



**Comptroller and Auditor General
Special Report**

**Internal Control in County Cork
Vocational Education Committee**

Report of the Comptroller and Auditor General

Department of Education and Skills

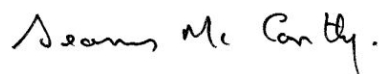
Internal Control in County Cork Vocational Education Committee

I have, in accordance with the provisions of Section 11 of the Comptroller and Auditor General (Amendment) Act 1993 carried out a review of certain matters pertaining to internal control in County Cork Vocational Education Committee (now dissolved in accordance with the Education and Training Boards Act 2013, but with functions transferred to Cork Education and Training Board (ETB)).

This report was prepared on the basis of information, documentation and explanations obtained from Cork ETB and the Department of Education and Skills. The ETB and the Department were asked to review and comment on the draft report. Where appropriate, the comments received were incorporated in the final version of the report.

References to any third parties (named or otherwise) are incidental to the purposes of assessing the performance by County Cork Vocational Education Committee of its administrative functions. Consequently, the report should not be read as constituting any comment, opinion or judgement by me in respect of any third party.

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



Seamus McCarthy
Comptroller and Auditor General

10 February 2015

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Abbreviations

BTEI	Back to Education Initiative
Cork ETB	Cork Education and Training Board
FETAC	Further Education and Training Awards Council
FMOEC	Fastnet Marine Outdoor Education Centre
QOI	Quality and Qualifications Ireland
PLC	Post Leaving Certificate
STP	Senior Traveller Programme
VEC	Vocational Education Committee
VSSU	Vocational Support Services Unit
VTOS	Vocational Training Opportunities Scheme

Summary

Summary

County Cork Vocational Education Committee (VEC) had annual expenditure of around €100 million and was responsible for a range of educational and training facilities. It employed 2,400 staff and catered for around 28,000 students on various programmes and courses. As part of the reform of the VEC sector, County Cork VEC was dissolved with effect from 1 July 2013 and its functions transferred to Cork Education and Training Board.

A large volume of correspondence has been received by the Committee of Public Accounts over an extended period, setting out a range of complaints and allegations about the operations of County Cork VEC, some with reference to incidents dating back to 2000.

The audit of the financial statements of County Cork VEC for the 2011 year of account was extended to examine the various alleged control weaknesses and alleged financial losses. The focus of the additional work was primarily on establishing whether any of the alleged control weaknesses were evident in the operation of County Cork VEC in the 2011 year of account, and if so whether the VEC had suffered financial losses as a result.

Operation of Macroom Youthreach

Youthreach is a national programme of second chance education and training directed primarily at unemployed early school leavers aged 15 to 20. County Cork VEC operated seven Youthreach centres. One of the centres, Macroom Youthreach, had an approved allocation for 30 students.

Payments to students at Macroom Youthreach

Eligibility for participation in the Youthreach programme is governed by guidelines issued by the Department of Education and Skills in 2001. While the Department specified eligibility criteria, local co-ordinators had discretion to allow individuals that did not satisfy the normal criteria to participate in the programme where it was determined that a foundation education and training programme was appropriate, notwithstanding any qualifications already achieved.

Between 2007 and 2012, payments totalling €114,000 were made to eight students who were subsequently deemed by the VEC to be ineligible.

In general, where a student does not satisfy the specified eligibility criteria in relation to educational levels achieved, the Youthreach application form should set out clearly the rationale for that student's inclusion on the Youthreach programme. Examination of the files of the eight students subsequently deemed ineligible in Macroom Youthreach indicates there is a lack of documentary evidence in relation to the reasons for their inclusion on the programme. Since they did not apparently satisfy the normal scheme criteria, the VEC should have documented the reason for their inclusion on the programme.

An internal audit report completed in August 2010 noted that just under one in five students participating in the Youthreach programme at Macroom had been on the programme for three or more years. This was well above the national average of around 3% of students participating for three or more years.

Although there were some control weaknesses, controls over assessment of eligibility were generally operating at Macroom Youthreach centre in 2011/12. Based on samples of files examined in other VECs, there was no evidence of the weaknesses that had occurred in Macroom being replicated at other Youthreach centres.

The Department should review its guidelines in relation to Youthreach and clarify the limits of discretion available to co-ordinators to admit students to the programme on an exceptional basis, and how such exercise of discretion should be documented.

Payments to staff at Macroom Youthreach

An internal audit report by the Vocational Support Services Unit (VSSU) completed in August 2010 identified a number of weaknesses over payments to staff at the Macroom Youthreach centre as follows.

- It was estimated that the VEC paid for 1,070 tuition hours in the year 2009/10, estimated to cost €60,000, where teachers were not timetabled to teach.
- The VEC had also paid part time teachers for an additional 500 non-teaching hours used for administrative work associated with the centre at an estimated cost of approximately €25,000 for the academic year 2009/10.
- Payments were made to two part time staff without deduction of PAYE and PRSI.
- It appeared that two individuals in receipt of a student allowance were not attending training but were in fact employed to provide tuition in English.

