

Higher Education Authority

Report of Special Meeting held on 10th October 2014, in Brooklawn House, Dublin 4.

Present ¹ Mr. Bahram Bekhradnia
Mr. Brendan Byrne
Dr. Mary Canning
Professor Maeve Conrick
Mr. Eamonn Grennan
Ms Siobhan Harkin
Professor Eileen Harkin-Jones
Ms Laura Harmon
Mr. John Hennessy, Chairman
Dr. Stephen Kinsella
Dr. Maria Meehan
Dr. Jim Mountjoy
Mr. Gordon Ryan
Professor Anthony Staines
Dr. Brian Thornes
Professor Marijk van der Wende

Apology: Mr. Paddy Cosgrave
Mr. John Dolan
Mr. Declan Walsh

In attendance: Mr. Tom Boland
Mr. Fergal Costello
Mr. Padraic Mellett
Ms Sarah Fitzgerald

The purpose of the meeting was to review the reports of the International Panel on stage 3 of the Technological University process

1. Members only session

1.1 Members felt that the reports of the expert panel created significant unease and that it was a requirement of the board to assess whether the plans were both credible and realisable. Clarity on both process and legal position were desirable. The board felt that each plan be reviewed separately and that there would be a reasonable and rational basis for any decision it would make. Whatever standard was now set would have impact on potential future TU decisions.

¹ Members present for all items unless otherwise indicated. The meeting concluded at 5.00pm

2. Legal and Process Issues

2.1 The CEO outlined the TU designation process to date noting that the process for stage 3 had been considered by the System Governance and Performance Management Committee in February and subsequently approved by the Board. The International Panel has reviewed the plans, met both consortia and has come to the conclusion that the plan submitted by each consortium is credible and achievable. He advised members that the decision on the plans is the Board's, based on the conclusions of the expert panel and their own view of the plan. This decision is a reserved function of the Board and cannot be exercised by the Executive or the International Panel.

2.2 He outlined to members preliminary legal advice as arranged by the HEA's solicitor. This advice was to the effect that the Board would be acting within their powers if they were to reject the plan. This could occur for reasons to do with a breach of process, system issues that would make implementation impractical, or because the Board disagrees with the conclusions of the panel. However, the advice was that the power to disagree with the conclusions of the panel should not be exercised lightly. If, as seemed likely, the Board's decision was challenged by a judicial review, a court would consider if the Board acted reasonably and proportionately. The Board would have to be able to put forward a detailed, reasoned and persuasive rationale. The court would have regard to whether the Board had the necessary expertise to analyse a plan in detail and if the Board are sufficiently removed to avoid any suggestion of conflict of interest and/or objective bias.

The principles of natural justice would also have to be adhered to. This would entail;

- The Board sets out the areas of disagreement to the panel and ask them to respond.
- If the Board remains intent on disagreeing that intention should be conveyed to the applicant consortium and they should be given an opportunity to respond to areas of concern.

He concluded by noting that Counsel had advised that the Board proceed with significant caution were it to decide to reject the conclusions of the reports of the panel.

2.3 The following issues were raised;

- Does the HEA have to make a decision by 31st October? The CEO indicated that the HEA could delay its decision beyond 31st October so long as it was not delaying the matter unreasonably. He advised members however that the system was expecting a decision by 31st October in the case of the Dublin consortium.
- Is it open to the Board to accept either report subject to certain conditions/further clarification? The CEO indicated this was possible.
- What would be the position were the Board to be of the view that some of the panel's recommendations, e.g. the need to provide the two consortia additional funding, were unachievable? The CEO indicated it would be unfair

on the consortia to reject the plans for reasons beyond their control, especially as the panel had endorsed the plans in any case.

- Stage 2 of the process relating to merger and levels 6 and 7. It was pointed out that the institutions in the consortia cannot become a TU until they merge and commit to protecting levels 6 & 7 as required.

3. General Discussion

3.1 The CEO addressed a number of issues raised by members. He confirmed that the plans can be approved subject to certain conditions. It was open to the Board to reserve its position on one or other of the plans. The Expert Panel was willing to consider any further issues the Board may wish to raise. It would be preferable if such issues were referred back soon while the process was still reasonably fresh in their minds. In addition, the focus should be on clarifying or expanding on issues raised by the Panel in their report.

3.2 It was important that the HEA was clear in its own role in dealing with applications for TU status i.e. to facilitate applications to attain TU status having regard to Government policy. It was accepted that while the HEA had to provide a leadership role, the HEA should be supportive of the applicants. Where there were genuine concerns these should be couched in a supportive manner.

3.3 Concern was expressed that the content of the reports did not match the final recommendations.

3.4 The recommendation of the panel that additional funding should be provided presented serious problems having regard to the current funding available to the HEA. On balance it was felt that any case made for additional funding would be helpful. The point was made that academic departments and support units, subject to periodic quality reviews, will often receive recommendations that have resource implications. The departments/units concerned take a pragmatic approach towards such recommendations.

As there was an opportunity cost for the system, the Executive should seek expert advice on the costs associated not just with the current two proposals but applications in general. The Executive agreed to undertake this exercise.

