irregularities in the processing and payment of expenses in the Finance Office in UL. This correspondence was forwarded to the PAC, Secretary General of the Department and HEA. The matter was also referred to the C&AG.
- 4.14. **April 2012:** The HEA wrote to UL enclosing Ms O’Callaghan’s correspondence requesting that the University outline the steps taken to investigate the allegations. The University subsequently wrote to the HEA, PAC and the C&AG on the matter refuting the allegations.

- 4.15. **June 2012**: Ms O’Callaghan reached a compromise agreement with UL on the grounds of ill-health and received a short service gratuity.
- 4.16. **July 2012**: UL informed Person T, Medical Director of the Student Health Centre, of its intention to commence a tender process for the provision of medical services. Since 2000 Person T had been engaged by UL as an independent contractor on a series of contracts, the most recent of which was in February 2011.
- 4.17. **October – December 2013**:
- Complaints were received by UL from three students against Person E. UL decided to investigate these under Student Dignity and Respect policy.
  - A formal complaint was received by the University from an agency staff member of the Student Health Centre against Person T.
- 4.18. **December 2013**
- UL appointed an independent HR consultant to carry out the investigation into the complaint against Person T.
  - A formal complaint was received by the University from Person T against the Director of Student Affairs.
- 4.19. **January 2014**: Person E commenced a period of sick leave.

4.20. **April 2014:**

- Final report of investigation against Person T concluded that the complaint was upheld in respect of 3 of the 9 allegations made against him and partly upheld in respect of another complaint.
- Person T made a submission to Revenue regarding his employment status with the University.

4.21. **September 2014:** Findings of investigation into the complaint against Person T upheld on appeal.

4.22. **October 2014:**

- Final Report on investigation regarding complaint by Person T against the Director of Student Affairs concludes that the complaint was vexatious.
- UL notified Person T of its intention to commence the disciplinary process under Section III of Statute No. 4 of the University.

4.23. **October 2014:** Disciplinary hearing for Person E. Finding not issued.

4.24. **December 2014:**

- Person E signed a compromise agreement from the University terminating his employment and received a settlement payment.
- An incident took place at the Finance Department Christmas party involving Persons B, C and Q, staff members in the Accounts Payable section of the Finance



Department, which resulted in Persons B and C reporting the incident to the Gardaí.

- Persons B and C made formal complaints to the University about the incident at the Christmas Party.

4.25. **April 2015:**

- Investigation report on B and C's complaints finds that the complaints were malicious in their intent. Persons B and C appealed the findings of the report.
- Persons B and C made a protected disclosure to the Chief Executive of the HEA, alleging workplace bullying and smear campaign following their identification of errors in practice and wrongdoing.

4.26. **May 2015:** The Chief Executive of the HEA met with Persons B and C where they outline in further detail their allegations and provide information on a severance package that they were offered by the University. The HEA then wrote to the President of UL enclosing a memo of the meeting.

4.27. **June 2015:**

- Report on Persons B and C's appeal did not uphold their appeals and found that the complaints found to be malicious in their intent should be addressed pursuant to the University's disciplinary policy. Persons B and C suspended on paid leave pending the outcome of the disciplinary process.
- UL responded to the HEA advising that:

- Persons B and C are involved in three ongoing complaints under the University's Policy and Procedures for Workplace Dignity and Respect by and against them involving other persons in the Finance Department
- Persons B and C had made claims of alleged penalisation for making a protected disclosure to a Rights Commissioner of the Workplace Relations Commission;
- Persons B and C had been supported by the University since they first made their complaints and were not put under pressure to take paid leave;
- UL had appointed its internal auditors, Deloitte, to review the allegations of poor or bad practice in the Finance Department; and
- Deloitte wrote to the HEA seeking further details of allegations (made to the HEA by B and C). This was forwarded to Persons B and C.

4.28. **June – September 2015:** Persons B and C expressed their reservations about providing information to Deloitte as the firm was appointed by the University. They were also concerned about the fairness of the ongoing HR processes and investigations. During this time, they also provided an extract from the allegations previously made by Ms O'Callaghan. The University advised the HEA that Persons B and C were refusing to cooperate in the relevant investigations and that in respect of the findings of malicious intent in making a complaint, a disciplinary hearing had been scheduled for October 2015.

4.29. **June 2015:**

- Revenue informed the University that Person T's contract with the University is a contract for services and does not constitute employment.
- A settlement agreement between Person T and the University was initiated.

4.30. **September 2015:**

- *Limerick Leader* published an article on allegations made by Persons B and C. The University issued legal proceedings against the newspaper in relation to its reporting of the allegations.
- Ms O’Callaghan wrote to a member of the Oireachtas and the HEA explaining that she had initiated legal proceedings against the University but found the process very stressful and, therefore, retired on ill-health grounds.

4.31. **October 2015**

- The Chief Executive of the HEA met with Ms O’Callaghan where she explained her allegations in greater detail.
- The HEA appointed Mazars to undertake an independent review of the process employed by UL to inquire into the allegations made by Ms. O’Callaghan, Persons B and C.
- The University advised the HEA that the disciplinary processes against Persons B and C had been suspended. It also advised that a Rights Commissioner of the Workplace Relations Commission had found no link to his satisfaction of any act of penalisation resulting from the making of the protected disclosure by Persons B and C.

4.32. **November 2015:** The Mazars review commenced.

4.33. **February 2016:** The Mazars report was published noting that there was adequate evidence available to support the processes employed by the University to inquire into

the allegations made by Ms O'Callaghan and Persons B and C. In the case of Ms O'Callaghan, Mazars noted that University's inquiry presented adequate evidence that she was correct to initially query these claims and that the relevant claims were ultimately correctly treated and approved by the Finance Department. The report also set out several recommendations for UL to strengthen its finance and HR practices.

4.34. **March 2016:**

- Person T made a protected disclosure to the HEA on matters relating to the administration and operation of the Student Health Centre. He alleged flawed process in how the University handled his appeal against the findings of an investigator appointed to examine complaints made against him by another member of staff.
- Person E contacted the HEA and made allegations of flawed processes and implementation of HR procedures in respect of an investigation of student complaints against him resulting in personal, professional and financial consequences for him.

4.35. **April 2016:**

- The HEA wrote to UL seeking a response to Person T's allegations. In its response, the University called the allegations damaging to employees of UL and referred to a settlement agreement reached with Person T.
- The C&AG published a report on the Management of Severance Payments in Public Sector Bodies. In the education sector, the report identified two higher education institutions (one of which was UL) that had made severance payments to staff between 2011 and 2013 without the prior approval of the Department.

Two separate severance payments amounting in total to approximately €450,000 were made by the University.

- 4.36. **May – June 2016**: Communications took place between the Chief Executive of the HEA, the University and its Chancellor (Chairman of Governing Authority) concerning a possible review of the allegations made against the University.
- 4.37. **July 2016**: Following consultation with the Department, the HEA appointed an independent, facilitator, Ms. Jane Williams of Sia Partners, to meet with key parties and investigate how the issues can be addressed and the dispute ultimately resolved.
- 4.38. **September 2016**: Ms Williams submitted her report to the HEA. In her report, Ms. Williams concluded that a facilitation process would be unlikely to succeed.
- 4.39. **October 2016**: HEA wrote to the Department of Education and Skills advising that it had exhausted its efforts and statutory powers in relation to these matters and that short of the powers invested in the Government to appoint a Visitor under the Universities Act 1997, any external intervention can only be with the agreement of the University.
- 4.40. **March 2017**: Consultations between the Department of Education and Skills, HEA and UL, as part of which, the then President of the University, Professor Don Barry, suggested that a review of governance at UL could be carried out.
- The HEA, Department of Education and Skills and UL appear before the PAC.
- 4.41. **May 2017**: The incoming President of the University, Professor Des Fitzgerald, advised the Department of Education and Skills that it was his view that an independent review of the matters was warranted. The Minister for Education and Skills announced the details of an independent review into governance, HR and financial practices and

procedures at UL. Dr Richard Thorn, former President of IT Sligo, was appointed to carry out the review.

4.42. **June 2017:** University of Limerick appeared before the PAC.

## Chapter 5

### 5. Personal (and Group) Narratives

#### 5.1. Patricia Conlan

5.1.1. Ms Conlan worked as a lecturer in European law in UL from 1991 until her retirement in 2010. She was also a member of the Governing Authority during the 2000s.

5.1.2. Ms Conlan outlined to the Review the circumstances that led to an increment being withheld from her salary and the way the matter was handled by the University. She described issues relating to the marking of exams and her concerns about the potential diminution of academic standards.

5.1.3. Ms Conlan also outlined to the Review her experiences as a member of the Governing Authority. She feels that the Authority did not sufficiently challenge management. She is critical of what she considers to be the repeated re-appointment of external members to the Authority and to the membership of its committees. She drew attention to her attempts to raise a variety of issues at Governing Authority meetings.

#### 5.1.4. *Review Observations*

- As both a member of staff who feels that she was poorly treated in relation to employment and academic matters and a member of the Governing Authority, Ms Conlan offered a unique insight into many of the issues and themes that

considered by the Review. The approach taken by the Governing Authority and its members in relation to several critical issues was closely examined and dealt with in other parts of this Review.

## 5.2. Person F

- 5.2.1. Person F was employed between 2003 and 2016 in the University of Limerick as an academic member of staff. She resigned from her post for reasons relating to dignity and respect, promotion opportunities and unreasonable work allocation and practices.
- 5.2.2. During her period of working in UL, Person F experienced what she felt to be a diminution of her academic work and research activities. This included projects such as programme development and international links being taken from her. Over time she was assigned more teaching, had a very heavy workload as a result and was unable to carry out research or supervise postgraduate students. Person F is of the view that any academic member of staff who had initiative or vision was not appreciated in the department in question.
- 5.2.3. On returning to UL from a career break in 2015 Person F was asked to review her programme's course content and documentation in advance of an accreditation visit from the relevant regulatory body. Person F expressed her concern about some of the documentation and whether it was fit for purpose.
- 5.2.4. Person F resigned from UL in December 2016 feeling that she could not continue to work in this environment. She also noted that she requested an exit interview which was denied. In general, she feels there is a culture of favouritism and in-group behavior within the University.



#### 5.2.5. *Review Observations*

- The circumstances of this case could be limited to the academic department in question. Some of the matters relate to the difficulties in balancing teaching and research as well as the inevitable conflicts and differences that arise in any working environment. The Review considered the individual circumstances of this case in the context of whether the experiences of Person F in her Department reflect the experiences of others in the whole of the University.

#### 5.3. Person G

- 5.3.1. Person G has worked in different roles since the early 1990s with a focus on information technology services and projects as well as academic work. Person G brought several matters to the attention of the Review ranging from issues to do with the University's student records system, expenditure in certain areas and personal HR issues.
- 5.3.2. Person G's main area of concern is what he considers to be the deficiencies in the University's student records system. He outlined to the Review the efforts he has made since 2003 to identify and rectify the problems in the system as well as his attempts to bring this issue to the attention of the University management and Governing Authority. Since this time, there have been several reports prepared by external consultants that have flagged potentially serious weaknesses in the student records systems. Person G is of the view that University management has not paid sufficient attention to the findings of these reports and that the Governing Authority has not been made properly aware of these issues.
- 5.3.3. Person G also outlined to the Review his concerns about expenditure in certain areas that he discovered as part of his work in the University.

5.3.4. Person G described his problems in dealing with HR on issues relating to returning from sick leave, his transfer to an academic position and his being put on sabbatical/study leave for one year. In addition, Person G described the circumstances surrounding his making a protected disclosure to the Governing Authority's Audit and Risk Committee in relation to the student records system and his dissatisfaction about how this has been handled.

5.3.5. *Review Observations*

- The Review considered the concerns raised by Person G in respect of the student records system, sought documentation, analysed Audit and Risk Committee records, examined the internal audit reports and spoke with members of the University.

5.3.6. *Finding*

- **The Review is satisfied that the matter brought to the attention of the University by Person G was of import and worthy of attention by the University. The Review is satisfied that the issue is receiving appropriate attention and warrants no further investigation.**

#### 5.4. Noni Hepple

5.4.1. Ms Hepple was employed between 2002 and 2013 in the University of Limerick Foundation with responsibility for managing the database of donors. In 2007, following an illness in 2006, Ms Hepple became disabled with a chronic condition. In the following years, arrangements were made for a reduced workload.

5.4.2. In 2012 and 2013, it became clear that Ms Hepple was having difficulty discharging her duties, even with a reduced workload. In January 2013, Ms Hepple was invited to a meeting at which a staff member from UL's HR Department and the CEO of the University of Limerick Foundation were present. At the meeting, Ms Hepple was informed her services were no longer required and a financial offer was made. It was made clear that the offer would remain on the table only if she left that day. Ms Hepple accepted the offer and was clear that this was not a redundancy situation. All employees of the Foundation had been offered a voluntary redundancy package at this time. However, Ms Hepple did not take up this offer as her skillset was particular to the Foundation database and she felt it would be difficult to find alternative employment. Subsequently, she took a case of discrimination against the University of Limerick Foundation to the Workplace Relations Commission (WRC) on the grounds of disability. The Foundation argued that her departure from the Foundation was redundancy. The WRC found against the Foundation noting that it did not provide any evidence that a redundancy situation had arisen.

#### 5.4.3. *Review Observations*

- The University of Limerick Foundation is a separate legal entity to the University of Limerick. The presence of a University HR staff member at a meeting at which HR matters were being discussed in the Foundation points to a degree of overlap or seamlessness between the two organisations. The Review has been informed

that there is no memorandum of understanding (MOU) underpinning the use of UL HR services and policies in the Foundation. This raises questions about the extent to which services and policies in operation in the University can be applied to subsidiary and related companies.

