



Northern Ireland Audit Office

Financial Auditing and Reporting: General Report by the Comptroller and Auditor General for Northern Ireland – 2016





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6 December 2016

This report has been prepared under Article 8 of the Audit (Northern Ireland) Order 1987 for presentation to the Northern Ireland Assembly in accordance with Article 11 of the Order.

K J Donnelly
Comptroller and Auditor General

Northern Ireland Audit Office
6 December 2016

The Comptroller and Auditor General is the head of the Northern Ireland Audit Office. He, and the Northern Ireland Audit Office are totally independent of Government. He certifies the accounts of all Government Departments and a wide range of other public sector bodies; and he has statutory authority to report to the Assembly on the economy, efficiency and effectiveness with which departments and other bodies have used their resources.

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Abbreviations

AFBI	Agri-Food and Biosciences Institute
ALB	Arm's Length Body
AOCC	Assembly Ombudsman and Commissioner for Complaints
BHARNI	Built Heritage at Risk Northern Ireland Register
C&AG	Comptroller and Auditor General
CAP	Common Agricultural Policy
DAERA	Department of Agriculture, Environment and Rural Affairs
DARD	Department of Agriculture and Rural Development
DCAL	Department of Culture Arts and Leisure
DE	Department of Education
DEL	Department of Employment and Learning
DETI	Department of Enterprise, Trade and Investment
DFP	Department of Finance and Personnel
DHSSPS	Department of Health and Social Services and Public Safety
DOE	Department of Environment
DOF	Department of Finance
DOJ	Department of Justice
DRD	Department for Regional Development
DSD	Department for Social Development
DSO	Departmental Solicitor's Office
EAFRD/EAF	European Agricultural Fund for Rural Development
EAGF	European Agricultural Guarantee Fund
EC	European Commission
EU	European Union
FReM	Northern Ireland Financial Reporting Manual
FSA	Food Standards Agency in Northern Ireland
FTE	Full Time Equivalent
GFIS	NI Civil Service Group Fraud and Investigation Service
HEI	Higher Education Institutions
HESA	Higher Education Statistics Agency

JCC	Joint Council Committee
LAG	Local Action Group
LoO	Letter of Offer
LPS	Land and Property Services
LSANI	Legal Services Agency Northern Ireland
MA	Managing Authority
MPMNI	Managing Public Money Northern Ireland
NAO	National Audit Office
NIAC	Northern Ireland Assembly Commission
NIAO	Northern Ireland Audit Office
NIAUR	Northern Ireland Authority for Utility Regulation
NICF	Northern Ireland Consolidated Fund
NICTS	Northern Ireland Courts and Tribunals Service
NIEA	Northern Ireland Environment Agency
NIHE	Northern Ireland Housing Executive
NILSC	Northern Ireland Legal Services Commission
NIRDP	Northern Ireland Rural Development Programme
NIW	Northern Ireland Water
NMNI	National Museums Northern Ireland
OFMDFM	Office of First Minister and Deputy First Minister
PAC	Public Accounts Committee
PAR	Project Assessment Review
PPS	Public Prosecution Service
QUB	Queen's University Belfast
RHI	Renewable Heat Incentive
SOR	Schedule of Requirements
SSA	Social Security Agency
STEM	Science, Technology, Engineering and Maths
UU	University of Ulster
VSS	Victims and Survivors Service

Foreword



Foreword

This report to the Northern Ireland Assembly summarises the results of the financial audit work undertaken on my behalf by the Northern Ireland Audit Office (NIAO). It deals primarily with the 2015-16 accounts of central government bodies but also considers a number of legacy accounts from previous accounting periods. It does not include the results of my examination of the accounts of those bodies within the health and social care sector which I report on separately. The Local Government Auditor produces her own annual report on financial audit work in the local government sector.

The primary aim of the NIAO's financial audit service is to provide objective information, advice and assurance to the Northern Ireland Assembly on how public funds have been used. In addition, we strive to assist audited bodies to improve their financial management processes, governance and propriety in the conduct of public business. This is achieved through our mainstream financial audit work, attendance at audit committees and production of good practice guides. Our statutory independence from Government affords us the opportunity to critically evaluate the performance of public bodies in an unbiased manner. Meanwhile, our close partnership with the Public Accounts Committee (PAC) enables us to assist them in holding public bodies to account.