The audit of County Cork VEC's financial statements for 2011 and 2012 examined payments to staff, including in Macroom Youthreach, and no issues of concern were noted.

Leases of property

The Vocational Educational Act 1930 requires a VEC to obtain sanction from the Minister prior to entering a lease.

In 2012, an internal audit in the VEC raised concerns about two leases entered into without obtaining the required sanction, and recommended that the VEC conduct a review. This identified six further leases where sanction had not been obtained as required. The position in relation to seven leased buildings has now been regularised by way of retrospective sanction granted by the Department between November 2012 and May 2014.

One of the leases related to a 15 year lease agreement entered into in 1996 with an option to purchase the building in 2011 for a nominal sum. A revised lease agreement was entered into in 2008 in the context of securing grant funding of €1 million towards the construction cost of a crèche in the building. The term of the lease was extended to 2031 and this variation committed the VEC to additional lease payments of €431,700. Revised arrangements concluded in September 2012 provided for the cessation of lease payments with effect from 1 January 2012 and the transfer of ownership of the building for a nominal sum as provided for in the original lease. No monetary loss to the VEC arose as a result of the revised lease arrangements.

In 2010, the VEC also entered into a 99-year lease committing itself to an annual cost of €20,000 in the form of four scholarships, in return for the use of a site with an area of 0.9 hectares adjacent to a marine outdoor education centre in Schull. No cost benefit analysis comparing the projected cost of the scholarships against the likely benefits was carried out. The lease arrangement was terminated in August 2013 by mutual agreement with the land owner. The cost of the scholarships amounted to a total of €40,000, and the VEC had the use of the site for four years.

Other issues

A number of other issues were identified in relation to County Cork VEC.

- Between 2010 and 2013, legal settlements amounting to €111,600 were made by the VEC from its own funds and a further 23 cases were settled and paid for by the VEC's insurers at a cost of €95,000. In addition, legal costs incurred by the VEC amounted to €442,200 for the four years 2010-2013, significantly above the VEC sector average. A further case was settled by the ETB in 2014 and included compensation of €10,000 and arrears of salary for 11 years amounting to €168,000.
- In 2002, the VEC accepted a gift of a boat – the Omar B – and used it as part of a sailing training programme. The boat has been in dry dock storage since 2007, at a total cost of €10,700.
- Under long standing co-operation arrangements, VECs provide teaching services to other institutions. The Department sets an upper limit on the amount of teaching hours that can be used for such co-operation arrangements. Under an arrangement between the VEC and a voluntary group providing services to people with disability, the VEC provided funding in lieu of teaching hours. The arrangement was in breach of Departmental guidelines in relation to the operation of such arrangements. The funding provided was based on a specified number of training hours using VEC pay rates for an unqualified part time teacher. The actual pay rates in operation in the voluntary organisation were significantly lower. As a result, if funding had been provided based on the teaching delivered, the cost would have been lower.
- A tax audit of County Cork VEC by the Revenue Commissioners resulted in a settlement of €115,700 in June 2013. The settlement included a number of tax categories and related to tax periods as far back as 2003.

Conclusion

Some of the control issues outlined in correspondence about County Cork VEC were present in the 2011 and 2012 years of account and included expenditure on leases which had not been sanctioned by the Department, scholarship costs associated with the Schull lease and expenditure incurred in relation to storage of the Omar B sailing boat. During 2011/12, in a number of cases, the documentation supporting a participant's admission to the Youthreach programme was inadequate. In addition, the VEC incurred higher than average expenditure on legal costs and settlements.

Control weaknesses evident in earlier years in relation to the payment of teachers at Macroom Youthreach were not evident in relation to 2011/12. The ETB has since taken action to regularise transactions or to terminate arrangements in order to address the remaining issues.

Internal Control in County Cork Vocational Education Committee

1 Introduction

- 1.1** County Cork Vocational Education Committee (VEC) was established under the Vocational Education Act 1930. Over time, its remit was expanded to include delivery of post primary education and further/adult education.
- 1.2** In 2011, the VEC had expenditure of around €100 million and was responsible for a range of education and training facilities, including 22 post primary schools and community colleges, seven Youthreach centres, two outdoor education centres, a traveller training centre, a school of music and a cultural centre. Approximately 10,000 students attended post primary and post leaving certificate (PLC) education courses in these centres. Other educational and training services were provided to a further 10,000 full time and part time students in the areas of Vocational Training Opportunities Scheme (VTOS), Youthreach, Back to Education Initiative (BTEI) and adult education and, in addition, there were almost 8,000 students attending the outdoor education centre and the school of music. At the time, the VEC employed 2,400 staff.
- 1.3** The Education and Training Boards Act 2013 provided for the merger of VECs nationally, with a view to improving co-ordination and delivery of education and training. County Cork VEC was dissolved and its operations and functions, assets and liabilities (along with those of the City of Cork VEC) were transferred to Cork Education and Training Board with effect from 1 July 2013.