5.4.4. *Recommendation*

- **The University should ensure that an MOU covering the use of HR services and policies, and any other relevant services and policies, by a subsidiary company, exists between the University and the company.**

5.5. Person H

5.5.1. Person H has worked in the Accounts Payable Office in the Finance Department in UL since 2011.

5.5.2. Person H outlined the interpersonal difficulties that arose between her, Persons B and C and other members of staff in the Accounts Payable office. She feels that Persons B and C treated other members of staff, including supervisors, badly and referred to bullying. This created a lot of a tension in the office and affected work performance. Person H was one of the members of staff who made a complaint against Persons B and C that led to an attempted external mediation process.

5.5.3. *Review Observations*

- Person H provided the Review with her perspective on the interpersonal difficulties in the Accounts Payable Office. The Review considered these matters

and drew on them in making findings and recommendations on matters arising from the issues in the Accounts Payable office.

5.6. Person I

5.6.1. Person I worked in UL until she was made redundant in 2012. She worked in an administrative role in one of the University's schools. Person I's concerns relate to the way she was offered redundancy and the way her superiors and UL HR engaged with her.

5.6.2. Person I worked in the centre in question from the late 1990s onwards. In 2006, she was given a contract of indefinite duration. Following a return to work after a period of ill-health, Person I became aware of what she considered to be several changes in her work and workplace e.g. changes to academic programmes. She alleges she was not paid her salary for the first month after returning from sick leave.

5.6.3. In 2012, it was brought to the attention of her and another colleague who worked in the same office that they were to be redeployed out of the school in question. Person I expressed her shock at the prospect of redeployment. At a subsequent meeting with the Dean and faculty manager of the school, it was put to Person I that if she did not wish to be redeployed the possibility of some form of exit mechanism would be open to her. This eventually led to a redundancy package that was agreed in September 2012.

5.6.4. *Review Observations*

- Based on the information provided to the Review it appears that there was a lack of clarity about how a decision relating to staff redeployment was arrived at.

Further, the reasons for withholding of salary after returning from sick leave are not clear.

5.6.5. *Recommendation*

- **The University should ensure that there is clarity on the processes employed when staff are being redeployed.**

Person L

5.7. Person L worked in an IT role in a research centre in UL from 2002 until 2007 when he was made redundant.

5.7.1. Person L outlined to the Review the circumstances leading up to the offer of redundancy made to him, e.g. difficulties faced by the centre in question in terms of attracting funding and the departure and retirement of staff. As a result, staff in the centre, like Person L, became uncertain about their positions.

5.7.2. Person L felt that that there was not sufficient understanding on the part of UL HR about his role. He also argued that the redeployment of staff within UL was not done on a consistent basis and with an absence of process and equality. He also felt that the process of engagement with him in relation to his redundancy was not handled with empathy.

5.7.3. In addition, Person L provided a copy of a letter he sent to the Governing Authority in 2008 where he referred to the lack of appropriate procedures in relation to redundancy. He did not receive a reply to this letter.

#### 5.7.4. *Review Observations*

- The Review considered the individual circumstances of this case in the context of whether the experiences of Person L reflect the experiences of others in the whole of the University.

#### 5.8. Person M

5.8.1. Person M is a former member of medical staff in University Hospital Limerick (UHL). Prior to his leaving UHL, he raised issues of concern with the University of Limerick surrounding the medical competence and clinical skills of a person who previously worked in UHL. This individual had had his contract terminated with UHL but later worked as a tutor in the University's graduate medical school with claimed access to patients and patient records.

5.8.2. Person M made a protected disclosure about this issue to the HEA in March 2016.

5.8.3. Person M outlined to the Review the concerns he raised, first in UHL and then later in UL, about the clinical competence of the person in question. Despite an assurance that the individual would not be carrying out clinical duties in his role as a tutor, Person M claimed that the individual still had access to patient information and carried out clinical activities. Person M is of the view that the medical school and university management chose to ignore his concerns.

5.8.4. Person M advised the Review that a complaint about the person in question has been made to the Medical Council.

#### 5.8.5. *Review Observations*

- The circumstances of this case are limited to the medical school. The Review raised this matter with the University and were told that the person in question no longer worked for UL and that if he did work with patients this would not have been contracted by UL.

#### 5.8.6. *Finding*

- **The Review finds that while it was appropriate that Person M raise the matter the evidence available to this Review suggests that there is no need for further investigation.**

#### 5.9. Person N

5.9.1. Person N has been working in the Accounts Payable office in the Finance Department in UL since 2011.

5.9.2. Person N outlined the interpersonal difficulties between her, Persons B and C and other members of staff in the Accounts Payable office. She referred to the tensions that arose in the office and the stress and worry that she personally experienced because of her dealings with Persons B and C. Person N, together with other members of staff in the Accounts Payable Office, made a complaint against Persons B and C that led to the attempted external mediation process.



### 5.9.3. *Review Observations*

- Person N provided the Review with her perspective on the interpersonal difficulties in the Accounts Payable Office. The Review considered these matters and drew on them in making findings and recommendations on matters arising from the issues in the Accounts Payable Office.

### 5.10. Leona O’Callaghan

5.10.1. Leona O’Callaghan was employed in UL between 2005 and 2012. She worked in the Accounts Payable Office in the Finance Department with responsibility for processing travel and expenses claims.

5.10.2. In 2012, correspondence she brought to the attention of a local TD was forwarded to the PAC and subsequently the C&AG, HEA and Department of Education and Skills. Ms O’Callaghan’s correspondence was in relation to concerns about irregularities in the processing and payment of expenses in the Finance Office in UL and her attempts to raise these concerns within UL and the difficulties she faced in doing so. She left the University’s employment on the basis of a compromise agreement. In 2015 she made a protected disclosure to the HEA in relation to the same issues.

5.10.3. In the Mazars report and other documentation she has been previously referred to as Person A.

5.10.4. Ms O’Callaghan outlined to the Review the difficulties she says she faced in processing expense claims. In her view there was a culture of favouritism in relation to such claims and she often had problems getting appropriate sign-off from her managers for claims that she regarded as questionable. This inconsistency and lack of certainty created a lot

of pressure and stress for Ms O'Callaghan and impacted on both her and her relationship with colleagues.

5.10.5. In July 2010 Ms O'Callaghan went on sick leave and intended to return to work in December 2010. However, her discussions with UL HR about her return to work, including a suggestion that she might not be able to re-adjust to her workplace and that she consider taking ill-health retirement, led Ms O'Callaghan to believe that she was not wanted back. There then followed correspondence between Ms O'Callaghan's solicitors and the University's solicitors. During this time, she also contacted the President of the University and later a local TD who forwarded her correspondence to the PAC. Eventually a compromise agreement was reached in June 2012 as part of which Ms O'Callaghan received a short-service gratuity on medical grounds. This agreement also contained a confidentiality clause.

5.10.6. *Review Observations*

- The circumstances of Ms O'Callaghan's case in UL have already been the subject of in-depth review and recommendations in the Mazars review. The Review also notes that Ms O'Callaghan's concerns should have been dealt with at an earlier stage.
- The case demonstrates the need for the University to ensure that it has a robust set of policies and processes in place that, e.g., allow members of staff to raise concerns, that support staff who are on sick leave and which accurately and sensitively convey information about employment or retirement options.

## 5.11. Brid O'Connell

5.11.1. Ms O'Connell works as a student counsellor in UL. When she met the Review, she was accompanied by another colleague, Carmel McMahon. Both have worked as student counsellors since 2000. The student counsellors are not employees of UL. They have been engaged on rolling contracts for service and are therefore considered by the University to be independent contractors.

5.11.2. In early 2017, the Department of Social Protection (DSP) ruled that the counsellors should be classified as employees of UL with contracts of service. The University is currently appealing this decision.

5.11.3. Ms O'Connell outlined to the Review the student counsellors' concerns about how they have been treated by UL. This mainly relates to the decision by the University to put the student counselling service out to tender even though Ms O'Connell and others had worked as counsellors in UL for over 15 years. Ms O'Connell and Ms McMahon are also critical of the communication the University had with the student counsellors about this decision and the difficulties they faced in engaging with their superiors and the University's HR department. Concerns were also expressed about the allocation of hours for counselling sessions and the withholding of pay arising from a period of sick leave.

### 5.11.4. *Review Observations*

- The Review is cognisant of the right of the University to tender for services. However, the fact that these staff had been employed on rolling contracts since 2000 without the University attempting to regularise the arrangements – either through an appropriately contracted service or by making the counsellors employees of the University does not reflect well on the management of tendered services by the University.

#### 5.11.5. *Finding*

- **The Review is of the view that a proposal to tender for the counselling services, without first attempting to reach a mutually acceptable arrangement with staff, was unreasonable and likely to diminish the relationship with staff who had served the University for many years.**

#### 5.12. Pierce Parker

5.12.1. Mr Parker was a PhD student in UL. In 2012 the University terminated his enrolment on the PhD programme in Sociology as he had been found in breach of the Code of Conduct for Students.

5.12.2. Mr Parker worked as a tutor teaching sociology modules from 2007 until 2009. In 2012 his name was removed from the list of tutors. He challenged the way this was done and is of the view that it was for racially motivated reasons. He made a complaint against a member of staff of UL Students' Union who he believes was responsible for the decision. Mr Parker was later subject to disciplinary action.

5.12.3. Mr Parker described how prior to these events he and other foreign students had been the subject of racially motivated attacks on the UL campus and is critical of the way UL handled his complaints. He feels that the decision to remove his name from the list of tutors is linked to the complaints he made. He also described difficulties he experienced in his accommodation both on and off campus and the concerns he raised with UL about this.

#### 5.12.4. *Review Observation and Finding*

- **The Review has considered the circumstances of Mr Parker’s removal from the University and is of the view that there is no need for further investigation.**

#### 5.13. Person P

5.13.1. Person P has worked for UL for several years including in the Accounts Payable Office.

5.13.2. Person P outlined the interpersonal difficulties that arose between her, Persons B and C and other members of staff in the Accounts Payable Office. Although her relationship with Persons B and C was initially good, difficulties arose in relation to the taking of ‘term time’<sup>23</sup>. The office environment subsequently became very tense and confrontational. Person P, together with other members of staff in the Accounts Payable Office, made a complaint against Persons B and C that led to an attempted external mediation process. She (and others, including Person S) were the subject of the complaint made by Persons B and C alleging favouritism shown to Person Q.

#### 5.13.3. *Review Observations*

- Person P provided the Review with her perspective on the interpersonal difficulties in the Accounts Payable Office. The Review considered these matters and drew on them in making findings and recommendations on matters arising from the issues in the Accounts Payable Office.

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<sup>23</sup> A provision whereby a working parent can take leave to match the summer holidays of their children.

#### 5.14. Person Q

5.14.1. Person Q worked in the Accounts Payable Office in the UL Finance Department. He initially started working in UL in 2011. Person Q worked with Persons B and C and is the individual who was the subject of complaints made by Persons B and C under the University's Policy and Procedures for Workplace Dignity and Respect. UL appointed an Investigator to carry out an investigation of these complaints. The Investigator found that the complaints made by Persons B and C were malicious.

5.14.2. Person Q no longer works in the Accounts Payable Office and currently works in another role in UL.

5.14.3. The main event of relevance in this case is what was allegedly said and done by Persons B, C and Q at a staff Christmas party in 2014. This incident, in turn, also related to comments allegedly made at another staff event held earlier in summer 2014. It is these comments and actions that led to the complaint being made against Person Q and the subsequent investigation.

#### 5.14.4. *Review Observations*

- The events at and after the Christmas Party in 2014 are considered in detail elsewhere in this Review.

5.15. Person R

5.15.1. Person R has worked in UL since 2003 in several roles in the Finance Department.

5.15.2. Person R outlined the interpersonal difficulties that arose between her, Persons B and C and other members of staff in the Accounts Payable Office. She feels that their behaviour contributed to a negative working environment. Person R is also of the view that management was aware of these issues and should have handled them better.

5.15.3. *Review Observations*

- Person R provided the Review with her perspective on the interpersonal difficulties in the Accounts Payable Office. The Review considered these matters and drew on them in making findings and recommendations on matters arising from the issues in the Accounts Payable Office.

5.16. Person S

5.16.1. Person S is Financial Controller Operations in the Finance Department in UL. She has worked in UL since 2011.

5.16.2. Person S referred to the set of complaints that arose in December 2013 involving Persons B and C and several other staff in the Accounts Payable Office. There followed an attempted externally-led mediation but after a period the facilitator felt that he could not go any further.

5.16.3. Person S also referred to the complaints made by Persons B and C against Person Q at the 2014 staff Christmas party and subsequent investigation.

5.16.4. In February 2015 Person S was, together with two other members of staff, were the subject of a complaint made by Persons B and C on grounds of victimisation and favouritism. The University's investigation into this complaint is currently on hold. Person S has expressed her concern that this complaint remains open and unaddressed.

5.16.5. Person S confirmed to the Review that she never received a query or complaint from Persons B or C regarding any financial impropriety outside of normal process checks. She also outlined the reviews and amendments that have been made to UL's travel and subsistence policy over the years including most notably the move to an automated online workflow process for submitting claims in 2010.

5.16.6. *Review Observations*

- Person S provided the Review with her perspective on the interpersonal difficulties in the Accounts Payable Office. The Review considered these matters and drew on them in making findings and recommendations on matters arising from the issues in the Accounts Payable Office.



## Chapter 6

### 6. Matters of Public Interest

#### 6.1. Severance Payments and Compromise Agreements

6.1.1. This Review is concerned with two aspects of severance payments and compromise agreements. First, their compliance with public pay policy and second, the way each was managed from a HR perspective. In this section, the pay policy issues are noted and followed by an analysis of each of the cases with attention to the HR dimension.

#### 6.2. Public Pay Policy

6.2.1. The Review has received details of the severance/compromise agreements entered into by UL since 2007. The information has been provided by UL directly and in an internal audit report prepared by Deloitte for UL and completed in August 2017.

6.2.2. Based on the information provided to the Review, and including proposed packages offered to Persons B and C, between 2007 and 2015 a total of 8 separate severance and compromise agreements were entered into by UL with employees or contractors, or were offered. The total value of these agreements is just over €1.7 million. Severance payments to Persons J and K were noted as part of staff costs in UL's published 2011/12 financial statements. A payment to Person E was also noted in UL's 2013/14 financial statements.