The public sector is currently facing a number of financial uncertainties and there are significant budgetary pressures on the Northern Ireland (NI) block grant which are likely to continue for the foreseeable future. The public sector has made significant savings in recent years. It is clearly necessary to continue to pursue efficiencies and cost reductions wherever possible. This includes restructuring and reducing permanent staff numbers.

Despite these reductions and uncertainties the important work of public services must continue. NIAO will play its part. We continue to encourage and support best practice in financial management; promote the proper conduct of public business; and promote improvement in the efficiency and quality of services provided to the public.

At a time when public finances are under increasing scrutiny and with public spending cuts in departmental allocations, my General Report should prompt a timely focus on the qualified opinions and reports issued on departmental resource accounts and other accounts for 2015-16 to enable the lessons to be applied in future years.

Many of the qualified audit opinions this year result from failures to comply with instructions from governing authorities, including the Department of Finance (DOF) and the European Union (EU). However this year all Departments were able to contain expenditure within statutory limits voted and approved by the Assembly, which avoids an excess vote position which is always irregular, that is, not in line with the intention of the Assembly.

I have also included short reports on the retention of students in Higher Education Institutions, the Coleraine to Londonderry rail upgrade, confidentiality agreements in the Northern Ireland public sector, protecting Northern Ireland's built heritage and control failures in the administration of European Funding under the Rural Development Programme.

In conducting financial audit work I am always mindful of the need to provide "added value" to audited bodies. Our oversight of public bodies affords us a unique position to identify examples of good practice and promulgate these throughout the public sector. It is reassuring that audited

bodies implemented a significant number of changes as a result of recommendations arising from our financial audit work. That is when the value of public financial audit is at its strongest.

The need for effective, efficient and independent audit scrutiny of public sector bodies is essential as the competing demands on public sector resources continue to grow. The experience and knowledge of my staff within the Northern Ireland Audit Office ensures that they are fully equipped to meet the challenge of providing this vital service. I would like to thank them for their continued professionalism in this work. I am also very grateful to the staff in the Northern Ireland Civil Service and the other public bodies audited for their continuing cooperation.

KJ DONNELLY

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6 December 2016

Section One:
Northern Ireland Consolidated Fund 2015-16 – Revenue Accounts



Section One: Northern Ireland Consolidated Fund 2015-16 – Revenue Accounts

Introduction

1.1 The Northern Ireland Consolidated Fund (NICF) is the NI Executive's current account (operating on a receipts and payments basis). All payments out of the NICF must have legislative authority and may either be charged to it directly by statute (known as Standing Services) or voted by the Assembly each year in the Budget Bills (known as Supply Services). Government Accounts Branch within the Department of Finance (DOF) - formerly the Department of Finance and Personnel (DFP) - controls the NICF, subject to the Comptroller and Auditor General (C&AG) authorising payments by, and determines arrangements for payments into the NICF.

1.2 Payments into and out of the NICF are reported annually in the Public Income and Expenditure Account which DOF prepares and submits for audit by the C&AG, in accordance with the Exchequer and Financial Provisions Act (Northern Ireland) 1950. I am content that the 2015-16 financial statements of the Public Income and Expenditure Account properly present the receipts and payments and that they are regular.

Payments into the Northern Ireland Consolidated Fund

1.3 An analysis of the amounts paid into the NICF in 2015-16, compared to the previous year's sums in brackets, is shown in **Figure 1**.

1.4 Payments into the NICF are categorised as follows:

- **Block Grant:** this is paid by the Secretary of State for Northern Ireland out of money provided by the UK Parliament and is, subject to the limit set by HM Treasury, the balance required to bring the level of public income in Northern Ireland up to the amount needed to cover public expenditure;
- **Capital Receipts:** the Exchequer and Financial Provisions Act (Northern Ireland) 1950 provides that all money raised by the creation of debt is payable into the NICF, together with receipts representing repayment of loans made from the fund and interest on those loans;
- **Rates Revenue:** this is rates income (regional and district) which is due for each property in Northern Ireland and is billed and collected by Land & Property Services (LPS); and
- **Consolidated Fund Extra Receipts and other sums due to the NICF:** these are receipts which are not the product of taxation, for example, interest received on Government loans and loans from the Consolidated Fund.