Focus of the Report

- 1.4** A large volume of correspondence has been received by the Committee of Public Accounts over an extended period, setting out a range of complaints and allegations about the operations of County Cork VEC, some with reference to incidents dating back to 2000.
- 1.5** The audit of the financial statements of County Cork VEC for the 2011 year of account was extended to examine the various alleged control weaknesses and alleged financial losses. The focus of the additional work was primarily on establishing whether any of the alleged control weaknesses were evident in the operation of County Cork VEC in the 2011 year of account, and if so, whether the VEC had suffered financial losses as a result.
- 1.6** The issues reviewed include
- the operation of Macroom Youthreach centre (Chapter 2)
 - payments to Youthreach staff (Chapter 2)
 - leases entered into by the VEC (Chapter 3)
 - other issues (Chapter 4).

2 Operation of Macroom Youthreach

- 2.1** Youthreach is a national programme of second-chance education and training and is directed primarily at unemployed early school leavers aged 15 to 20. It offers participants the opportunity to acquire certification while at the same time receiving an attendance allowance. County Cork VEC operated seven Youthreach centres.
- 2.2** The programme consists of two phases: a foundation phase to help overcome learning difficulties and develop competencies for further learning; and a progression phase which can include the leaving certificate applied course, a higher-level Quality and Qualifications Ireland (QQI) award or other skills training. Participants normally attend for one to two years but the duration of participation may be longer, depending on the participants' individual needs.
- 2.3** Participants in the Youthreach programme receive a weekly attendance allowance and may also receive additional amounts to cover travel, childcare and meals. The weekly allowance in 2011 was €77 for 16 year olds, €96 for 17 year olds and €188 for those aged over 18 (with some exceptions).¹

Investigations of Macroom Youthreach

- 2.4** Macroom Youthreach centre had approved places for 30 students.
- 2.5** Each Youthreach centre is managed by a centre co-ordinator. In May 2010, the co-ordinator for Macroom Youthreach centre went on certified sick leave.
- 2.6** In June 2010, as a result of concerns regarding activities and controls at the centre, the then CEO of the VEC
- employed an independent investigator to review Macroom Youthreach centre and sought advice from a firm of solicitors regarding employment matters, and
 - requested the Vocational Support Services Unit (see Figure 2.1) to conduct an internal audit review of Macroom Youthreach centre.
- 2.7** The VEC stated that attempts were made to engage with the Macroom Youthreach co-ordinator regarding the investigation and the internal audit but due to ill health, the co-ordinator was not available to meet with the investigator or to discuss the findings emerging from the internal audit report.

Figure 2.1 The Vocational Support Services Unit

The Vocational Support Services Unit (VSSU) provided an internal audit service to most VECs. (City of Dublin VEC had its own internal audit function.) The VSSU now provides an internal audit service to most of the newly established Education and Training Boards (ETBs).

The VSSU operates for and reports to the members of the relevant ETB. The Unit is funded by the Exchequer. For convenience, administrative matters in relation to the VSSU are co-ordinated through Cavan and Monaghan ETB.

¹ For example, participants aged over 18 may have been claiming Jobseekers Allowance or some other welfare payment from the Department of Social Protection. In cases where the welfare payment was higher than the Youthreach allowance, the participant continued to be paid at the higher rate.

- 2.8** The co-ordinator applied to the VEC to retire on ill health grounds in May 2011. The pension scheme provides that a member with between five and ten years service retiring on ill health grounds could be credited with an equivalent amount of added service.
- 2.9** The pension scheme procedures specify an independent medical assessment in cases where an application for ill health retirement benefit is made. In this case, the VEC did not employ an independent medical assessor in relation to the application. The VEC stated that it had made efforts to engage with the co-ordinator with a view to having an independent assessment carried out related to his fitness to return to work, but in the end, it relied on a letter from the co-ordinator's GP as evidence of his health status for retirement on ill health grounds.
- 2.10** Following the co-ordinator's retirement, the VEC terminated the investigation being conducted by the independent investigator. The cost of the investigation was €26,200.
- 2.11** In May 2012, the co-ordinator commenced unfair dismissal proceedings against the VEC at the Employment Appeals Tribunal. In January 2014, the case was dismissed on the grounds that it had not been lodged within the specified timeframe.

Internal Audit Report

- 2.12** The VSSU completed its report in August 2010. The report was issued to the CEO of the VEC. In June 2011, the VSSU provided a copy of the report to the Chairperson of the VEC's Audit Committee.
- 2.13** As outlined above, the centre co-ordinator was not available to the VSSU auditor either during the audit or to discuss the findings. The internal audit reviewed, inter alia,
- procedures pertaining to the application, assessment and payment of students
 - monitoring, checking and reporting systems for students, staff and suppliers, and
 - custody of assets at the centre.
- 2.14** The VSSU report identified a number of issues and control weaknesses in relation to the operation of Macroom Youthreach centre, and in particular, payments to ineligible students and certain payments to tutors.