6.2.3. In 2015, the C&AG published its special report on the management of severance payments in the public sector. The report included a section on the education sector and referred to two higher education institutions that made severance payments between 2011 and 2013. One of these institutions, (referred to in the C&AG's report as public body D) was UL and the report considered severance payments made to two UL staff –

[REDACTED]

6.2.4. In the C&AG's report, the Department confirmed that there is no approved scheme of severance in the education sector. Furthermore, the Department regards severance payments to be a form of remuneration and therefore prior approval for such payments is required from the Minister for Education and Skills with the agreement of the Minister for Public Expenditure and Reform.

6.2.5. None of the severance and compromise agreements listed above received the approval of the Department of Education and Skills. [REDACTED]

[REDACTED]

[REDACTED] It was only after the Department requested clarification from UL on the payments did the University provide details of the amounts involved.

6.2.6. UL also provided the Department with details of the compromise agreement reached with Person E, after the signing of that agreement, however, prior approval was not sought from the Department.

6.2.7. *Review Observations*

- The Review team has received information from the Department on the use of severance arrangements in institutions under its jurisdiction and has considered the C&AG special report referred to above. Based on the Department's

information and the C&AG report, the number of severance agreements entered into by UL over the period considered by this investigation is several orders of magnitude greater than any other institution under the Department's jurisdiction.

- The Review team can find no evidence that the Governing Authority approved or discussed the severance packages. The former President, Professor Don Barry, has confirmed to the Review that the decision to enter into the agreements was an Executive decision.

#### 6.2.8. *Findings*

- **The Review notes that the Department of Education and Skills was not informed of the severance agreements. Further, at least some of the severance agreements breached public pay policy guidelines.**
- **The Review finds that management of the severances (and the events leading to them) and the communication of their facts to relevant stakeholders, as will be demonstrated in succeeding sections, was confusing.**

#### 6.2.9. *Recommendations*

Deloitte, in its internal audit report submitted to UL in August 2017, has made several recommendations concerning severance payments. This Review has considered these recommendations, and the management responses, considers both the recommendations and responses to be appropriate and further recommends that:

- **The University should prepare a comprehensive and accurate account of all severances agreed and the circumstances surrounding and reasons for those severances.** [REDACTED]

**[REDACTED] The account should be forwarded to all relevant stakeholders including the C&AG, Department of Education and Skills, HEA and Public Accounts Committee within one month of the publication of this Report. In preparing this account, the University should circulate the Deloitte internal audit report, together with its management responses, to the stakeholders noted above on a confidential basis.**

6.3. Person O

- 6.3.1. Person O was appointed to a senior management position in UL. On 31 August 2007, Person O's employment was terminated and a settlement agreed.
- 6.3.2. The Review has examined the documentation associated with this case including the personnel file for Person O and correspondence between Person O and the Acting President, Mr John O'Connor, at that time. The Review has also spoken with Person O.
- 6.3.3. The Acting President, formed the view shortly after Person O's appointment that Person O's performance was not up to the standard that the Acting President expected. Correspondence in early 2007 between the Acting President and Person O suggests that matters of performance had been raised in outline in October and November 2006 and at review meetings in January and February 2007. The personnel file for Person O has handwritten notes by the Acting President of his concerns with Person O's performance and objective setting. It is not clear to this Review that those notes constitute an adequate or transparent evaluation of performance. Person O disagreed with the Acting President's evaluation of performance.

6.3.4. On 20 February 2007, a representative of the University sought advice from the University's legal advisors<sup>24</sup> on the termination of the employment of Person O. In a lengthy reply, in which the nature of Person O's contract (fixed-term) and status (at that point on probation) and precedent were considered, the legal advice noted that there would be substantial risk associated with termination without reason and that Person O should be provided with opportunity to make representation. On 2 March 2007, a meeting between the Acting President and Person O was held at which Person O's performance was a matter for discussion (as noted in a follow up letter of 5 March). The follow up letter, noted an intention to terminate appointment but that no further action would be taken pending a written response to the performance evaluation. On 8 March, Person O wrote back disputing the evaluation of performance and noting that legal advice would be sought.

6.3.5. On 31 August 2007, Person O's Employment was terminated and a settlement agreed.

6.3.6. *Review Observations*

- The Acting President formed a view at a very early stage during Person O's probationary period that the performance of Person O was not to the standard he desired. This Review finds this curious as Person O had had a successful career to that point in business improvement and strategy development and had come through a rigorous two stage interview process during which his capacity for the position was rigorously tested.
- Having taken a view that the performance of Person O was not to the required standard, the Acting President sought to terminate employment without using the procedure laid out in Statute No. 4.

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<sup>24</sup> It should be noted that, in considering the various allegations and other matters, the Review does not purport to comment on the validity or otherwise of any legal advice received by the University, referred to in this Report.

#### 6.3.7. Findings

- **The Review finds that if Person O's performance was not to the desired standard it should have been evidenced in a documented and approved process. That this is not obvious points to a fundamental weakness in the approach to performance management.**
- **The Review believes the approach by the Acting President to dealing with alleged issues of performance of Person O did not reflect best practice and could have led to the University being subject to a legal challenge.**
- **The Review notes that legal advice to UL during the process of dealing with Person O suggested that Statute No. 4 be amended to provide a clearer process for dealing with persons in probation. This should be addressed in the review of Statute No. 4 recommended elsewhere in this Review.**

#### 6.4. Person D

6.4.1. Person D was appointed to a senior management position in UL from July 2005 and remained in post until December 2008. During 2008, Person D was the subject of an investigation of gross misconduct pursuant to the University's Statute No. 4 on disciplinary matters. Person D and the University subsequently reached a compromise agreement as part of which a severance package was agreed and Person D left the employment of the University.

6.4.2. The allegation of misconduct against Person D related to the recruitment of a Risk Management Officer, a post within the office for which Person D had responsibility. Two issues were to the fore in this case; a claim by the University that Person D failed to

inform the President that a close relation of Person D's was a candidate for the position; and, that Person D signed a recommendation to the Recruitment Sub-Committee of the Governing Authority purporting to have been made by the Audit Committee recommending recruitment for the position of Risk Management Officer, where the Audit Committee may not have made such a recommendation.

- 6.4.3. The University appointed Mr Finbarr Flood to carry out the investigation into Person D. This investigation made findings that Person D did not meet the standard required of a senior manager in respect of the disclosure of a conflict of interest and that there was no evidence to substantiate a claim that the post had been properly approved. Person D appealed this finding.
- 6.4.4. The disciplinary hearing under Section III of Statute No. 4 was heard by the then President, Professor Don Barry, alone. A finding from the hearing was not issued. The University and Person D subsequently reached a compromise agreement in which Person D left the employment of the University and received a severance payment.
- 6.4.5. In her meeting with the Review, Person D outlined the events leading up to, during and after the investigation. Person D maintains that the findings of the investigation are not correct and that she did promptly withdraw from the Selection Committee as soon as her close relation applied for the position of Risk Management Officer and that she also informed relevant colleagues that she could not be involved in any decision to do with the filling the post. She also maintains that some persons interviewed as part of the investigation did not provide accurate or truthful information when questioned about her disclosure of the conflict of interest.
- 6.4.6. Person D also described to the Review her experience of working in UL and the challenges she faced in working with senior management colleagues. During her time in the senior management position, Person D attempted to bring in new ideas in relation

to UL's finances e.g. looking for alternative sources of income while also challenging expenditure on e.g. capital projects and the use of public funds. Person D feels that, because of this, she was considered to have overstepped the mark, particularly in relation to the position and views of other longer-serving senior management. Person D claims also to have challenged the University's continued payment of a President's salary to the two former Presidents.<sup>25</sup>

#### 6.4.7. *Review Observations*

The Review notes, that the legal advice proffered in an email of 3 December 2008, suggested that one of the findings made by Mr Flood could not be classified as gross misconduct, while the other could be viewed as serious or gross and, if the latter, would warrant dismissal. The then President, Professor Don Barry, therefore, had the option of making a finding that warranted a sanction less than dismissal had a decision been reached in the disciplinary hearing.

#### 6.4.8. *Finding*

- **Implicit in Person D's narrative is the suggestion that there was a link between attempts to bring in new ideas in relation to finances in UL, the outcome of the investigation and the subsequent severance of contract. This Review has examined an extensive range of documentation associated with this case and cannot find sufficient evidence to sustain that suggestion.**

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<sup>25</sup> The contemporaneous payment of a President's salary to three persons in UL is discussed in the C&AG's special report in 2010, *Comptroller and Auditor General Special Report – Irish Universities, Resource Management and Performance*, September 2010.

[http://www.audgen.gov.ie/documents/vfmreports/75Irish Universities Resource Management.pdf](http://www.audgen.gov.ie/documents/vfmreports/75Irish%20Universities%20Resource%20Management.pdf)



[Redacted]

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[Redacted]

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<sup>26</sup> Copy of scheme available at: [http://www.hse.ie/eng/staff/Resources/HR\\_Circulars/VERVRS.pdf](http://www.hse.ie/eng/staff/Resources/HR_Circulars/VERVRS.pdf)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.6. Person K

6.6.1. Person K served in a senior role in the Finance Department in the University for greater than 30 years prior to his departure in February 2012. In addition to a severance agreement Person K was rehired by the University in a consultancy capacity from March 2012 on a three-year contract.

6.6.2. The University did not seek prior approval from the Department of Education and Skills for the severance agreement with Person K. The Department has provided the Review with copies of correspondence between it and the University in relation to the severance payment made to Person K after the matter had been brought to the Department's attention in 2015. In providing details of this payment, the University advised the Department in an email of 20 May 2015 that the compromise agreement was entered into in 2011 on the basis of legal advice and that from the University's perspective, performance issues had arisen.

6.6.3. In communication with the C&AG, similar wording was used in a letter of the same date (20 May 2015) from the University to the Deputy Director of Audit of C&AG in response

to the queries raised in relation to the payment. The C&AG report itself notes that “the institution was of the view that a termination agreement represented the most economic and efficient course of action ...”. UL had advised the C&AG that the compromise agreement was based on a Health Service Executive redundancy model introduced in 2010<sup>27</sup> and was extremely beneficial to the University. However, the Department of Education and Skills subsequently noted that the terms of the agreement for Person K was significantly at variance with the terms of the HSE scheme as it exceeded one of the limits provided for within that scheme i.e. one half of the salary payable to preserved pension age in each case.

6.6.4. It was only following the Public Accounts Committee hearing on 30 March 2017, that it emerged that Person K had also been re-engaged by the University for consultancy services for a period of three years, commencing immediately after the termination of the employment, without going through a formal tendering process. This was in addition to the terms of the severance agreement. This information was not previously provided by UL to the C&AG or Department of Education and Skills. Following a request for clarification from the Department in April 2017, UL advised that the severance agreement arose primarily from restructuring.

6.6.5. *Review Observations*

- In 2015, UL advised the Department and C&AG that the agreement was reached because of performance issues. In 2017, the advice provided to the Department of Education and Skills was that the agreement was reached to facilitate restructuring within the relevant UL department. The fact that in Person K’s case, the consultancy services for UL commenced immediately after the termination of the employment suggests that despite any concerns about performance the

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<sup>27</sup> Copy of scheme available at: [http://www.hse.ie/eng/staff/Resources/HR\\_Circulars/VERVRS.pdf](http://www.hse.ie/eng/staff/Resources/HR_Circulars/VERVRS.pdf)

University was still prepared to engage the services of Person K for a period after leaving UL.

#### 6.6.6. *Findings*

- **The severance agreement and subsequent consultancy arrangements breached the terms of a HSE voluntary redundancy scheme, the requirement to notify the Department of Education and Skills and tendering requirements.**
- **The Review is of the view, that the confusing narrative adopted by the University in communicating with the C&AG, the PAC and the Department reflects poor communication between members of the senior management in responding to external stakeholders on this important matter.**

#### 6.7. Person E

##### *Background*

6.7.1. In December 2014, a severance agreement was signed with Person E. The date of termination was 31 December 2014.

6.7.2. Person E had been employed as a lecturer in the University since the late 1990s.

6.7.3. Person E noted, that in the ten years following his appointment, he found the work interesting and a change from the environment in which he had worked before. However, in the two to three years prior to his departure from the University there had been pressure within his department to increase research output by having a greater

focus on the scientific component of the programme. Person E acknowledges that the focus on 'up-sciencing' of activities put practitioners like him at a disadvantage and that he was challenged on his research work.

- 6.7.4. In the months immediately prior to the complaints made against Person E, there were informal student complaints about his teaching and classroom behaviour (based on the transcripts of the investigation of the student complaints and examination of emails between the head of department and the HR Department). In relation to Person E, HR noted that performance issues had been raised by Person's E head of department.

### *Student Complaints*

- 6.7.5. A student wishing to make a complaint about a staff member in the University of Limerick can do so through two separate processes; University of Limerick Policy and Procedures for Student Dignity and Respect<sup>28</sup> or University of Limerick Student Complaints Procedure<sup>29</sup>.

- 6.7.6. The Student Complaints procedure 'relates only to behaviour which occurs on the University campus or in the course of other University-organised activities such as field trips, placements, Co-operative Education, teaching practice and social events'.

- 6.7.7. The Policy and Procedures for Student Dignity and Respect deal with bullying;

'The University of Limerick is committed to the development and maintenance of a positive learning environment in which all employees and students are treated with

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<sup>28</sup>[http://ulsites.ul.ie/corporatesecretary/sites/default/files//UL%20Policy%20%26%20Procedures%20for%20student%20dignity%20and%20respect\\_0.pdf](http://ulsites.ul.ie/corporatesecretary/sites/default/files//UL%20Policy%20%26%20Procedures%20for%20student%20dignity%20and%20respect_0.pdf)

<sup>29</sup>[www2.ul.ie/pdf/306009609.doc](http://www2.ul.ie/pdf/306009609.doc)

dignity and respect. In pursuit of this, it is the policy of the University to provide all employees and students with an environment that is free from any form of bullying’.