Figure 1: Analysis of Payments into the NICF

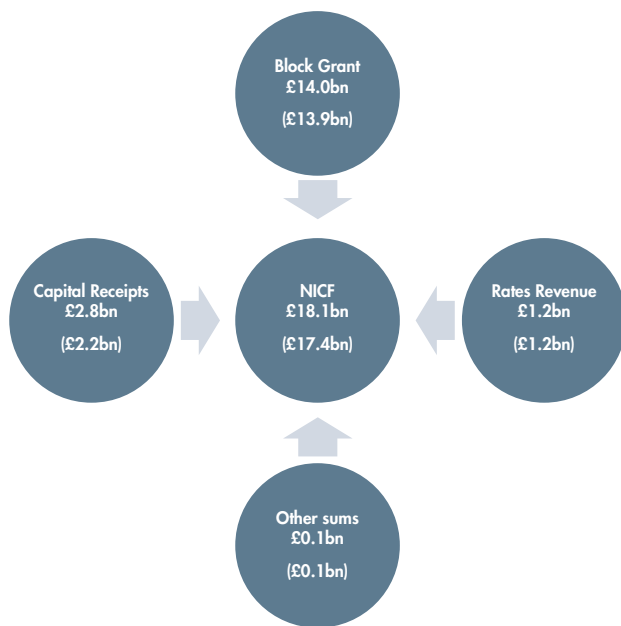
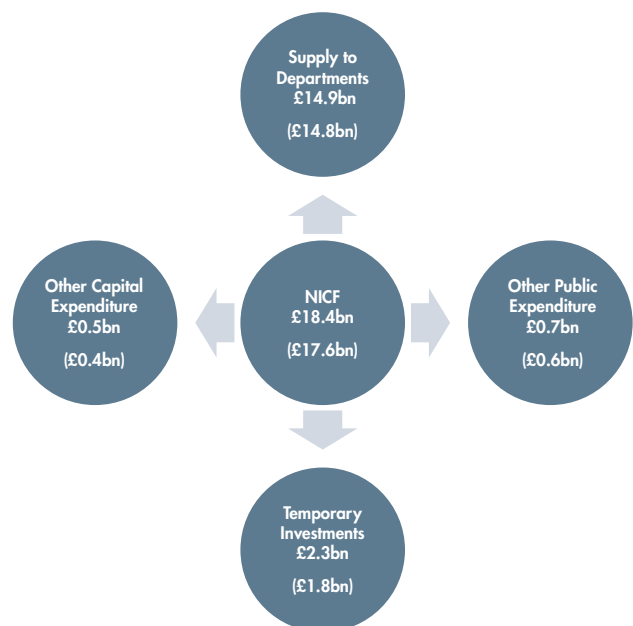


Figure 2: Analysis of Payments out of the NICF



1.5 Rates Revenue (regional and district) which is billed and collected by LPS, is accounted for in the LPS Trust Statement – Rate Levy Accruals Account and is subject to separate audit. The rates revenue in **Figure 1** are the net receipts from the 2014-15 financial statements of the LPS Trust Statement – Rate Levy Accruals Account.

Payments out of the Northern Ireland Consolidated Fund

1.6 An analysis of the amounts paid out of the NICF in 2015-16, compared to the previous year's sums in brackets is shown in **Figure 2**.

1.7 Payments out of the NICF are as follows:

- **Supply to Departments:** payments required to meet central government expenditure i.e. from departmental Supply Estimates. Money is voted by the Northern Ireland Assembly (the Assembly) for a particular financial year. Statutory authority for the necessary payments from the NICF is given by the Budget Act for the year in question, which also grants authority for what the Assembly intends the money to be used for;
- **Temporary Investments and Other Capital Expenditure:** includes loans to district councils, other public bodies under statute, and schools. It also includes redemption of debt and other payments such as

Section One: Northern Ireland Consolidated Fund 2015-16 – Revenue Accounts

the investment of temporary cash surpluses on the short-term money market; and

- **Other Public Expenditure:** payments for services which the Assembly has decided by statute should be met directly from the NICF, for example, interest on loans from the National Loans Fund; judicial salaries; and the salary and pensions of the Northern Ireland Ombudsman.