Eligibility for the Youthreach Programme

- 2.15** Eligibility for participation in the Youthreach programme is governed by guidelines issued by the Department of Education and Skills in September 2001. In order to participate in a Youthreach programme, individuals must be EU citizens and should normally satisfy the following eligibility criteria.
- They should be aged between 15 and 20 years of age, be unemployed and have left school more than six months ago.
 - They should have no qualifications or incomplete qualifications from the junior cycle, or otherwise lack competence or skills.
- 2.16** The assessment process for participation on the Youthreach programme includes the completion of a standard application form supported by evidence of the individual's identity, age, address and prior education.

- 2.17** The Department's 2001 guidelines allow a local co-ordinator discretion to depart from the normal eligibility criteria in circumstances where an applicant lacks competencies or skills in the area of interpersonal communications, enterprise and motivation or where personal/domestic circumstances are such that a foundation education and training programme is the most appropriate option for them to pursue, notwithstanding any qualifications they already hold.

Payments to ineligible students

- 2.18** The internal audit report (completed in August 2010) concluded that seven individuals participating in the Macroom Youthreach programme were not eligible for the programme, and that the audit required further details in relation to another participant in order to conclude on his eligibility. The students had been participating in the programme for periods of between one and five years. The VEC took the following actions based on the findings of the internal audit report.
- In August 2010, five Youthreach students at the centre who had been accepted onto the programme at various dates back to November 2007 and who were still actively participating in courses were deemed ineligible and payment of their allowances was terminated.
 - Two other students who had left the programme in May and June 2010 respectively were also deemed to have been ineligible.
 - Another student who had started on the programme in March 2008 was retained on the programme in August 2010. However, he was deemed in October 2012 to have always been ineligible for payment.

Between 2007 and 2012, payments totalling €114,000 were made to these eight students. €34,000 of that total related to the student retained on the programme until 2012.

- 2.19** The VEC informed the Department that the trainees were deemed ineligible because they were not EU citizens or because they already held educational qualifications.
- 2.20** The internal audit report noted that just under one fifth of students in Macroom Youthreach had been participating in the programme for three years or more. While the Department does not specify maximum durations for student participation, a VSSU report¹ completed in 2008 noted that training in Youthreach is generally for a maximum of two years. An analysis completed for that report (based on visits to 43 Youthreach centres) noted that just 3% of participants had been participating in the programme for more than three years.

¹ VSSU report, October 2008, Youthreach general findings from internal audit reviews 2007/08.

- 2.21** The case files of the eight students were examined again in the course of this audit. Based on the available records, the documentation surrounding the application and assessment process in relation to the eight students was inadequate.
- None of the eight files included a fully completed application form.
 - Five files had partially completed forms but none of these had been stamped by the Department of Social Protection as evidence of their unemployment status.
 - There was no educational record on file for six of the students.
 - Two students appeared not to meet the normal eligibility criteria on grounds that they already had reasonable educational achievements.
 - There was no record in any of the cases of the exercise of discretion by the co-ordinator, or of any reasons which could have established their eligibility on exceptional grounds.
- 2.22** In summary, the audit did not find that the VEC had evidence of a sufficient basis for inclusion of the students on Youthreach when they joined the programme.
- 2.23** In June 2013, the VEC wrote to each student seeking a refund of the amounts paid but no responses were received to any of these letters and no money has been recovered. In May 2014, the ETB sought legal advice on the recoverability of payments based on a review of the eight student files and the Department's guidelines on eligibility for the Youthreach programme. The legal advice noted that
- The Department guidelines permit wide discretion in admitting students to the programme.
 - The eligibility guidelines do not have the force of law, so there is no suggestion that the payments were illegal.
 - There is no contract between the centre and applicants which obliges the applicant to abide by any particular rules – it noted that the application form was weak in this regard – and concluded that there was no prospect of a successful action to recover the payments based on breach of contract or misrepresentation.

Control over Payments in Macroom Youthreach in 2011/12

- 2.24** Control over payments to 25 other students in Macroom Youthreach centre in 2011/12 was examined.
- 2.25** Based on the audit work carried out, the controls were found generally to be operating satisfactorily. While there were application forms on file for all participants, some control weaknesses were identified.
- In three cases (from 25 examined), the evidence of the students' educational record was insufficient.
 - In respect of three travel allowance payments, it was not possible to substantiate the correct rate of payment as there was no satisfactory proof of address.
 - In two cases, there was no birth certificate on file as evidence of age.

Control over Youthreach Payments in other VECs

- 2.26** An examination of payments to Youthreach participants in other VECs, conducted on a sample basis as part of the audit of those financial statements in respect of 2011 did not reveal significant control weaknesses. In general, application forms (and supporting evidence) were on file in respect of all participants.
- 2.27** Students are normally deemed eligible for participation in Youthreach in circumstances where they have left school with less than five grade D's in the junior certificate or without having attempted the leaving certificate. In situations where these circumstances did not apply in other VECs, in almost all cases, the individual files set out clearly the rationale for the student's admission to the programme.