6.7.8. In November 2013, as noted above, informal student complaints about Person E’s teaching and behaviour were received in his Department. These complaints were dealt with through the informal process provided. In early December 2013, written complaints were received from three students. On 15 December, Person E was informed that he had 20 days to respond to the complaints and on 20 December, the three students were told that an investigation was proceeding under Section 5 of the Student Dignity and Respect Policy. (The Review returns to the complaints and the investigation below).

#### *Events Following Issuance of Notice of the Investigation*

6.7.9. Following the issuance of the notice about the investigation, Person E was referred to the University’s employment support services in a state of distress. Person E attended six counselling sessions between late December 2013 and early February 2014 at which point a further three were approved.

6.7.10. At the same time as Person E was receiving counselling, the investigation proceeded. Leave of absence for Person E was approved in mid-March 2014; he continued to receive counselling and the investigation continued.

6.7.11. In April and May, the Investigator, submitted reports on the three sets of complaints in draft and following observations by Person E, among others, in final form.

6.7.12. Once the investigation was concluded, the University moved the process into the procedures provided for in the University Statute on Employee Disciplinary Matters and

Termination of Employment (Statute No. 4). This statute notes, that a series of warnings and other measures apply in the process:

‘except in respect of gross misconduct, or in respect of allegations which, in the opinion of the University, would, if substantiated, constitute gross misconduct. In such circumstances, the procedure contained in Section III will apply’.

- 6.7.13. Section III, which deals with hearings, references ‘gross misconduct’ including assault, theft and wilful damage as grounds for gross misconduct. That the University considered Person E’s actions serious enough to be moved directly to Section III of Statute No. 4 has been confirmed by HR, who noted to the Review that the University took a very serious view of the allegations made against him and were concerned that someone would be conducting themselves in this manner with students.
- 6.7.14. From June to October 2014, a hearing under Section III of Statute No. 4 was set in motion. The three student complainants declined to attend. Person E continued to attend counselling. The hearing was held on 13 October 2014; no findings were issued.
- 6.7.15. On 19 November 2014, Person E called to the office of a member of the Disciplinary Panel which ran the hearing, to seek advice on whether to challenge UL or to accept a severance offer. Person E’s meeting with the member of Panel was followed by a letter from the Manager, Human Resources on 20 November 2014 suspending Person E on full pay pending the conclusion of the disciplinary process.
- 6.7.16. In December 2014, a severance agreement was reached and Person E’s employment was terminated by the University.



### *The Investigation*

- 6.7.17. The Review has examined the complaints made by the students.
- 6.7.18. In the case of Student 1, there were 11 complaints of which 4 were clearly related to academic matters. The Review returns to this below. Of the 11 complaints, the Investigator upheld one, a single reference to the book 'Fifty Shades of Grey' which the Investigator found were unwelcome and 'which was a breach of the UL guidelines on Bullying and the Employment Equality Act definition of Harassment, on gender grounds'. The Investigator found that this behaviour was at the lower end of the scale and would best be described as '**Mild**'.
- 6.7.19. In the case of Student 2, there were 12 complaints of which 8 were of an academic nature. Of the 12 complaints, the Investigator upheld two, the reference to 'Fifty Shades of Grey', as noted above and a reference to a quote by Winston Churchill that "A good speech should be like a woman's skirt; long enough to cover the subject and short enough to create interest." The Investigator found 'that the extent of such behaviour is tantamount to a **MODERATE** level of bullying'.
- 6.7.20. Student 3 made identical complaints to Student 2 and the Investigator made similar findings.
- 6.7.21. In relation to the academic complaints, the Review notes that in his report the Investigator stated that his investigation did not consider it appropriate to consider academic matters as to do so could create unacceptable levels of precedent and risk for the teaching profession and the examination process. However, the Review also notes that the Investigator, on several occasions in his interview, did pursue questioning around academic matters e.g. complaints about the syllabus, lecture notes, learning material.

6.7.22. If the student complaints about academic matters had been dealt with under the Student Complaints procedure, then Person E would have had the opportunity to make his case on the academic matters to two of his peers instead of to someone whose findings were final and who professed ignorance throughout the interview of, at least some of, the academic matters being discussed.

*Letter to PAC of 18 April 2017*

6.7.23. On 18 April 2017, the then President of the University, Professor Don Barry, wrote to the PAC dealing with queries raised by it at its hearing of 30 March 2017. Amongst the queries, was a statement in relation to Person E which reads in full:

‘In December 2013, three students lodged formal complaints against Person Z<sup>30</sup>. The complaints referred to inappropriate sexual references in class and inappropriate touching of students causing them to feel uncomfortable. In February 2014, the university appointed an external independent investigator to investigate the complaints which cost €6,973. A compromise agreement for €150,000 was entered into terminating the University’s relationship with Person Z.’

The Review returns to this below.

6.7.24. *Review Observations*

- That Person E had made inappropriate remarks in classroom settings is acknowledged by Person E. While some of the complaints made by students were appropriate to be dealt with through a dignity and respect policy, many were not.

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<sup>30</sup> Person E in this Review has been referred to in various documents to date as Person Z.

- The investigation having been completed, sections 6.7. and 6.8 of the Policy and Procedures for Student Dignity and Respect applied. These are respectively;

‘If at the end of the investigation the complaint is substantiated, the student Code of Conduct or the University Statute on Employee Disciplinary Matters and Termination of Employment as appropriate may be invoked and disciplinary action may be taken’.

‘In some circumstances, disciplinary action may be inappropriate. Alternative measures may include training, counselling and/or a period of monitoring and appraisal. Should these actions prove unsatisfactory, disciplinary action may then be invoked.’

- At this point, the University could have chosen to consider ‘alternative’ measures such as training or counselling or monitoring. The decision to go straight to Section III of Statute No. 4 which, as we have seen, is reserved for ‘gross misconduct’, appears to the Review to be a very severe application of the Statute, particularly given that Person E had acknowledged the inappropriateness of his comments in his interview with the Investigator and previously to his head of department.
- The final matter concerns the letter to the PAC on 18 April 2017. The association of the phrase ‘inappropriate touching’ with the statement on the ‘agreement terminating the University’s relationship with Person E’ was immediately picked up by the press and one newspaper, the *Irish Independent*, on the 10 May 2017 provided a headline ‘Lecturer who 'inappropriately touched students and made sexual comments' receives €150k pay-off’<sup>31</sup>. It should be noted that the specific

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<sup>31</sup> <http://www.independent.ie/irish-news/education/lecturer-who-inappropriately-touched-students-and-made-sexual-comments-receives-150k-payoff-35699216.html>. Online Edition 10 May 2017.

issue of ‘inappropriate touching’ was addressed by the Investigator when he noted that ‘The Investigation did not obtain any evidence of inappropriate touching or feeling’.

- Person E acknowledges that his approach to the member of the Disciplinary Panel, which led to his suspension, was inappropriate. He has apologised to the individual concerned for this approach.

#### 6.7.25. *Findings*

- **Given that many of the student complaints were of an academic nature these should have been dealt with through the University of Limerick Student Complaints Procedure which makes specific provision for such matters and not through a dignity and respect procedure. While the Investigator did not consider the academic complaints in his final analysis, he did question Person E on academic matters. This was inappropriate and unnecessarily imposed additional stress on a person who was receiving counselling for same.**
- **The Review believes, that to move from the findings, as described, to a view that they constituted gross misconduct, without exploring alternative ways of dealing with Person E, as provided for in the Policy and Procedures for Student Dignity and Respect - as noted above - was a severe application of Section III of Statute No. 4; rehabilitative (e.g. training followed by monitoring) rather than disciplinary procedures may have been more appropriate.**
- **The Review is of the view, that to move to a gross misconduct hearing, based on the findings noted above and in the absence of an appropriately defined threshold or process for determining conduct as potentially gross misconduct under Statute No. 4, appears unduly severe.**

- **The Review believes the decision to move to a hearing for gross misconduct was based on a view that Person E had other ‘performance’ issues and that these were conflated with the findings of the investigation.**
- **That during the course of 2014 Person E was under extreme pressure is obvious and the Review finds his actions, particularly in approaching the member of the Disciplinary Panel, following the disciplinary hearing, should be considered in that light.**
- **The Review is of the view that the phrasing of the paragraph in the then President’s letter to the PAC of 18 April 2017 did not properly describe the circumstances of the case and had the effect of leading the reader to the impression that Person E had had his contract terminated for matters other than those in the findings of the investigation.**

## 6.8. Person T

- 6.8.1. Person T is the former Medical Director of the Student Health Centre in UL. The University engaged him in this role as an independent contractor from 2000 until 2014.
- 6.8.2. Person T was a contributor to the Mazars review and made a protected disclosure to the HEA in February 2016.
- 6.8.3. Person T outlined to this Review his experiences of working in the Student Health Centre, the services it provided to students, his engagement with other staff of the Centre, the Director of Student Affairs and UL HR. He described the difficult working relationship he had with the Director of Student Affairs and his dissatisfaction with the University and

its agents on several issues, including what he considered to be a downgrading of the services offered by the Student Health Centre.

- 6.8.4. The main events of relevance to this Review relate to a complaint made against Person T by another contractor working in the Student Health Centre and a separate complaint made by Person T against the Director of Student Affairs. In 2013, a contractor working in the Student Health Centre made a complaint against Person T on several issues. UL appointed an Investigator to carry out an investigation of these complaints. In his report to the university in April 2014, the Investigator upheld three of the nine complaints and found that Person T's actions were tantamount to repeated inappropriate behaviour and a breach of the other person's right to dignity at work.
- 6.8.5. After the investigation, HR wrote to the Investigator requesting that he 'note the extent of the behaviour' as this was required in cases where bullying, harassment or victimisation has taken place. In response, the Investigator noted that 'the relevant policy does not set down a range of definitions by which I might be guided, I have therefore sought to position the matter on a four-point scale of Mild/Moderate/Serious/Extreme. I have concluded, that the extent of the behaviour engaged by Person T can be described as **SERIOUS**<sup>32</sup>'. Person T subsequently appealed this finding and was unsuccessful.
- 6.8.6. In 2013, Person T made a formal complaint against his line manager, the Director of Student Affairs. UL appointed an Investigator to carry out an investigation of this complaint. In his report to the University in October 2014, the Investigator did not uphold any of the allegations made and considered several of them to be **Vexatious**<sup>33</sup>.

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<sup>32</sup> Emphasis in original letter.

<sup>33</sup> Emphasis in report on the investigation.

6.8.7. On 22 October, HR wrote to Person T, noting that as he may have committed gross misconduct the University intended to commence disciplinary procedures under Section III of Statute No. 4 to ensure that he received fair procedure and secondly, lest he became an employee of the University. This last point was a reference to the fact that Person T had also been in dispute with the University in relation to his employment status and contractual relationship<sup>34</sup>.

6.8.8. On 5 December 2014, HR wrote to Person T indicating that the report of investigation into Person T's complaints against the Director of Student Affairs would be included as part of the disciplinary process.

6.8.9. The disciplinary hearing did not take place and, following exchanges of correspondence, a compromise agreement was reached with Person T in 2015 as part of which he received a severance package.

6.8.10. *Review Observations*

- There are similarities between Person T's case and that of the student counsellors (Brid O'Connell and Carmel McMahon) noted in Chapter 5. In both cases, the University failed to regularise the contractual relationship between the individuals in a timely manner by either entering into properly tendered contracts for services or by making them employees of the University. Having worked for the University for such an extended period, a level of expectation had built on the part of these staff. In proposing to move to a model of tendered services without adequate consultation to address that level of expectation, it was inevitable that the

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<sup>34</sup> Person T had worked in the Student Health Centre since 2000 but his contractual relationship was not covered by signed contracts for all of that period. Unlike the Counsellors, who had sought a ruling from the Department of Social Protection and referred to previously, Person T approached Revenue in relation to his employment status; Revenue did not sustain Person T's contention that he was an employee.

relationship between the University and these staff would be diminished and problems would likely arise.

- In relation to the interpersonal conflict in the Student Health Centre, evidenced by the complaints and counter complaints involving Person T, it is not possible for this Review, even following an analysis of the large volume of documentation associated with the issues, to assign responsibility for issues. However, the review is concerned that the findings by the Investigator of 'Serious' and 'Vexatious', in respect of the investigations individually, could a) reach a threshold of possible gross misconduct and b) be conflated to the one disciplinary hearing.

#### 6.8.11. Findings

- **The Review believes that a proposal to tender for medical services without obvious attempts to address the fact that Person T had served the University for an extended period was unreasonable and likely to diminish the relationship with Person T.**
- **The Review is of the view, that to move to a gross misconduct hearing, based on the findings noted above and in the absence of an appropriately defined threshold or process for determining conduct as potentially gross misconduct under Statute No. 4, lacks the necessary transparency of decision making for such a potentially significant hearing. Further, it appears to this Review that the conflation of the two complaints into one hearing allows for the possibility that the hearing was, *de facto*, being established as a means of dealing with the totality of the matters affecting Person T instead of the individual investigation findings.**



- **The adoption of the Statute No. 4 process for dealing with the alleged gross misconduct of Person T arose because of the absence of a process for dealing with allegations of gross misconduct by someone who was not an employee of the University. The Review is of the view that such an approach is not ideal and a more appropriate approach would have been through specific procedures for non-University staff or through provision in the employment contract.**

6.9. Legal Action Against the *Limerick Leader* and Mr Alan English

- 6.9.1. On 16 September 2015, the University's legal representatives, wrote to Mr Alan English, then Editor of the *Limerick Leader*, and threatened High Court proceedings against Iconic Newspapers and Mr. English, personally, for damages. The threat arose from the publication by the *Limerick Leader* of newspaper articles earlier in September 2015 and comments in subsequent interviews given by Mr English on national radio. The articles and radio comments covered offers of severance agreements to Persons B and C (see elsewhere in this Review) and matters arising from a disciplinary investigation by UL into B and C. The letter from the University's legal representatives required the *Limerick Leader* to issue an apology on the basis that the article and comments were damaging and of the most serious dishonesty and impropriety.
- 6.9.2. Elsewhere in this Review the allegations of financial mismanagement are dealt with, as are interpersonal office conflicts in the Accounts Payable Office in the University, and the matters leading up to and following on from the disciplinary investigation noted above. For this part of the Review, the following matters are of relevance;
- Persons B and C had been offered severance agreements in April 2015, which included confidentiality clauses,

- At least as far as this Review can ascertain, Persons B and C had, on several occasions, queried transactions and practices during the course of their work in the Accounts Payable Office,
- The offer of severance agreements followed closely on a disciplinary investigation in which Persons B and C were found to have acted maliciously.