1.8 Appendix 1 shows the amount of supply received by Northern Ireland departments in 2015-16 and 2014-15. The two largest Departments were the Department of Health and Social Services and Public Safety (DHSSPS) and the Department of Social Development (DSD) receiving supply of £4.5bn and £3.9bn respectively in 2015-16. 10 of the 18 departments received a smaller amount of supply compared to 2014-15.

Voluntary Exit Scheme

1.9 In response to the significant budgetary pressures facing departments, the NI Executive asked DFP to bring forward proposals to effect a paybill reduction. The Stormont House Agreement and Implementation Plan (Fresh Start) provided the flexibility to use £700 million¹ of capital borrowing to fund voluntary exit schemes over the four year period to 2018-19.

1.10 In 2015-16, £170.7 million was spent on exit schemes. Over half the expenditure (£90.4 million or 53 per cent) provided for the exit of 2,363 Full-Time Equivalent (FTE) staff under the Northern Ireland Civil Service Voluntary Exit Scheme. The remaining funding of £80.3 million, provided for the exit of 2,020 FTE staff through 22 voluntary exit schemes across the wider public sector. Schemes funded in 2015-16 are estimated to have generated in-year paybill savings of £45 million in 2015-16. Annual savings in future years are estimated at £155 million. I reported in October 2016² on how the Department of Finance managed the implementation of the voluntary exit schemes.