Conclusion

- 2.28** In general, where a student does not satisfy the specified eligibility criteria in relation to educational levels achieved, the Youthreach application form should set out clearly the rationale for that student's inclusion on the Youthreach programme.
- 2.29** In relation to the examination of files of the eight students subsequently deemed ineligible in Macroom Youthreach conducted as part of this audit, there was a lack of documentary evidence in relation to the reasons for their inclusion on the programme. Since they apparently did not satisfy the formal scheme criteria, the Youthreach centre should have documented the reason for their inclusion on the programme.
- 2.30** At the time the internal audit report was completed (August 2010), the proportion of students participating in the programme for three or more years was well above the national average.
- 2.31** Controls over assessment of eligibility were generally operating at Macroom Youthreach centre in 2011/12, although there were still control weaknesses in some cases. Based on samples of files examined in other VECs in 2011, there was no evidence of the weaknesses that had occurred in Macroom in earlier years being replicated at other Youthreach centres.

Recommendation 1

While there is no evidence of a systemic problem in that regard, the Department of Education and Skills should review its guidelines in relation to Youthreach to clarify the limits of the discretion available to Youthreach co-ordinators to admit students to the programme on an exceptional basis, how such decisions should be documented and reported, and what level of authorisation/confirmation should be applied (e.g. approval of ETB CEO).

Secretary General's response

Agreed. The Secretary General stated that the Department will review its guidelines in relation to Youthreach and provide clarification to ETBs on the procedures to be followed when enrolling participants who do not satisfy the normal criteria.

Part Time Youthreach Staff

- 2.32** Payments to staff employed at Youthreach centres include payments to full time staff in respect of tuition, administration and catering, and payments to part time staff to deliver training in specific areas. The VSSU internal audit report on Macroom Youthreach identified
- instances where part time teachers were paid in respect of hours where they were not timetabled to deliver training
 - payments to part time staff without the deduction of PAYE and PRSI.

Utilisation of Part Time Hours

- 2.33** In September of each year, each Youthreach centre co-ordinator notifies the VEC of the number of planned part time hours for the next academic period (September to May). As part of the VSSU audit of Macroom Youthreach, the notified planned part time teaching hours were compared to the class timetables at the centre. The VSSU estimated that in the financial year 2009/10, the VEC had paid part time teachers for 1,070 tuition hours when they were not timetabled to teach. The VSSU estimated the cost of these hours at €60,000.
- 2.34** The audit also noted that in some cases, part time teachers had been paid for additional hours used for administration work associated with the centre, rather than tuition. In 2009/10, the VEC paid for an additional 500 hours for administration at the centre at a cost of approximately €25,000. The audit noted that further clarification was required in relation to the exact nature of the additional hours in order to conclude on whether those hours were paid for and used correctly.
- 2.35** The VSSU noted that part time teachers should only be paid in respect of teaching hours delivered and recommended that payment returns from the centre should be reconciled to class timetables.

Salary Payments not processed through the Payroll

- 2.36** The VSSU identified a number of instances where the Macroom Youthreach centre employed individuals to deliver tuition but the relevant payments were not processed through the payroll.
- It appeared that two individuals in receipt of a student allowance were not attending for training but were in fact employed to provide tuition in English. This arrangement had ceased in the 2008/09 academic year.
 - Two other individuals were employed to provide tuition but were paid directly from the centre's bank account without the deduction of PAYE and PRSI.

Review of Payments to Staff, 2011 and 2012 Audits

- 2.37** The audit of the VEC's financial statements for 2011 and 2012 examined payments to staff including those at Macroom Youthreach. There were no issues of concern. There were no discrepancies noted between the contact hours required per the employment contracts and those time-tabled.
- 2.38** All payments sampled were processed correctly through the payroll.

3 Approval of Property Leases

- 3.1** Section 28 of the Vocational Education Act 1930 provided that a VEC could take a lease on land or buildings with the approval of the Minister. VECs also required ministerial approval to engage in borrowing.
- 3.2** An internal audit review of County Cork VEC, conducted in February 2012, identified two leases which had been entered into without the required ministerial approval. The VSSU recommended that the VEC review all its leases to ensure the appropriate sanctions were in place and, arising from this exercise, six other leases were identified as irregular.
- Six of the leases related to buildings used for the Youthreach programme, including one in Mallow.¹
 - Another lease related to a second building in Mallow that was originally used for the Senior Traveller Programme (STP) and subsequently for BTEI and Community Education and Literacy.
 - One lease related to a piece of land adjacent to Schull Community College.
- 3.3** In August 2012, the VEC sought ministerial sanction for the seven leased buildings. In November 2012, the Department granted retrospective sanction for five but sought further information in respect of the two Mallow buildings. Following further correspondence, the Department granted retrospective approval for the revised arrangements in respect of the Mallow Youthreach lease (November 2013) and the STP/BTEI lease (May 2014).