6.9.3. Bearing these in mind, it is not surprising that the *Limerick Leader* chose to cover the matters surrounding the case.

6.9.4. On the 6 October 2015, the University placed a statement on its website<sup>35</sup> in which it noted that the University had provided the newspaper with a detailed breakdown of the multiple errors, inaccuracies and imbalances that it wrongly presented to its readership.

6.9.5. On 25 September 2015, the then President of the University, Professor Don Barry, made a statement to the Governing Authority giving the background to the case and noting that the University had not received an official response from the *Limerick Leader* regarding its request for an apology and that the University had requested its solicitors to prepare legal proceedings against the Newspaper and its Editor. The Governing Authority discussed the then President's report but offered no formal advice or admonition on the matter. The former President has told the Review that there was discussion of the matter at the Governing Authority and that whilst there was some challenge the majority view seemed supportive of his position on the matter. A High Court Plenary Summons to the *Limerick Leader* and Alan English was issued on 30 September 2015.

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<sup>35</sup> Available at <https://www.ul.ie/news-centre/news/university-of-limerick-statement>.

6.9.6. On 6 May 2016, the HEA wrote to the then President of the University advising that the University should terminate its legal action. The University chose not to terminate the action until May 2017.

6.9.7. *Review Observations*

- It is the responsibility of a free press to report on matters of public interest. In this instance, the matters of interest were complex and multivariate (as the Review notes elsewhere), and open to several interpretations and points of view.
- The fact that the University chose to address its concerns to the *Limerick Leader* through its legal representatives, despite informal attempts by the *Limerick Leader* and Mr English to open a discussion with the University on the matter, is suggestive of an institution that is not confident in its own ability to engage with enquiry and challenge. That the University chose to pursue, not just the *Limerick Leader*, but also its Editor in a personal capacity, does not reflect well on the largest educational institution in Limerick and was ill-conceived.

6.9.8. *Finding*

- **The Review is of the view that the University's decision to threaten the *Limerick Leader* and Mr English with High Court proceedings was ill-conceived.**

6.10. The Accounts Payable Office (Including B and C)

6.10.1. The Review recognises that many, though by no means all, of the matters of public interest and concern that prompted this review, centre on Ms O'Callaghan and Persons

B and C. The Review has dealt separately with Ms O'Callaghan. This section is concerned with the matters involving Persons B and C.

6.10.2. The issues within the Accounts Payable Office, that are the concern of this section of the report, are complex and emotive. Allegations of financial mismanagement, have become conflated with suggestions of a smear campaign and emotional abuse, in turn compounded by serious interpersonal conflict within the office and a finding of an investigation that a complaint had been made that was malicious.

6.10.3. Having reviewed all material associated with the issues and having spoken to Ms O'Callaghan, Persons B and C, and others who are or have been part of the office or its management, the Review considers there to be three separate, but related, matters which are;

- The allegations of financial mismanagement within the Accounts Payable Office,
- Interpersonal conflict within the Accounts Payable Office,
- Matters arising from events on 19 December 2014.

#### *Allegations of Financial Mismanagement within the Accounts Payable Office*

6.10.4. Allegations of financial mismanagement first emerged in the disclosures by Ms O'Callaghan. It is important to note that Ms O'Callaghan's disclosures relate to the period before the introduction of an online approval and claims system for travel and subsistence claims; Person B's and C's allegations refer to both travel and subsistence claims and more general financial management queries.

- 6.10.5. The Mazars investigation found that there was adequate evidence that Ms O'Callaghan (referred to as Person A in the Mazars report) was correct to question some payments and that the relevant claims were ultimately correctly treated and approved by the Finance Department (in instances where such approval was needed).
- 6.10.6. Persons B and C, in a protected disclosure to the HEA in April 2015, claim that they highlighted errors in practice and wrong doing in connection with their financial roles and that they were threatened numerous times with losing their jobs if they continued making their claims. The University claimed that any issues raised by B and C relating to financial practices were raised in the normal course of their duties and that it wasn't until the disclosures to the HEA in April 2015 that such claims were formalised. The assertion by the University of the date of formalisation of claims is significant and will be returned to below in this part of the Review.
- 6.10.7. Once a formal claim of financial mis-management had been made, the University attempted to find out from Persons B and C which transactions were the subject of the claims of financial mis-management. In the absence, initially, of the information sought the University requested Deloitte to undertake a general review of travel and subsistence at the University<sup>36</sup>. This review was conducted in September 2015. The review made a series of recommendations covering travel and subsistence policy, alcohol, foreign travel and accounts payable. The review concluded that they had not identified any critical weaknesses that would indicate systematic breakdown in internal controls.

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<sup>36</sup> Deloitte (2015) University of Limerick Travel and Subsistence Review. 31pp.

6.10.8. Between October 2015 and January 2016 Mazars conducted a review<sup>37</sup> into the processes that the University had used to inquire into the allegations made by Ms O'Callaghan and Persons B and C.

6.10.9. During the Mazars review process Persons B and C were given access to email records and the financial system to identify the transactions they believed were pertinent to their claims of financial mis-management. These transactions were analysed by Deloitte<sup>38</sup>.

#### 6.10.10. *Review Observations*

- The Review has considered the disclosures and statements made by B and C to Mazars, the HEA and this Review. This Review has not examined in detail all the allegations of financial mis-management. However, the Review has examined some of the allegations and has considered the various internal and external reviews undertaken by and on behalf of the University.

#### 6.10.11. *Finding*

- **The Review finds that Persons B and C made allegations concerning the circumstances surrounding the rehire of recently retired staff. Having considered the various reports and other information available to this Review, the Review concludes that in at least one instance an allegation can be sustained and that Persons B and C were correct to raise other queries as part of their professional responsibilities.**

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<sup>37</sup> Review of the processes employed by the University of Limerick to inquire into allegations made by Persons A, B and C, January 2016. Available at: <http://hea.ie/assets/uploads/2017/09/Mazars-review-final.pdf>

<sup>38</sup> Deloitte (2016) University of Limerick Internal Audit Report. Review of Specified Queries and Transactions. 19pp.

### *Interpersonal Conflict Within the Accounts Payable Office*

6.10.12. It is clear to the Review, that the level of interpersonal conflict within the Accounts Payable Office during late 2013, through 2014 and early 2015 was sustained and deep-rooted. A set of complaints between December 2013 and January 2014 was made by Persons B and C and against Persons B and C by six other staff; in December 2014 Persons B and C made a complaint against a staff member; in February 2015 Persons B and C made complaints against three staff members. During this Review, documentation has been examined and Persons B and C and four other existing or past staff members of the Accounts Payable Office have been interviewed.

6.10.13. The interpersonal conflicts have involved many and various triggers including the use of fan heaters, access to fridges, the use of computers and, most seriously, alleged threat of violence to which the Review returns below. The Review notes many attempts to mediate and investigate the various complaints, including by persons appointed by but independent of the University, and one person appointed by the Higher Education Authority.

6.10.14. On 16 October 2015, a Rights Commissioner ruled on claims made to the Labour Relations Commission on 17 and 22 April 2015 by Persons B and C respectively<sup>39 40</sup>. In the claims, Persons B and C argued that an email communication to the University in late 2013, claiming wrongdoing, was followed by a smear campaign and threats of violence and that they were being penalised because of their complaints. The Rights Commissioner, in ruling on the claim noted that ‘the claimant could not link to my satisfaction any act of penalisation by the Respondent which directly resulted from a protected disclosure or as a result of submitting the email’.

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<sup>39</sup> Decision of Adjudication Officer/Rights Commissioner Protected Disclosures Act 2014. No. r-155520-pd-15

<sup>40</sup> Decision of Adjudication Officer/Rights Commissioner Protected Disclosures Act 2014. No. r-155349-pd-15

#### 6.10.15. *Review Observations*

- Interpersonal relations within the Accounts Payable Office were fraught and stressful to all the parties. It is impossible, and likely to be counterproductive, to attempt to determine and apportion responsibility for these conflicts. That the effects of the conflict have been traumatic to all concerned is beyond doubt.

#### 6.10.16. *Finding*

- **It is the view of this Review that it is unlikely that the conflict and complaints between Persons B and C and other members of staff in the office arose because of their attempts to draw attention to what they believed were financial wrongdoings. It is more likely that an unfortunate combination of circumstances and personalities combined to create a hostile working environment.**

#### *Matters Arising from Events on 19 December 2014*

6.10.17. On 19 December 2014, a Christmas party was held in the Strand Hotel in Limerick. Many of the members of staff in the Finance Department attended. Events at and following the party have been the subject of complaints, Garda investigation, consideration by the Director of Public Prosecutions (DPP), UL investigation and suspension of Persons B and C.

6.10.18. At issue was an alleged threat of violence by one attendee against Persons B and C and various complaints including the use of foul and abusive language. Persons B and C subsequently (early in the morning of 20 December 2014) took the matter to An Garda Síochána. This Review has not been privy to the results of the investigation by An Garda Síochána but understands that a prosecution was not pursued.



6.10.19. Persons B and C made a complaint on 22 December 2014 regarding the alleged incident at the Christmas party. The University appointed an Investigator to investigate the complaint. The investigation commenced in January 2015 and concluded in April 2015. The investigation did not uphold the complaints of Persons B and C and found that the complaints were malicious. The findings were appealed. The appeal was not upheld. In June 2015 Persons B and C were suspended on full pay under Section III of Statute No. 4 which provides for summary suspension in cases where the University considers the conduct to constitute gross misconduct. A disciplinary hearing called for October 2015 was postponed when Person B's solicitor submitted a medical certificate on their behalf. That hearing has not been held and Persons B and C remain suspended to this point.

6.10.20. The Review notes that separate complaints were lodged to the Workplace Relations Commission in October 2015 and June 2016 by Persons C and B respectively under the Protected Disclosures Act alleging endangerment of health and safety and suspension in relation to a disclosure made in 2014. The Review notes that the decisions of the Adjudication Officer are now the subject of an appeal to the Labour Court.

#### 6.10.21. *Review Observations*

- There is no doubt that events at the Christmas party in December 2014 have had a significant impact on the lives of many people including Persons B and C. It is clear from the Investigator's report, that the event involved the consumption of alcohol and that circumstances combined to bring at least some of the interpersonal difficulties which had been experienced since late 2013 to the fore.
- Considered in isolation, and given the highly emotive circumstances surrounding the event, Persons B and C were unwise to pursue a complaint with the possibility that a finding such as has been made could have been the outcome.

#### 6.10.22. *Finding*

- **This Review acknowledges the probable impact of the ongoing and significant interpersonal difficulties in the Accounts Payable office on Persons B and C and other staff as an influencer on the events that took place at the Christmas party and the subsequent outcome of the investigation. The Review is of the view that the events and the investigation outcome could be considered in the broader context of the ongoing difficulties.**

#### 6.11. Exalt and UniJobs

6.11.1. The Review has examined the arrangements for two companies – UniJobs and Exalt that were drawn to the attention of the Review.

##### *Exalt Recruitment Limited*

6.11.2. Exalt Recruitment Limited, a recruitment services company based in Galway, was appointed as recruitment agency for temporary staff of the University following a tender process in 2009. This service was retendered for in 2012 and Exalt was appointed together with another firm subject to an ongoing six-monthly review. This review clause was incorporated into the contract as the University was in the process of establishing a wholly-owned subsidiary which would provide temporary recruitment services to public service bodies on a shared services model.

6.11.3. In 2012, the University received anonymous correspondence regarding the appointment of Exalt as recruitment service provider, alleging a conflict of interest due to a possible connection with a senior member of staff in HR. The Governing Authority engaged an external firm to carry out an investigation into the issue. The external investigation

concluded that there was no connection between Exalt Recruitment and the staff member concerned, therefore no conflict of interest arises from the engagement of Exalt recruitment services.

6.11.4. *Review Observation and Finding*

- **Based on the findings of the external review commissioned by the Governing Authority, this Review finds no grounds for further investigation of this matter.**

*UniJobs (Designated Activity Company)*

6.11.5. UniJobs DAC was incorporated in March 2013 as a wholly-owned subsidiary of the University. It was established as a shared service provider of agency staff services to Public Bodies aimed at reducing the costs associated with the recruitment of temporary agency staff.

6.11.6. The financial and management accounting activities of UniJobs are provided by the Finance Department of the University. The University can reduce the costs associated with recruitment services through a not for profit shared services model and an associated tax exemption for shared services.

6.11.7. Shared service arrangements which consolidate administrative functions can increase administrative efficiency and reduce cost for all parties involved. The UniJobs shared-service has reduced the costs associated with the employment of agency staff from approximately 20% to 3% for the public bodies availing of the service. In this regard, the arrangements are not unlike the Education Procurement Services unit based in UL which procures services and materials in the Department of Education and Skills sector under the Office of Government Procurement model.

6.11.8. The Board of UniJobs is comprised mainly of members of the UL Governing Authority and members of the University Executive.

6.11.9. It has been suggested to the Review that the presence on the board of a senior member of staff from UL HR is a conflict of interest given the company's role in recruitment to the University. The Review notes that the establishment of the company was considered in some detail by the Audit and Risk Committee. Also, the University has confirmed to the Review that no director's fees have been paid to any member of the Board.