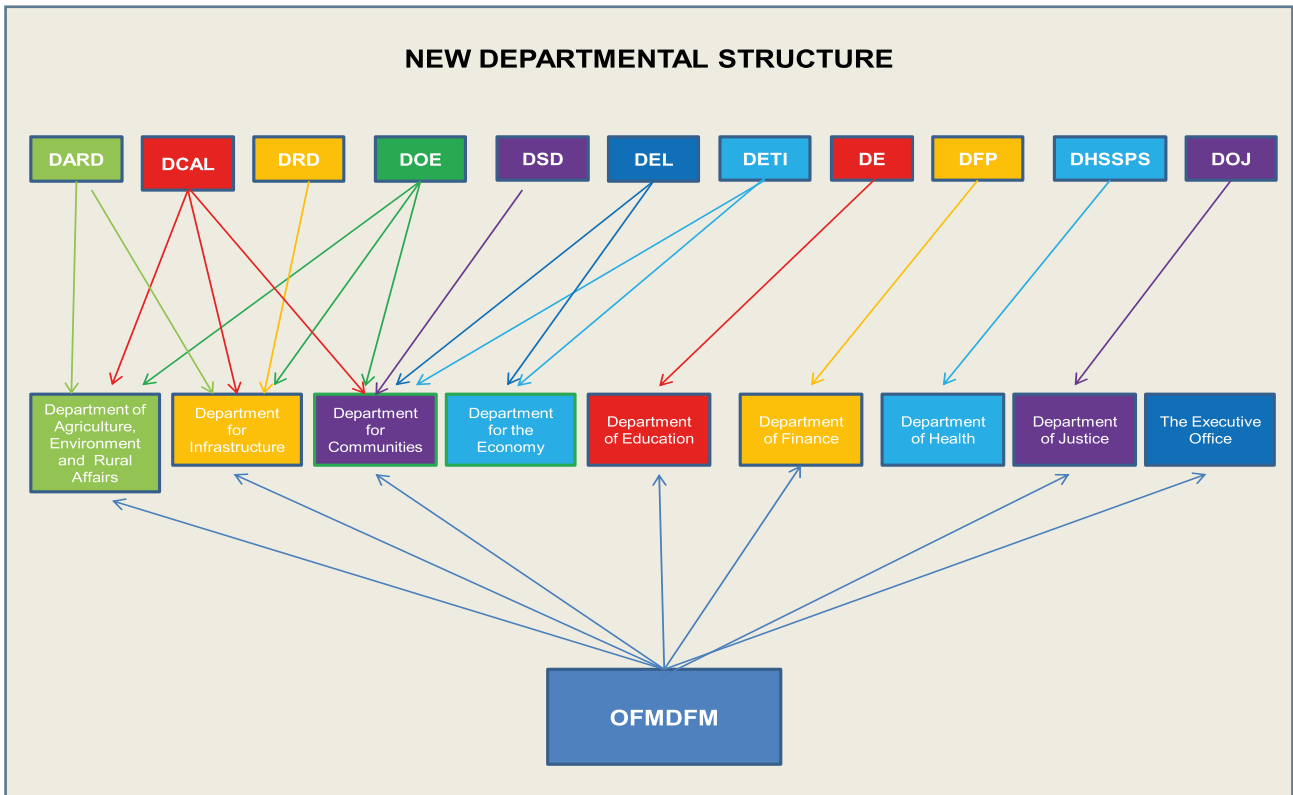
The Future

1.11 The NI Executive reduced the number of NICS Departments from 12 to 9. This change – the most significant departmental reorganisation since 1999 – took effect from 9 May 2016. Figure 3 outlines the main relationships between the new Departments (described by their full name) and their predecessor organisations (identifiable by their initials).

1 £200m in 2015-16; £200m in 2016-17; £200m in 2017-18 and £100m in 2018-19

2 *Northern Ireland Public Sector Voluntary Exit Schemes*, Northern Ireland Audit Office, 11 October 2016.

Figure 3: NI Government Reorganisation – Transfer of Responsibilities



Source: NIAO and OFMDFM

1.12 The reorganisation occurred in a context of significant budgetary pressures, where it can be anticipated that the new Departments will be expected to achieve more with fewer resources. The change in demographics and public expectation of service delivery prompts new ways to increase the value for money from public spending and improve the quality of

public services. To achieve more savings without detriment to those using public services, departments will be looking for innovative ways to organise and deliver services. To succeed, departments will need to continue to develop new skills, new methods of engagement with those using public services and new innovative thinking about reforming services.

Section Two:
Qualified Opinions and Reports on Accounts



Section Two: Qualified Opinions and Reports on Accounts

Remit

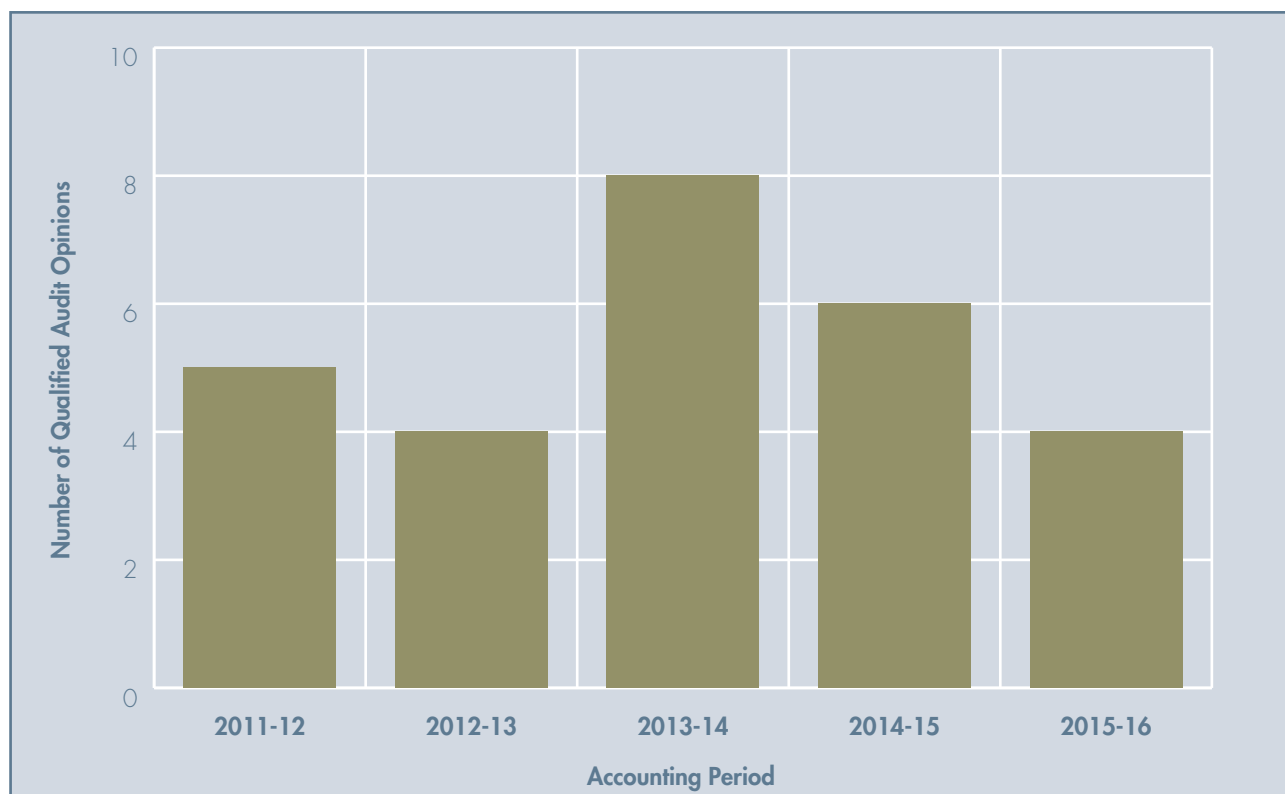
2.1 I am responsible for forming an audit opinion on 128 central government accounts. In forming an audit opinion on a set of financial statements I must assess whether expenditure is regular and in accordance with the intentions of the Assembly when it granted the money.