Mallow Youthreach Lease

- 3.4** In December 1996, County Cork VEC signed a 15 year lease with Mallow Credit Union in respect of a property owned by the Credit Union at Ballyellis, to be used as the Mallow Youthreach Education and Training Centre. The lease provided for an annual rental payment of €21,585² and included an option to buy the building in 2011 for €6,349 (IR£5,000). The minutes of the VEC meeting held in December 1996 record that the Chairman stated that the Department was not willing to allow purchase of the premises for the Youthreach centre but had agreed to the rental of the property.
- 3.5** In October 1998, the Credit Union provided funding of €63,487 (IR£50,000) to carry out repairs to the roof of the building. Under a new lease agreement, the annual rent was increased from €21,585 to €28,777 for the remainder of the lease term. The VEC did not seek sanction from the Department for the revised lease arrangement.
- 3.6** In 2008, the VEC sought to provide a crèche in the property with the aid of a €1 million³ grant from Pobal under the Government's National Childcare Investment Programme. The conditions attached to the Pobal grant required the grantee, inter alia, to either own the property or hold a long-term lease thereon. The VEC and the Credit Union amended the lease by deed of variation, extending the term by a further 20 years until 2031, thereby satisfying the Pobal condition. The extension to the lease was approved by the VEC Committee at its meeting in October 2008.

¹ The other Youthreach leases were located in Fermoy, Bandon, Macroom and Ballincollig (2).

² IR£17,000 payable quarterly in arrears at a rate of IR£4,250 per quarter

³ The total cost of providing the crèche was €1.14 million.

- 3.7** Around the time the funding to build the crèche was being secured from Pobal, the VEC also arranged a loan facility of €200,000 with the Credit Union but in the end did not avail of the facility. The VEC confirmed that no funds, other than the €63,487 in 1998, were advanced to it since the commencement of the lease.
- 3.8** The deed of variation committed the VEC to additional lease payments of €431,700. However, although not specified in the deed of variation, the VEC ceased paying the rent from December 2011, the termination date specified in the original lease. It entered into correspondence with the Credit Union to exercise the option provided for in the original lease i.e. purchase the property outright for the agreed €6,349.
- 3.9** In September 2012, the VEC and the Credit Union agreed to revised terms which confirmed that no rent is due from 31 December 2011 and provide for the transfer of ownership of the property to the VEC in December 2018 for the nominal sum of €6,349 (the amount provided for in the original lease).
- 3.10** Cork Education and Training Board (ETB) and the Credit Union entered a further revised arrangement (with Departmental sanction) whereby the ETB executed an option to buy out the property on 31 March 2014 for the sum of €6,349. Deeds of transfer have since been signed by both parties.
- 3.11** The crèche in Mallow commenced operations in September 2010. It catered for between six and ten children a day and had two full time staff. The CEO of Cork ETB stated that the crèche was operating at a loss and the ETB looked at a strategy to address this. However, in July 2014, a decision was made to close the crèche.

Conclusion

- 3.12** The VEC was in breach of the statutory requirement to obtain Departmental sanction in respect of seven leases but the position has now been regularised by way of the retrospective sanction.
- 3.13** Under the terms of the original lease for the Youthreach centre in Mallow, the VEC had the option of taking ownership of the building for a nominal sum in December 2011. A revised lease agreement was entered into in the context of seeking grant funding of €1 million towards the cost of construction of a crèche in the centre. This created an additional substantial liability for the VEC, but the Credit Union subsequently agreed to a further revised lease that removed that commitment. Cork ETB have since executed a deed of transfer with the Credit Union which transferred ownership of the property to the ETB with effect from 31 March 2014. No rent was paid or is due since December 2011 and therefore there was no monetary loss to the VEC as a result of the revised arrangements.
- 3.14** The December 1996 minutes of the VEC Committee meeting suggest that the Department was aware of the original lease arrangement but the VEC had no evidence of formal sanction for the lease from the Department. The Department confirmed that it was aware in 1996 of a new lease taken out by the VEC for the premises for Mallow Youthreach but it also had no evidence that sanction was either sought or given at that time. Retrospective sanction issued in November 2013.

Schull Community College Lease

- 3.15** The Fastnet Marine Outdoor Education Centre (FMOEC) is located within the grounds of Schull Community College, which was owned by the VEC. The owner of adjoining land was prepared to allow the College use of a site of 0.9 hectares to expand the range of activities at the FMOEC and to cater for more advanced studies in sailing. It would be available to FMOEC for storing and carrying out maintenance on boats and would also be available to accommodate functions and equipment during the annual international sailing regatta in Schull. The land was also to be available to the College for teaching physical education and extra curricular activities.
- 3.16** In June 2010, County Cork VEC entered into a 99 year lease arrangement with the land owner in respect of the site but did not seek the formal prior sanction of the Department as required under Section 28 of the Vocational Education Act 1930. The then Chairman and CEO of the VEC signed the lease on behalf of the VEC.
- 3.17** Under the terms of the lease, no rent was payable to the owner. Instead, the consideration was payment of €20,000 per annum in the form of four scholarships of €5,000 each to students of Schull Community College who had completed their leaving certificate and were pursuing further education. The scholarship scheme was administered by the VEC in accordance with criteria set down by an assessment group established to determine how the scholarships were to be awarded. The assessment group comprised representatives of the College and a charitable foundation for underprivileged children run by the land owner.
- 3.18** Precise details on what the site was to be used for were not stated, nor was there a cost-benefit analysis study carried out to assess whether the arrangement represented good value for money over the period of the lease.
- 3.19** In March 2012, the VEC advised the Department of its concerns as to the cost viability of the arrangement. It also instructed its solicitor to engage with the legal representative of the owner with a view to renegotiating the terms of the lease.
- 3.20** In August 2013, following a meeting between the CEO of Cork ETB and the land owner, the lease was terminated by mutual agreement. The owner allowed the school to continue using the site until June 2014, the only condition being that the ETB covered the insurance cost.
- 3.21** The cost of the scholarships under the lease incurred by the VEC was €10,000 in 2010, €20,000 in 2011, and €10,000 in 2012. There was no cost in 2013.