6.11.10. *Review Observation and Findings*

- **The Review finds no conflict of interest as alleged.**
- **The board composition in shared service models is generally a client-based governance board with representation from stakeholders using the service. The current composition of the board of UniJobs does not reflect the users of the service and is made up primarily of employees and Governing Authority members of the University.**

6.12. Other Matters of Public Interest

6.12.1. The RTÉ Investigates programme raised several matters that have not been considered by this Review for reasons noted previously. These matters, including conflicts of interest, procurement and matters associated with further education of staff, have been addressed by the Deloitte internal audit report referred to previously. This Review has considered the Deloitte report, its observations, recommendations and findings and finds no reason to challenge any aspect of the report.

## Chapter 7

### 7. Matters of Institutional Significance (including HR Matters)

7.1. The preceding Chapters have considered individual (and group) narratives, the individual severance agreements and the actions against the *Limerick Leader* and its Editor largely as unconnected matters. However, the Review, in its consideration of personal and group narratives, its review of documentation and its analysis of meetings with current and former University staff believes some generalised findings may be drawn from these individual matters, particularly as they relate to HR policies, procedures and practice. In this chapter, the generalised Review observations and findings that are, in the opinion of the Review, of institutional significance are considered.

#### 7.2. Application of Statute No. 4

7.2.1. Appendix 2 contains a link to Statute No. 4. Under the provisions of the Universities Act of 1997 universities approve statutes for dealing with a variety of issues including staff disciplinary matters and termination of employment. The Statute is clear that it applies to all employees and governs disciplinary matters. The Statute, provides for a Disciplinary Process and Gross Misconduct. The Statute states, in respect of 'Disciplinary Process', that 'Where, in the opinion of the University, an employee's performance or conduct warrants disciplinary action, the procedures contained in this Section will apply, except in respect of gross misconduct, or in respect of allegations which, in the opinion

of the University, would, if substantiated, constitute gross misconduct. In such circumstances the procedure contained in Section III will apply’.

7.2.2. In the case of ‘Gross Misconduct’ the Statute states that where, in the opinion of the University, an employee’s conduct may constitute gross misconduct, the employee may be summarily suspended with pay by the University from his or her post in the University to facilitate an investigation into the alleged misconduct.

7.2.3. Examples of gross misconduct are provided and include assault, theft and willful damage to university property, *inter alia*.

7.2.4. Of the eight severances, or offers of severances, five persons (Persons B, C, D, E and T) were the subject of investigations under the workplace dignity and respect policy, the policy and procedures for student dignity and respect or Statute No. 4 which resulted in findings as follows:

- ‘Malicious’ complaints (Person B)
- ‘Malicious’ complaints (Person C)
- Non-disclosure of interest and approval of a post (Person D)
- ‘Mild’ and ‘Moderate’ bullying (Person E)
- ‘Serious’ bullying and ‘Vexatious’ complaints (Person T)

7.2.5. In all cases, Section III of Statute No. 4 was invoked implying that each of the findings reached a threshold for a gross misconduct hearing. Statute No. 4 does not define the threshold for findings that would lead to a hearing of gross misconduct other than giving

some examples, as noted above, none of which cover the findings of the hearings referred to here.

7.2.6. This Review, in the case of Person E, has reservations that findings of ‘mild’ and ‘moderate’ bullying reach a threshold of gross misconduct. It is this Review’s view that the findings were conflated with previous suggestions of poor performance to justify reaching a threshold of possible gross misconduct.

7.2.7. In the case of Person T, it is difficult to believe that findings of ‘serious’ bullying and ‘vexatious’ complaints could, in isolation, constitute gross misconduct. It appears that it is the conflation of the two findings that is used to justify a view that they reach the threshold for investigation of gross misconduct. It will be recalled that although Person T was not an employee of the University he was subjected to the Statute No. 4 process. The Review makes observation on this below.

7.2.8. *Findings*

- **The Review believes that, in the absence of appropriately defined thresholds for matters construed as gross misconduct, or a documented process for progressing an issue to Section III of Statute No. 4, the application of the Statute has been overly severe and that at least some of the matters investigated could have been dealt with through Section II of Statute No. 4.**
- **This Review notes that Mazars make recommendations concerning the procedures to be adopted in the implementation of Statute No. 4. This Review notes these recommendations and the management responses from the University (see below). However, this Review is not satisfied that Statute No. 4, or the processes for its implementation, as currently constituted meet the standards required by the University and as evidenced by this Review. The**

**Review notes the appropriateness of the Mazars recommendations in respect of Statute No. 4, provided they are applied once the Statute has been reviewed and amended to reflect the views expressed in this Review.**

7.2.9. *Recommendations*

- **Statute No 4 should be reviewed to ensure its fitness for purpose. The review should, at minimum, and where possible, specify thresholds for gross misconduct, provide for an accompanying robust decision-making process that is transparent and documented, provide a clearer process in respect of probationer staff, and allow for an appeal process that, while overseen by the Governing Authority, allows that body be aware of the initiation of and general circumstances surrounding disciplinary action under the Statute.**
- **Procedures, or a provision in the contract, should be adopted for dealing with alleged misconduct by non-University contract staff.**

7.3. Disciplinary Hearings and their Aftermath

- 7.3.1. Two of the five cases (Person E and Person T) that went to Section III of Statute No. 4 went as far as disciplinary hearings. However, in neither case was a finding issued as events overtook the issuance of findings. In all five cases where severance agreements were entered into, or were offered, they followed either the issuance of the findings of the initial investigation or after a hearing. A common theme from the accounts provided to the Review that individuals under investigation chose to enter into severance arrangements because they felt under pressure to do so – reasons for this are dealt with below.



### 7.3.2. *Finding*

- **The Review finds that an effect of the invocation of Statute No. 4, Section III was the likelihood, at a later stage, of proposals for severance agreements (and their likely agreement) thus, perhaps, explaining the apparently high numbers of severance agreements in UL.**

7.3.3. All four of the persons who chose to enter into a severance following investigation or hearing, plus Mr. English, referred, either directly or indirectly, to the imbalance of power and resources that was manifest in the University's use of a large legal firm and, frequently, senior counsel, and their own capacity as individuals to afford legal advice. In all cases the imbalance of power had the effect on the individuals of them feeling they were being pressurised into entering into a severance agreement with no option but to accede. The Reviewer recognises that each of the individuals involved was legally represented in his/her dealings with the University and that any sense of imbalance was a matter of perception on the part of the individual concerned. But the Reviewer, nonetheless, believes that it is something of which the University should be conscious in its dealings with others. Needless to note, the Review does not suggest any lack of due care or improper conduct on the part of any legal adviser involved, whether representing any individual or the University.

### 7.3.4. *Finding*

- **The Review believes that the University, through its capacity to draw on substantial legal resources in negotiations with persons under investigation, should have been aware of the power imbalance and moderate its approach accordingly.**

## 7.4. Policies, Procedures and HR Processes

7.4.1. In addition to the reservations noted previously in respect of Statute No. 4, the Review has identified several instances where policies and procedures and HR processes, and their implementation, could have been handled more consistently;

- the use of a student dignity and respect policy in a situation where many of the complaints were academic, and which should thus have been dealt with through a student complaints procedure;
- the failure by the University to tender, in a timely manner, the services required for the Student Health Centre leading to claims for university employee status;
- the absence of MOU's to underpin the implementation of HR policies and procedures in university subsidiaries;
- the absence of procedures to deal with alleged misconduct on the part of contract staff.

7.4.2. *Finding*

- **The Review is of the view that, taken in conjunction with the inappropriate approach to the implementation of Statute No. 4, the system of HR policy and procedure implementation has, on occasion, lacked the consistency required of the University and that this has had negative impacts on individuals.**

7.4.3. *Recommendation*

- **Relevant staff and the University should individually and collectively acknowledge that the standards expected in HR policy and procedure**

**implementation have fallen short of the standards expected in the University and commit to ensuring that they will address the shortcomings.**

*7.4.4. General Observation and Recommendation*

**While many of the recommendations made in this, and other reviews, will help to address the issues identified, and should be implemented, they generally address individual policies and not the management structure within which such policies are considered, reviewed and implemented. The University is a large and complex organisation. With almost 16,000 staff and students it is inevitable that staff and student issues will arise. To address this complexity the University should consider the management structures and systems adopted for implementation of HR policies and procedures in addition to consideration of the management and implementation of specific policies and procedures as recommended in this and other reviews.**

## Chapter 8

### 8. Matters of Higher Education Significance

- 8.1. During this Review, several persons, including past members of the Governing Authority, raised concerns and made observations about governance at the University. These concerns related generally to structure, membership and duration of tenure of both the Authority itself and its sub-committees. Additionally, questions were raised about the extent to which the Governing Authority had considered, or not, the matters that gave rise to this Review, principally the severances and the events leading up to them. To these concerns, the Review also added the matter of the issuing of legal proceedings against the *Limerick Leader* and its editor and the extent to which the Governing Authority discussed this matter.

This Review acknowledges structure, membership and tenure as being potentially matters of concern. During the initial stages of this Review's work it became aware that University had tendered for a Corporate Governance Review<sup>41</sup>. This Governance Review is, in summary, an assessment of the University's overall governance structural arrangements *vis a vis* governance best practices. The review of governance arrangements is in two Stages. In Stage One 'the Review will centre on evaluating and advising on Governing Authority size, membership (including composition and appointment provisions) and term of office provisions against contemporary best practice

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<sup>41</sup> University of Limerick Corporate Governance Review - UL Ref: UL0443.

in the area. Any such advice must take account of the provisions of the Universities Act, 1997.’

- 8.2. Given that a Governance Review is being undertaken on behalf of the University, this Review has confined itself to the governance aspects of the two matters of public interest; the severances and the issuance of legal proceedings against the Limerick Leader.
- 8.3. Regarding severance agreements, this Review, as noted previously, has identified a series of severance agreements dating back to 2007. The circumstances surrounding each of these severance agreements have been described in foregoing sections. This Review has examined Governing Authority, Finance Committee and Audit and, later the, Audit and Risk Committee minutes and documentation and spoken with several past members of the Governing Authority to determine if severance agreements were discussed.
- 8.4. In November 2008, a question was posed at Governing Authority about the position of Person D. The Chancellor noted that a formal process was underway and that it would be inappropriate for the Authority to discuss the matter. In January of 2009 the then President briefed the Authority on the resignation of Person D. At this meeting, it was noted that consideration would be given to the development of a process whereby the Authority might be informed of the commencement of procedures under Statute No. 4 – the Review returns to this matter below. Severance agreements were not tabled for discussion at Authority meetings until April 2016. In April 2016, the then President provided a briefing to the Authority on recent severance payments that had been made. This briefing arose from media coverage of disclosures made in the 2014 accounts. [REDACTED]
- [REDACTED]
- [REDACTED] The former President has confirmed to this Review that, apart from Person D, severance agreements were not brought to the Governing Authority.

8.5. This Review has not been able to identify consideration of severance agreements by the Finance Committee. The Audit Committee (which was renamed the Audit and Risk Committee in 2012), is provided with regular anonymised updates in legal cases including where employees (or former employees) are engaged in legal correspondence with the University. The updates include student claims, claims for contracts of indefinite duration and various other HR-related cases. A summary of the report is brought to the Governing Authority.

8.6. Following coverage by the *Limerick Leader* in 2015 of matters pertaining to Persons B and C, the University, through its solicitors, engaged in correspondence with the *Limerick Leader* and requested an apology for the publication of the articles. On 25 September 2015, the then President of the University made a statement to the Governing Authority giving the background to the case and noting that the matter could not be discussed because of the potential for appeal. The former President has confirmed that there was discussion about the matter at the Governing Authority meeting. The decision to instruct the University's legal representatives to issue legal proceedings was an Executive decision and although the Authority discussed the matter they declined to challenge the President on the wisdom of the actions. A High Court Plenary Summons to the *Limerick Leader* and Alan English was issued on 30 September 2015.

#### 8.7. *Review Observations*

Regarding the use of severance agreements, their number and scale have been significant and out of line with similar institutions. The question arises as to whether the Governing Authority in UL should, or could, have known of the extent of the use of the mechanism and thus have had a view on their deployment. It is clear from the minutes of the January 2009 meeting that the Authority was aware of the resignation

of Person D. The reference to the development of a process for notifying the Authority of the commencement of procedures under Statute No. 4 follows immediately on the briefing by the President of the resignation of Person D. It is reasonable to assume that the Authority, in requesting that a process be put in place, recognised the potential risks associated with invoking disciplinary procedures and wished to, at minimum, be made aware of the commencement of a process.