3.5 Other issues raised;

- The possibility of some HEIs being allowed flexibility with their ECF to facilitate mergers.
- Evidence lacking in terms of sustained level of research activity of staff, to include those holding level 10 qualifications and those with equivalent professional experience, in order to meet staff profile criteria.
- Budget implications were the academic contact hours in the TUs to mirror those in the traditional universities. The budgets as set out in the plans represented merely an aggregation of existing funding.
- The importance of links with the work-place, a key component of TUs, was not adequately addressed in the reports.

4. TU4Dublin Application

4.1 The following issues were discussed –

The staff profile outlined in the plan. It was noted that the consortium's profile includes the professional equivalent of PhD, although agreement has not yet been reached as to its definition. Some concern was expressed over the proportion of staff who can demonstrate a sustained level of research activity, in addition to holding level 10 qualifications or the professional equivalent. The TU4Dublin may well have to recruit more staff with the appropriate qualifications and this would have resource implications. It was noted that the consortium should not be expected to meet the minimum staffing profile until they are at stage 4.

Cost: Clarity was required including the source of non-exchequer income. The application had a relatively high contingency provision. The extent to which the costings were subject to a risk analysis should be assessed. The point was made that it was to be expected that the process leading to TU designation would have resource implications so it would be unfair to turn down the applications due to uncertainty over the availability of additional resources. It would have been expected that the plan would have included some provision for co-funding from industry as it was not credible for any new institution to expect that it would be entirely publicly funded. This was outlined in the National Strategy Report. It was noted that the panel had recommended that both consortia explore other sources of research funding.

Student numbers should be stress tested.

4.2 Having regard to the fact that it was open to the HEA to approve the panel's report on TU4Dublin subject to certain conditions/clarifications, some of which may be in addition to recommendations outlined in the panel's own report, it was important that the consortium addressed any additional issues raised by the HEA. It was noted that some of these requirements will be time bound.

Decision: Members agreed that the TU4Dublin consortium would be advised as follows;

“The plan has now been evaluated by an expert Panel, as provided for in Stage 3 of the process. The Board of the HEA has reviewed the report of the panel and the plan. The Board welcomes the plan and have decided that, in principle, the plan is credible. The realisation of the plan will require close attention to a number of considerations, addressed both to the institutions directly concerned and the HEA, and set out in the report of the expert panel. The HEA is giving immediate attention to the considerations set out by the panel in the context of the national landscape for higher education. We are also considering what further issues need to be addressed at this time. We will forward the report of the Panel to you by end November, at which time we will also set out additional issues that require attention.”

The Executive will prepare for the November Board meeting a paper outlining the considerations which the TU4Dublin consortium need to address. This document, once approved, will be submitted to the consortium with the expert panel's report.

5. Munster Technological University Application

5.1 Serious and widely held concerns were expressed over the credibility of the Munster TU plan and the extent to which it could be realised as presented. The concerns expressed included;

- The inadequacy of the mission statement/ vision.
- The insufficiency of the costing of the plan.
- The apparent absence of an adequate risk assessment.
- The conditionality and vagueness of the language in the plan in important respects.
- The plan presented as the rebranding of an IoT which was unacceptable.
- In relation to TU criteria, the plan lacks demonstration of a sustained level of research activity of staff, to include those holding level 10 qualifications and those with equivalent professional experience, in order to meet the staff profile criteria.
- The plan implied an erroneous assumption that simply achieving TU status would lead to additional research revenue.
- The concerns of the panel in relation to the governance and management of the proposed TU.

5.2 In terms of the Panel report, members noted that the tenor of comments in some instances, did not align with the Panel conclusions reached. The language in the report was somewhat nuanced so it was important that the HEA amplify such concerns where appropriate. The near unanimous opinion at the meeting was that the proposal should be rejected, that said, it was important that the feedback to the consortium should be as supportive as possible having regard to the morale of staff in both institutes.

5.3 Next steps

Members were advised, to ensure fair procedure that they should take further time to review the plan and determine the detailed grounds for a possible rejection of the plan given the near unanimous reservations. It is imperative that the HEA makes a decision that will stand up to possible challenge and protect the reputation of the HEA. Having regard to the above the Board should follow the following process -

- (1) Set out the reasons for rejection of the plan. These need to be detailed. While some issues were raised at the meeting a detailed memorandum setting out the considerations that would lead to a decision to reject the plan would be required. Members should contact the Executive outlining grounds for a decision on the Munster consortium's plan. The Executive will prepare a draft memorandum having regard to issues raised at the meeting and subsequent views submitted by members and circulate this to the Board for its agreement.
- (2) Following agreement of the Board of this draft, the Executive will ask the expert panel for their views on the issues as appropriate.

(3) Having considered any views of the panel at its next meeting in November, if the Board remain of the opinion that the plan should be rejected, then the views of the consortium will be sought on the stated reasons for that opinion.

(4) Having considered the response of the consortium, the Board makes its decision.

(5) Until the HEA is in a position to state the detailed reasons for the opinion that the plan be rejected, the prudent course is to inform the consortium only that their proposal remains under consideration.

Decision: It was agreed that the Executive would prepare for consideration by the Board at its November meeting a document detailing the grounds for possible rejection by the HEA having regard to the above process. The Munster consortium will in the meantime be advised that the HEA requires more time before a decision is made and that their proposal remains under active consideration.

Padraic Mellett
Secretary to the Board
13th October 2014