Conclusion

- 3.22** The VEC did not seek sanction from the Department, as required, to enter into the lease. In addition, the terms of the deal were imprecise, and the VEC did not carry out a cost benefit analysis of the proposal which compared the projected cost of the scholarships with the benefit likely to be obtained by the VEC.

4 Other Issues

Legal Costs and Settlements

- 4.1 County Cork VEC has incurred significant expenditure in relation to legal costs and settlements in recent years. In addition, a number of cases have been settled and paid by the VEC's insurers.
- 4.2 The following amounts have been incurred by or in respect of County Cork VEC in the period 2010 to 2013.

Figure 4.1 Legal costs and settlements incurred by or in respect of County Cork VEC, 2010 to 2013

	2010	2011	2012	2013
	€	€	€	€
Amounts paid by VEC				
Settlements	500	14,800	3,000	93,300 ^a
Legal costs	178,300	49,700	156,200	58,000
Total	178,800	64,500	159,200	151,300
Amounts paid by insurer				
Settlements	54,700	36,100	1,500	2,600
Legal costs	49,400	70,300	–	–
Total	104,100	106,400	1,500	2,600

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

Note: a Includes pay arrears of €83,300 and a compensation payment of €10,000, paid in January 2014 on foot of a settlement reached in 2013.

- 4.3 Among VECs nationally, County Cork VEC had the highest level of payments to solicitors and barristers in 2012, amounting to €156,200. This was considerably above the sector average of legal costs incurred by VECs, which was approximately €30,000.
- 4.4 Between 2010 and 2013, the VEC (or Cork ETB) made settlements in six cases totalling €111,600 which in some cases included arrears of pay. These amounts were paid from the VEC's own funds. All settlements related to matters concerning employment law and included such issues as
- contracts of indefinite duration
 - recognition of qualifications
 - unfair selection for redundancy
 - non-provision of contract of employment.
- 4.5 In February 2014, a settlement was reached in another case, resulting in payment of arrears of salary of €168,368 covering an 11 year period, and a compensation payment of €10,000. The settlement was brokered by the mediation service of the Equality Authority.

- 4.6** Between 2010 and 2013, a total of 26 cases were pursued through the VEC's insurers. Three cases were successfully defended. Settlements totalling €95,000 were paid by the insurers in the remaining 23 cases.
- 4.7** The CEO of Cork ETB confirmed that there are currently six ongoing cases in relation to County Cork VEC operations – five personal injury claims and one property damage case. The costs associated with defending all of the cases are covered by insurance policies.

Procurement of legal services

- 4.8** The audit noted that County Cork VEC had not engaged in a competitive procurement process for legal services.
- 4.9** In general, VECs had not tendered for legal services. In May 2013, the Department reported to the Committee of Public Accounts that only three of the 32 VECs were compliant with the requirement for competitive tendering in the area of procurement of legal services.
- 4.10** The Department noted that in October 2013, a circular issued by the Department of Public Expenditure and Reform which sets out the competitive procedures that can be used in the engagement of legal services and sets out a number of approaches and tools for bodies to use to manage legal costs, was issued to ETBs. In April 2014, the Department asked the ETBs to confirm that they were complying with the requirements of the circular. Ten ETBs indicated that they were compliant or that arrangements were being put in place or would be in place when required. The Department subsequently conveyed its expectation to all ETBs that they should be fully compliant with the procurement procedures specified in the circular. Compliance with the requirements of the circular will be examined in the course of the audit of ETBs for the 2013/14 period of account.