8.8. *Finding*

- **This Review can find no evidence that the wishes of the Governing Authority in respect of being informed about initiation of Statute No. 4 were acted upon (and the former President confirms that this did not happen) and so future cases were not brought to the attention of the Authority. The Executive was remiss in not providing a mechanism for so informing the Governing Authority. In turn, the Governing Authority members were remiss in not following up this requirement as they had requested.**

8.9. *Recommendation*

- **The Review recommends that a formal process for tracking action items arising from Governing authority meetings be established.**

## Chapter 9

### 9. Mazars Review and Other Review Recommendations

- 9.1. In October 2015, the HEA appointed Mazars to undertake an independent review of the process employed by the University of Limerick to inquire into the allegations made by Ms O’Callaghan and Persons B and C. The final report was published in February 2016. The report sets out several recommendations for UL to strengthen their finance and HR practices as per the below table.
- 9.2. In February 2017, the Governing Authority’s Audit & Risk Committee, engaged Deloitte to perform a review of the follow up action taken by the University in respect of the Mazars report recommendations. The below table reflects the status of the actions taken by the University as at September 2017 and is based on information provided to the Review by the University. Where appropriate, it also reflects the findings made by Deloitte in its review of the follow-up actions taken by UL.

| No | Recommendation   | Action taken by University of Limerick   |
|----|--|--|
| 1. | i) The University should consider that, when conducting its own inquiry into allegations made in respect of University affairs, parties independent of the function to | i) Deloitte were engaged to conduct audit management reviews and wider audits of the allegations made against the University. The University have confirmed that if an inquiry is being conducted in |



| No | Recommendation  | Action taken by University of Limerick   |
|----|---|--|
|    | <p>which allegations relate should be appointed to conduct such an inquiry.</p> <p>ii) At the time of performing an internal inquiry of this nature, the University should consider widening its detailed review, at least on a sample basis, to ensure that alleged practices do not exist on a wider scale.</p> | <p>future it will be independent of the function to which it relates.</p> <p>ii) Following the allegations made against the University, the University engaged Deloitte, as internal auditors, to conduct an independent review of the allegations. Two reviews were conducted, one based on the themes of the allegations raised and one specifically focussing on transactions highlighted in the allegations.</p> |
| 2. | <p>The University should clarify the source of funding utilised in this instance for payment of Sabbatical Leave.</p>   | <p>The source of funding was unable to be clarified absolutely to Deloitte, as internal auditors, as the receipt of the funding in question took place over 17 years ago, and predates the Agresso system.</p>   |
| 3. | <p>The University should review, at least on a sample basis, items raised by Ms O'Callaghan as equipment purchases put through expenses, particularly those items (if any) exceeding procurement or purchase approval thresholds in place at the time, with a view to consider whether:</p>                       | <p>The University reviewed all items raised by Ms O'Callaghan as equipment purchases put through expenses. The review found that no item was claimed through expenses that would have required a more formal procurement process. The review noted that 85% of the items related to research projects. The review did not find evidence that the</p>   |

| No | Recommendation  | Action taken by University of Limerick   |
|----|---|--|
|    | <ul style="list-style-type: none"> <li>- procurement rules were breached; and</li> <li>- these practices may have been utilised to circumvent purchasing controls in place at the time.</li> </ul> <p>The University's findings in this regard should be evaluated to consider whether control improvements implemented subsequently, adequately mitigates against the risk of re-occurrence.</p> | <p>practice may have been utilised to circumvent purchasing controls.</p> <p>The University provided information to Mazars during their review which demonstrated that the value of equipment purchased through expenses in 2014 and 2015 was €nil. The University, therefore, does not consider it necessary to conduct further evaluation of control improvements as suggested in the recommendation.</p>  |
| 4. | <p>i) The University Sick Leave Scheme in respect of requiring medical certification and reporting certified sick leave to the Human Resources Department should be followed in all instances.</p>  | <p>i) The provisions of the University of Limerick sick leave scheme are based on the Public Sector Sick Leave Scheme. The scheme requires: <i>"Absence on sick leave must be properly certified. If the illness is longer than two consecutive days' duration, a medical certificate must be received by the Dean/Head of Department/Manager on or before the third day of illness."</i> The procedure is followed and if instances of non-adherence are identified, then these instances will be pursued to ensure compliance.</p> |

| No | Recommendation  | Action taken by University of Limerick  |
|----|---|---|
|    | <p>ii) The seriousness of reported staff illnesses should be evaluated on a case by case basis, and where defined serious illnesses are reported, such staff members should be referred to an Occupational Health Specialist to assess their fitness to return to work, prior to their return. The University should also implement a defined return to work process in such cases.</p> <p>iii) The University should ensure that line managers and employees receive adequate training in respect of sick leave certification, and reporting. Line managers should formally liaise and consult with HR on the implementation of appropriate procedures and should notify the employee that this is being done.</p> | <p>ii) The University advised that it evaluates the seriousness of illnesses on a case by case basis as may be evidenced by Occupational Health referrals. The University's Managing Attendance Procedure states: <i>"Employees may not return to work unless they are medically fit to do so. In cases of long-term absence, the University's Occupational Health Service or the employee's own doctor must certify that the employee is fit to resume duties."</i></p> <p>iii) Training programmes have been in place since 2012. "Managing Attendance" training was held on 6 December 2016 and on 23 March 2017. Consideration will be given to compulsory attendance for line managers, in the first instance, followed by compulsory attendance for all staff. The University's aim is to provide training via an on-line platform in the near future. This initiative is being progressed.</p> <p>The University's Managing Attendance Procedure states: <i>"Line managers - To seek</i></p> |

| No | Recommendation   | Action taken by University of Limerick  |
|----|--|---|
|    |  | <p><i>support and advice from HR in relation to the management of attendance.”</i></p> <p>The University advised that the requirements of the sick leave scheme and the managing attendance procedures will be reinforced at every opportunity e.g. management council meetings, induction, management training programmes, and managing attendance training programmes.</p>  |
| 5. | <p>i) Where the University is aware of a condition or number of conditions that could affect an employee’s ability to be in work, including diagnosis of a significant illness, extended previous absence from work, indications of work related concerns, or workplace incidents relating to such illness, it should take appropriate action to specifically assess the affected employee’s ability to continue in work (including consideration of potential referral to an Occupational Health Specialist).</p> | <p>i) The University’s Managing Attendance Procedure states:</p> <p>Line manager – <i>“To seek support and advice from HR in relation to the management of attendance;</i></p> <p>HR –</p> <ul style="list-style-type: none"> <li><i>a) to monitor levels of absence and maintain accurate absence records,</i></li> <li><i>b) to maintain appropriate and accurate records of interventions taken regarding absence,</i></li> <li><i>c) to liaise with line managers, as required, on the implementation of</i></li> </ul> |

| No | Recommendation  | Action taken by University of Limerick  |
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|    | <p>ii) The development of internal protocols to deal with ill health related workplace incidents should be done in consultation with relevant health specialists.</p> <p>iii) The University should ensure that line management and employees receive appropriate training regarding their responsibilities under the Managing Attendance Procedure (May 2012).</p> | <p><i>recommendations arising from occupational health referrals,</i></p> <p><i>d) to advise employees on the availability of the Employee Support Service,</i></p> <p><i>e) to refer employees, where appropriate, to the University's Occupational Health Service."</i></p> <p>ii) Internal protocols are now developed in accordance with the University's Managing Attendance Procedure which states "c) to liaise with line managers, as required, on the implementation of recommendations arising from occupational health referrals"</p> <p>iii) "Managing Attendance" training was held on 6 December 2016 and on 23 March 2017. Consideration will be given to compulsory attendance for line managers, in the first instance, followed by compulsory attendance for all staff. The University's aim is to provide training via an on-line platform in the near future. This initiative is being progressed. The University advised that the requirements</p> |

| No | Recommendation   | Action taken by University of Limerick  |
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|    |  | <p>of the sick leave scheme and the managing attendance procedures will be reinforced at every opportunity e.g. management council meetings, induction, management training programmes, and managing attendance training programmes.</p>  |
| 6. | <p>i) As a matter of good practice, employers should keep communication channels open with employees who are out sick. Typically, line managers, in conjunction with the Human Resources Department share this responsibility.</p> <p>ii) A process should be put in place between the Human Resources Department and line management as to who will be the primary contact with employees on illness leave, who</p> | <p>i) The University's Managing Attendance Procedure states: <i>"Line manager - Should maintain regular (fortnightly) contact with employees during illness absence."</i></p> <p>The Compensation and Benefits Manager (CBM) is often the liaison between the University and the employee. The CBM operates on open door policy whereby employees can seek advice and periodically issues guidance on processes and procedures between HR and the Faculties.</p> <p>ii) The University's Managing Attendance Procedure states: <i>"Regular contact should be maintained between the line manager and employee during extended periods of sick leave. Weekly/monthly medical</i></p> |

| No | Recommendation   | Action taken by University of Limerick   |
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|    | <p>should then be notified of such contacts.</p>   | <p><i>certificates should be sent by the employee to their line manager. The employee is responsible for keeping their line manager informed of their progress and likely return date.</i></p> <p>The liaison between the University and the employee is determined on a case by case basis as to who the primary contact should be.</p>   |
| 7. | <p>i) Where an employee on long term sick leave indicates the possibility of return to work, the University should facilitate this in the first instance, and exercise a significant degree of caution in respect of any engagement in discussions on retirement options. This should be considered in the context of suitable processes available to the University, such as review by Occupational Health, medical advice, assessment of reasonable accommodation and fitness to return to work certification.</p> | <p>i) The University's Managing Attendance Procedure states: "<i>Line manager –</i></p> <p>a) to take all reasonably practicable steps to accommodate an employee's return to work in line with any recommendations from HR or the University's Occupational Health Service;</p> <p>b) to make reasonably practicable adjustments to employment arrangements or accommodation for employees with a disability."</p> <p>The University noted that it is incumbent on its part to provide information on entitlements relating to retirement and redeployment options in</p> |

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|    | <p>ii) Retirement on ill health grounds should only be considered on a case management basis, with input from a number of stakeholders, including but not limited to the employee, Occupational Health Specialist or other medical advice, Human Resources, line management, and employee representatives (if required).</p> | <p>an open and transparent manner if employees require it. Not to do so would breach industrial relations legislation, agreements and protocols and the University would be remiss in its duty of care towards its employees.</p> <p>ii) Retirement on grounds of ill health is a medical decision. An employee can only be retired on grounds of ill health where specialist medical practitioners have conducted appropriate medical assessments and have determined that the individual will not be medically fit to carry out their role in the future. Line managers, employees, human resources and employee representatives do not have the competence to make medical decisions on ill health retirement.</p> |
| 8. | <p>i) The University should re-communicate the requirements of the Managing Attendance Procedure to line management and employees in respect of notification of return to work and managing communication with employees on illness absence</p>  | <p>i) “Managing Attendance” training was held on 6 December 2016 and on 23 March 2017. Consideration will be given to compulsory attendance for line managers, in the first instance, followed by compulsory attendance for all staff. The University’s aim is to provide training via</p>  |



| No | Recommendation   | Action taken by University of Limerick   |
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|    | <p>(including long term illness absence). Suitable training should also be put in place for line management and employees on respective responsibilities.</p> <p>ii) In the case of long term illness absence, the University should consistently apply the Managing Attendance Procedure which states “in cases of long-term absence (greater than 20 days), the University’s Occupational Health Service or the employee’s own doctor must certify that the employee is fit to resume duties. The requirements of this procedure should be re-communicated to line management and employees.</p> | <p>an on-line platform in the near future. This initiative is being progressed. The University advised that the requirements of the sick leave scheme and the managing attendance procedures will be reinforced at every opportunity e.g. management council meetings, induction, management training programmes, and managing attendance training programmes.</p> <p>ii) The procedure is followed and if instances of non-adherence are identified, then these instances will be pursued to ensure compliance. The Managing Attendance Procedure has been amended to specify the circumstances under which a return to work fitness certificate will be required</p> |
| 9. | i) The University should ensure that the rationale for decisions relating to how complaints are to be treated is   | i) The University’s Dignity & Respect policy states:   |

| No | Recommendation  | Action taken by University of Limerick  |
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|    | <p>adequately documented. Such documentation should include evidence of:</p> <ul style="list-style-type: none"> <li>– clarifying the nature of the complaint;</li> <li>– involvement of line management in the first instance;</li> <li>– consideration of the basis for whether a complaint should be informally or formally resolved; and</li> <li>– confirmation of the specific policy under which the complaint is being managed.</li> </ul> | <p>“The complainant should submit a formal complaint in writing to his/her manager (or the next level of management). The complaint should be confined to the specific details of the alleged incidents of bullying, harassment, sexual harassment, or victimisation including their dates and names of witnesses, where possible and be signed and dated.”</p> <p>“Allegations of bullying, harassment, sexual harassment, or victimisation will normally be dealt with locally in a low-key, non-confrontational manner through the informal procedures, except where, in the view of management, the seriousness of the complaint requires implementation of the formal procedures.”</p> <p>“The Formal Complaint &amp; Investigation Procedure will normally be followed: -</p> <p>a) If the complainant’s manager or the Human Resources Division considers the complaint to be of sufficient seriousness to warrant the complaint</p> |

| No | Recommendation  | Action taken by University of Limerick   |
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|    | <p>ii) In the event of a failure to resolve complaints through an informal process, University policies and procedures should be implemented on a timely basis. For example, formal complaint and investigation procedures should be followed on a timely basis to seek to resolve and close open complaints amongst employees. The resolution process of complaints should be completed within a reasonable timeframe in accordance with the principles for natural and constitutional justice.</p> <p>iii) The University should seek to update existing policies to further clarify the required format for submitting</p> | <p>being dealt with under the Formal Procedure in the first instance; or</p> <p>b) If attempts to resolve the matter pursuant to the Informal Procedure have failed; or</p> <p>c) If the conduct complained of has continued after the Informal Procedure was followed.”</p> <p>ii) In instances when the informal process fails to resolve the situation the formal procedures should be invoked except in instances where there are clear recommendations from a mediation process that invoking a formal investigation would have an adverse impact and drive the parties further apart. Cognisance must be taken of recommendations from any mediation process on a case-by-case basis.</p> <p>The University complies with the timelines insofar as it is possible.</p> <p>iii) The University’s Dignity &amp; Respect policy states:</p> |

| No | Recommendation  | Action taken by University of Limerick  |
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|    | <p>complaints, including requirements to outline the specific events that took place (including dates), the nature of the complaints and, where known, the policy under which such complaints are made.</p> | <p>“The complainant should submit a formal complaint in writing to his/her manager (or the next level of management). The complaint should be confined to the specific details of the alleged incidents of bullying, harassment, sexual harassment, or victimisation including their dates and names of witnesses, where possible and be signed and dated.”</p> <p>“Allegations of bullying, harassment, sexual harassment, or victimisation will normally be dealt with locally in a low-key, non-confrontational manner through the informal procedures, except where, in the view of management, the seriousness of the complaint requires implementation of the formal procedures.”</p> <p>“The Formal Complaint &amp; Investigation Procedure will normally be followed: -</p> <p>a) If the complainant’s manager or the Human Resources Division considers the complaint to be of sufficient seriousness to warrant the complaint</p> |

| No | Recommendation  | Action taken by University of Limerick   |
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|    | <p>iv) University communications of complaints to respondents should clearly state under which policy the response is being pursued and the nature of the complaints being made. This includes where a complaint is being raised under the Policy &amp; Procedures for Workplace Dignity and Respect.</p> | <p>being dealt with under the Formal Procedure in the first instance; or</p> <p>b) If attempts to resolve the matter pursuant to the Informal Procedure have failed; or</p> <p>c) If the conduct complained of has continued after the Informal Procedure was followed.”</p> <p>A revised Grievance Procedure was approved in June 2017 and it stipulates that the line manager must formally document a clear written record of the issues raised and discussed at various stages.</p> <p>iv) The University’s Dignity &amp; Respect policy states: “The respondent will be notified in writing by Human Resources that an allegation of bullying, harassment, sexual harassment, or victimisation has been made against him/her. This notification will be sent to the respondent within 5 working days of the complaint being submitted, or as soon as possible thereafter, in exceptional circumstances. Such exceptional circumstances may be</p> |