Qualified Audit Opinions – Resource Accounts

2.2 The 2015-16 accounting period saw a decline in the number of resource accounts receiving qualified opinions

compared to the previous year. **Figure 4** illustrates the number of resource accounts that have received a qualified audit opinion for the five year period 2011-12 to 2015-16. In the 2015-16 accounting period, four of the twenty resource accounts received a qualified audit opinion (20 per cent compared to 32 per cent in 2014-15 and the lowest proportion³ within the five year timeframe). The reasons for the qualifications in the 2015-16 accounting period included significant levels of benefit fraud and error; a failure by departments to obtain necessary DOF approvals; and a failure to comply with EU regulations.

Figure 4: Number of Resource Accounts receiving a Qualified Audit Opinion for Accounting Periods 2011-12 to 2015-16



³ While the same number of resource accounts were qualified in 2012-13, in 2015-16 the total number of resource accounts increased from 19 to 20.

2.3 Departments plan their resource and cash requirements so that they do not exceed the limits approved by the Assembly. If one or both of these limits are exceeded, an excess vote occurs and I qualify my opinion on the accounts and report on the circumstances giving rise to it. I also bring the matter to the attention of the Public Accounts Committee which must decide whether to recommend that the Assembly approves further grant to the Department involved to regularise the overspend. I am pleased to report that no resource account received a qualified audit opinion due to an excess vote compared with two in 2014-15.

2.4 Of the four resource accounts receiving a qualified audit opinion in the 2015-16 accounting period, two (DARD and DSD) had been subject to a similar qualified audit opinion in the previous accounting period, and two (DETI and DOJ) received new qualified audit opinions. Four accounts which had been qualified in 2014-15 were no longer subject to qualification.

2.5 **Figure 5** contains brief details of the four resource accounts which received qualified audit opinions for the 2015-16 financial year. My full reports are published separately and laid in the Northern Ireland Assembly.