Omar B Sailing Boat

- 4.11** In 2002, the VEC accepted a gift of a three mast schooner. It planned to use the boat as part of a sailing training programme for Youthreach students in County Cork. Further donations were received from various donors that enabled the boat to be fitted out later that year.
- 4.12** In 2003, the Bantry Youthreach centre commenced a programme, with FETAC¹ accreditation, called the Omar B programme comprising sail training and other water-related activities for learners from all Youthreach centres in County Cork VEC.
- 4.13** The programme operated until June 2007 when the boat's passenger licence lapsed and was not renewed. In 2008, the VEC commissioned an engineer to examine the boat and he estimated that €150,000 would be required to make it seaworthy. A further marine survey report was undertaken in 2010. The total cost of both surveys was €1,772.
- 4.14** The Omar B has been in dry dock storage since 2007 and up to the end of 2013, costs of €10,700 had been incurred to keep the boat in dry dock.
- 4.15** In February 2013, the Department wrote to the VEC requesting that the boat be sold or otherwise disposed of. Cork ETB require the permission of the donor in order to comply with the Department's request but to date has been unable to secure such permission.

¹ FETAC (Further Education and Training Awards Council) was merged into QQI in November 2012.

- 4.16** Negotiations are ongoing between the boat owner and the CEO of Cork ETB who is hopeful of a resolution which will satisfy both parties so that the requirement to incur further expenditure on docking charges will cease.

St Joseph's Foundation – Co-operation Hours

- 4.17** Under long-standing co-operation arrangements, VECs provide teaching services to other institutions as part of the VECs' remit to provide continuing education in their areas. The Department sets an upper limit on the number of teaching hours that can be used for such co-operation arrangements and the related funding is included in each VEC's 'main scheme' programme.
- 4.18** St Joseph's Foundation is a voluntary group providing services to people with disability in North Cork and South West Limerick. It employs trainers in a number of disciplines including sports and recreation, horticulture, adult education, printing, catering/home management and personal development.
- 4.19** A co-operation arrangement was in existence between St Joseph's and County Cork VEC for many years whereby, in lieu of the provision of the allocated number of teaching hours, the VEC funded an element of the community training programme run by the Foundation in the aforementioned disciplines. In effect, the VEC were funding part of the pay costs incurred by the Foundation in providing training services.
- 4.20** In October 2011, the VEC paid a grant of €93,464 to the Foundation based on a calculation of its authorised maximum hours (2,288) multiplied by the VEC hourly pay rate for an 'unqualified' part time teacher (around €41 per hour).
- 4.21** The arrangement was examined during a VSSU internal audit in 2012 which found that the return form submitted by the Foundation in respect of the year 2010/11 revealed that the actual pay rates of the trainers was between €17 and €25 per hour. Evidence of Departmental approval for the arrangement in place with the Foundation was requested from the VEC.
- 4.22** The VEC was unable to provide evidence of such approval. The VSSU estimated that, had funding been provided to cover only the maximum number of tuition hours at the actual rate paid to the trainers, the cost would have been €49,000 less.
- 4.23** The VSSU internal audit also found that the VEC needed to strengthen its monitoring and evaluation of the arrangement with the Foundation.
- 4.24** The CEO of Cork ETB has indicated that the long standing arrangement with the Foundation, while technically in breach of the Department guidelines, was effective in delivering value for money. Had the VEC been providing teaching hours directly, the cost would have been the same, so the arrangement whereby the Foundation was delivering the training at pay rates lower than those paid by the VEC meant that more training hours were being delivered for no extra cost.

- 4.25** In June 2013, a revised service level agreement was put in place between St Joseph's and Cork ETB. Under the revised arrangements
- St Joseph's must submit staff timetables, pay rates, audited accounts and an annual report to Cork ETB.
 - There is a requirement for St Joseph's to review its programme delivery and project outcomes annually, and to report on objectives and indicators set down in the work plan and implementation plan.
- 4.26** Cork ETB noted that where project outcomes are not in line with approved plans, funding may be withdrawn.

Revenue Audit

- 4.27** The Revenue Commissioners conducted an audit of County Cork VEC's compliance with the tax code. A settlement of €115,700 was reached in June 2013. This included tax due of €95,300, interest of €10,900 and penalties calculated at 10% of tax due, amounting to €9,500. The settlement comprised PAYE/PRSI, VAT, Professional Services Withholding Tax and Relevant Contracts Tax and dated back as far as 2003. The settlement related to payments made from school/training centre bank accounts (€86,200) and VEC head office payments (€29,500).
- 4.28** The total tax due and related interest of €106,200 included
- €49,600 for one centre in respect of the period 2003 – 2012 and covering all categories of tax mentioned
 - €14,500 in PAYE/PRSI due on payments to Special Needs Assistants as compensation for reductions in employment hours
 - €11,000 in respect of PAYE/PRSI on payments made at school level to referees of post-primary schools' matches
 - €9,000 in respect of PAYE/PRSI on payments made to the County Games co-ordinator
 - €22,100 in respect of various payments issued to tutors, professionals and sub-contractors on behalf of schools, Youthreach, Literacy and BTEI and covering all the tax categories mentioned above.
- 4.29** €86,000 was paid to the Revenue Commissioners in January 2013 and the balance in June 2013. Both payments will be charged to the final account of the VEC covering the period 1 January to 30 June 2013.
- 4.30** Cork ETB has stated that it is reviewing the matters which gave rise to the Revenue settlement to ensure that no further breaches of the tax regulations occur.