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|     | <p>v) The University Grievance procedure, last updated in 2005, should be reviewed and updated to identify examples or instances of grievances, including but not limited to workplace relations.</p>   | <p>that Human Resources may need to take professional advice with regard to the complaint. The respondent will be given a copy of the complainant's written complaint and will be informed that s/he is required to respond to the allegation in writing, within 10 working days. The complainant will be provided with a copy of this response."</p> <p>v) A revised grievance procedure was approved in June 2017 and the revised procedure includes the type of issues which are appropriate for referral under the grievance procedure.</p> |
| 10. | <p>i) The University should seek to further improve existing processes by formally documenting and retaining evidence of the checks performed by the University on relevant experience, potential conflict checks and other pertinent factors which the University deems relevant to the appointment of any independent investigator.</p> | <p>i) The University engages legal professionals and HR Consultants with considerable experience of working in the area of HR and industrial relations to conduct investigations or hear appeals. They are sourced from:</p> <p>a) Legal Firms working with the University,<br/> b) the Law Library (to source barristers appointed (called) to the bar with employment expertise), and</p>   |

| No | Recommendation  | Action taken by University of Limerick  |
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|    | <p>ii) The University terms of reference for investigations should seek to establish a reasonable timeline in</p> | <p>c) IBEC</p> <p>All individuals appointed to conduct an investigation or hear an appeal have the required skills, knowledge and competence to carry out such tasks and come highly recommended. Advice is sought from various sources including IBEC and the Law Library in selecting an appropriate investigator. Officers of the University meet with each individual prior to appointment to ensure no conflicts of interest exist and the candidates are suitable for the proposed task. The University will ensure that all supporting documentation is retained on case files.</p> <p>The University maintains an approved vendor list (AVL) for external workplace investigations which documents the qualifications and experience of the investigators that have been assessed for entry onto the AVL.</p> <p>ii) The University endeavours to conduct all investigations and appeals in the shortest time frame possible and this</p> |

| No  | Recommendation   | Action taken by University of Limerick  |
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|     | line with the stated policy requirements.  | is reflected in the terms of reference for the investigation.   |
| 11. | <p>The University should ensure that the rationale supporting key decisions is, in all cases, clearly and adequately documented, for determining whether:</p> <ul style="list-style-type: none"> <li>- A complaint should be informally or formally resolved, in the first instance (the University policies allow for both options);</li> <li>- The nature of the complaint is clearly defined, and whether based on this definition, the complaint should fall under a specific policy, such as the Policy &amp; Procedures for Workplace/Student Dignity and Respect, or Grievance Procedures;</li> <li>- The details in the complaint, such as dates/times and nature of events, are adequately documented support further investigation;</li> </ul> | <p>The University maintains a Complaint Tracker and all documentation relating to key decisions is maintained on the complaint case file. Deloitte selected a sample from the Complaint Tracker for the period March 2016 to March 2017 and confirmed in the sample selected that the rationale supporting key decisions was clearly and adequately documented.</p> |



| No  | Recommendation   | Action taken by University of Limerick  |
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|     | <ul style="list-style-type: none"> <li>- Complaints were made within the relevant timeframe specified in policies and procedures;</li> <br/> <li>- A complaint should be escalated to formal stage;</li> <br/> <li>- The process should be progressed to a disciplinary matter under Statute no 4 of the Universities Act 1997 University of Limerick.</li> </ul>  |   |
| 12. | <p>The University should place specific focus on the adequate management of the timeline for processes falling under the Policy and Procedures for Dignity and Respect, and Statute no 4 of the Universities Act 1997 University of Limerick, including ensuring that the processes for making complaints, following informal resolution processes (if appropriate), carrying out investigations and completing disciplinary meetings take place within a reasonable timeframe in accordance with the principles for natural and Constitutional justice.</p> | <p>The University endeavours to conduct all investigations, appeals and disciplinary hearings in the shortest time frame possible and this is reflected in the terms of reference. A work-in-progress (WIP) document is reviewed and updated on a weekly basis logging progress on all cases.</p> |

| No  | Recommendation  | Action taken by University of Limerick   |
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| 13. | <p>While it is acknowledged that the investigation process should be independent, the University should therefore ensure that a clearly evidenced process is in place under the Policies and Procedures for Workplace Dignity and Respect that demonstrates how responses in respect of draft findings are given adequate time and consideration prior to finalising an investigation report.</p> | <p>The University has noted that it cannot interfere with the independence of an external expert who is engaged to conduct an investigation or hear an appeal. The University verifies that the external professional who is engaged to conduct an investigation or hear an appeal has considered all the facts including the claimants and respondents responses to draft reports.</p> <p>Section 9.14 of the Policy and Procedures for Workplace Dignity and Respect outlines the process of issuing a draft report to both parties, requiring response within 10 working days. The policy outlines that the Investigator will give reasonable consideration to any responses provided and will provide a reasoned commentary in the final report following submission of responses by both parties.</p> |
| 14. | <p>i) The University should consider being more prescriptive in its policies in respect of the selection of disciplinary panel members.</p>   | <p>i) Statute No. 4 specifies:<br/> <i>“The Governing Authority shall devolve responsibility for all functions under this Statute to the Chief Officer and the Chief Officer may delegate authority to other employees of the University as</i></p>  |

| No  | Recommendation   | Action taken by University of Limerick  |
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|     | <p>ii) In respect of disciplinary matters of a serious nature, consideration should be given to including an independent external panel member. Such an approach is used in other Universities.</p>                                      | <p><i>appropriate, save in respect of the functions of the Governing Authority in relation to the Appeals Procedure as set down in this Statute and where the Chief Officer is the subject of disciplinary proceedings.”</i></p> <p><i>“Appeals to the Governing Authority will be heard by a five person subcommittee of members of the Governing Authority appointed by the Governing Authority called the Appeals Committee.”</i></p> <p>ii) This would require a change to Statute No. 4.</p> |
| 15. | <p>In addition to the provisions of Statute no 4 of the Universities Act 1997, the University should develop clearly documented criteria for suspension, and maintain evidence of decisions taken in respect of possible suspension.</p> | <p>Statute No. 4 specifies: <i>“Where, in the opinion of the University, an employee’s conduct may constitute gross misconduct, the employee may be summarily suspended with pay by the University from his or her post in the University to facilitate an investigation into the alleged misconduct.”</i></p>  |

| No | Recommendation | Action taken by University of Limerick  |
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|    |                | The provisions of Statute No.4 are satisfactory with regard to suspension of employees on full pay. The reasons for suspension are outlined in the suspension letter issued to the employee (and representatives if appropriate). |

### 9.3. Observations on Implementation of Mazars Recommendations

9.3.1. In line with the terms of reference, the Review has considered the University's response to the Mazars report and is satisfied that, except for recommendations 9 (i), 14 and 15 the University is responding appropriately to the recommendations made.

- **Recommendation 9 (i):**

*"The University should ensure that the rationale for decisions relating to how complaints are to be treated is adequately documented"* The Review believes this recommendation has not be responded to adequately as no confirmation has been provided by the University that a rationale for the decision of management or the HR Division relating to such complaints will be held on file.

- **Recommendation 14:**

(i) *The University should consider being more prescriptive in its policies in respect of the selection of disciplinary panel members.*

- (ii) *In respect of disciplinary matters of a serious nature, consideration should be given to including an independent external panel member. Such an approach is used in other Universities.*

The Review notes the University's response to this recommendation states that a change to Statute No. 4 would be necessary. As noted elsewhere in this Review, Statute No. 4 should be reviewed to ensure its fitness for purpose and any such review should also take account of the above-mentioned recommendations.

- **Recommendation 15:**

*"In addition to the provisions of Statute no 4 of the Universities Act 1997 University of Limerick, the University should develop clearly documented criteria for suspension, and maintain evidence of decisions taken in respect of possible suspension."*

The Review notes that Recommendation 15 recommends development of clearly documented criteria for suspension and evidence of decisions taken in respect of possible suspension. The Review believes this recommendation has not been responded to adequately as the recommendation states that these criteria and evidence are required **in addition** to the provisions of Statute No. 4.

#### 9.4. *General Recommendations*

The Review recognises that there are many and various recommendations included in this and other reports, including the Deloitte internal audit reports, the Mazars report and the forthcoming review of governance.

- **This Review recommends that the President, or a designated nominee, reports on the implementation of the recommendations in the reports noted above to the Audit and Risk Committee on a quarterly basis.**

- **This Review recommends that the Audit and Risk Committee is delegated with the responsibility for tracking implementation of the recommendations and in reporting to the Governing Authority in the normal manner. This reporting should continue for a minimum of three years and thereafter until such stage as the Governing Authority is satisfied that the recommendations have been implemented.**

# Appendix 1

## Terms of Reference

Terms of Reference for Independent review of certain matters and allegations  
relating to the University of Limerick

### Background

In October 2015 the Higher Education Authority ('HEA') commissioned Mazars to conduct a review of the processes employed by the University of Limerick ('the University') to inquire into the allegations made by serving and former members of staff in the Finance Office of the University. The persons concerned made the allegations as part of protected disclosures to the HEA under the Protected Disclosures Act 2014. The Mazars report (Appendix 1)<sup>42</sup> was published by the HEA in February 2016. In addition, the HEA has received a number of other protected disclosures and allegations relating to the University.

Arising from the publication of the Mazars report there followed a process of engagement between the HEA, Department of Education and Skills ('the Department'), the disclosers and the University. Sia Partners were appointed by the HEA to establish whether a facilitated intervention might offer a way out of the difficulties caused by disputes at the University but concluded that such an intervention would be highly unlikely to be successful. The Department and HEA are of the view that the matters in question are an ongoing cause of concern and require further review.

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<sup>42</sup> *Review of the processes employed by the University of Limerick to inquire into allegations made by Persons A, B and C*, January 2016. Available at: <http://hea.ie/assets/uploads/2017/09/Mazars-review-final.pdf>

In addition to the above, the Department was made aware in 2015 of unsanctioned severance payments made to two staff members in the University in 2012. These payments only came to light in the context of a C&AG Special Report on the Management of Severance Payments in Public Sector Bodies. During a hearing of the Committee of Public Accounts in March 2017 senior officials of the University provided details to the Committee which varied with the Department's understanding of the situation surrounding the severance payments.

The University has also communicated to the Department its view that an independent review of these matters now be carried out. On that basis, the Department and HEA have decided to commission an independent reviewer to identify, investigate and report on the allegations made and on issues relating to Public Pay Policy and Governance.

### **Terms of Reference**

The terms of reference of the review are as follows:

1. The reviewer will receive details of the allegations from the disclosers and any other persons who feel that there are matters of concern or of public interest relating to the University of Limerick that need to be addressed.
2. Where appropriate, the reviewer will interview or consult with the disclosers, other persons and relevant members of staff in the University in relation to the matters identified. The reviewer may revert to any party if further clarification or information is required.
3. On the basis of the information received, the reviewer will:
  - Determine whether the allegations require further examination and whether, on the balance of probabilities, the allegations are well-founded;



- Where allegations have been determined as well-founded, prepare a report that shall make findings or recommendations on the steps to be taken by the University including governance, HR, financial and administrative processes as well as overall organisational culture;
  - Examine the application of wider HR policies and processes in the University. This will cover the governance arrangements and practices around the use of severance payments.
  - Consider specifically and report on the recommendations in the Mazars report which have yet to be implemented.
4. The reviewer will consult with the Department and HEA as required and provide regular updates to them.
  5. The reviewer will present his/her final report, including any findings or recommendations, to all parties (the disclosers and other persons, the University, the Department and the HEA).

### **Approach to the Review**

The HEA will oversee the review and will commission an appropriate independent external reviewer to conduct the exercise. It is estimated that the review will take 20-25 working days to complete. The HEA Executive will support the reviewer in general administration, analysis of material and gathering of relevant data as required.

All parties will collaborate fully with the review and respond promptly and in full to requests from the reviewer for information, documents and other records.

## **Timeframe**

It is expected that the review will be completed by 30th September 2017. In the event that it is not practicable to make a final report within this timeframe, an interim report will be provided.

**Department of Education and Skills.**

**11 May 2017**

## **Appendix 2**

### **Policies and Procedures**

#### **Policy and Procedures for Workplace Dignity and Respect**

<http://www.ul.ie/hr/sites/default/files/POLICY%20AND%20PROCEDURES%20FOR%20WORKPLACE%20DIGNITY%20AND%20RESPECT.pdf>

#### **Statute No. 4 – Statute on Employee Disciplinary Matters and Termination of Employment**

[https://www.ulsites.ul.ie/corporatesecretary/sites/default/files/Statute%20No.4\\_0.pdf](https://www.ulsites.ul.ie/corporatesecretary/sites/default/files/Statute%20No.4_0.pdf)

#### **Policy and Procedures for Student Dignity and Respect**

<http://www2.ul.ie/pdf/184103083.pdf>

#### **Student Complaints Procedure**

<http://www2.ul.ie/pdf/306009609.doc>