Figure 5: Resource Accounts 2015-16 receiving a qualified audit opinion	
Public Body	Nature of the Qualified Audit Opinion & C&AG's Report
Department of Agriculture and Rural Development	<p>The audit opinion on the Department of Agriculture and Rural Development's (DARD) Accounts has been qualified for a number of years. This year's accounts were qualified in respect of two issues:</p> <ul style="list-style-type: none"> • During the 2015-16 financial year, DARD accrued £17.4 million (£17.3 million in 2014-15) in its resource accounts as amounts due to be paid to the EU in respect of disallowances of EU funding through the European Agricultural Funds. At 31 March 2016, the total amount accrued in the Department's financial statements for EU disallowances is £37.3 million. I qualified my regularity opinion as the £17.4 million disallowed represents a loss to public funds which falls outside the Assembly's intentions in relation to the proper administration of EU funding. I have therefore concluded that expenditure has not been applied for the purposes intended by the Assembly and does not conform with the authorities which govern it. • DARD were unable to provide sufficient or appropriate audit evidence to support £13.6 million of the disallowances accrued in year. There were no additional audit procedures that I could undertake to provide me with assurance over this element of accrued expenditure. As a result, the audit opinion ['true and fair'] has been qualified on this amount due to a limitation in scope. <p>https://www.daera-ni.gov.uk/sites/default/files/publications/daera/dard-resource-accounts-2015-16.PDF</p>

Section Two: Qualified Opinions and Reports on Accounts

Figure 5: Resource Accounts 2015-16 receiving a qualified audit opinion	
Public Body	Nature of the Qualified Audit Opinion & C&AG's Report
Department of Enterprise, Trade and Investment	<p>The audit opinion on the Department of Enterprise, Trade and Investment Accounts has been qualified for 2015-16 on regularity grounds in relation to two issues:</p> <ul style="list-style-type: none"> • expenditure amounting to £11.9 million which was incurred without the necessary approvals in place for the non-domestic Renewable Heat Incentive (RHI) scheme and is therefore irregular; and • because there was not enough evidence to be assured that expenditure on the non-domestic RHI scheme amounting to £30.5 million had been incurred for the purposes intended. This was due to the fact the systems in place to prevent or detect abuse of the scheme were considered to be inadequate. <p>This issue has already been reported on and published. The report is available at https://www.niauditoffice.gov.uk/publication/renewable-heat-incentive-scheme.</p> <p>It was also considered by the Public Accounts Committee(PAC) in September 2016 and subsequently.</p>
Department of Justice	<p>My audit opinion on the Department of Justice's (DOJ) accounts was qualified for 2015-16 due to a limitation of scope regarding the amount provided for legal aid liabilities at 31 March 2016.</p> <p>DOJ's financial statements are consolidated to include the Legal Services Agency Northern Ireland (LSANI) financial statements. A total provision of £126.8 million was made in the accounts for the estimated amount required to settle the costs incurred on legal aid cases. LSANI was unable to provide sufficient evidence to support management information used to determine a number of key assumptions and judgements it used to estimate these provisions. Consequently, I was unable to determine the full extent of the adjustments necessary to the provision for legal aid liabilities, although I have been able to estimate the impact of some of these issues which have led to a net understatement estimated between £9 million and £33 million.</p> <p>https://www.justice-ni.gov.uk/sites/default/files/publications/justice/departement-of-justice-annual-report-and-accounts-2015-16.pdf</p>
Department for Social Development	<p>The audit opinion has been qualified for a considerable number of years and is qualified again this year because of significant levels of fraud and error in certain benefit expenditure.</p> <p>The total expenditure on benefits by the Department for Social Development (DSD) in 2015-16 was £5.8 billion (£5.7 billion, 2014-15) and on all benefits except State Pension, DSD estimated overpayments due to fraud and error of £75.3</p>

Figure 5: Resource Accounts 2015-16 receiving a qualified audit opinion

Public Body	Nature of the Qualified Audit Opinion & C&AG's Report
	<p>million (1.3 per cent) compared to £81.1 million (1.4 per cent) last year. In addition, underpayments due to official error also reduced to £16.1 million (0.3 per cent) from £25.1 million (0.4 per cent) last year.</p> <p>From an overall Departmental point of view the estimated levels of overpayments and underpayments due to fraud and error were 1.7 per cent this year compared to 2.0 per cent in 2014-15. Customer error and underpayments due to official error have fallen significantly. But the estimated levels of customer fraud in the benefit payments made by the Social Security Agency, Northern Ireland Housing Executive (NIHE) and LPS increased to £45.1 million and is now at its highest level since 2004-05.</p> <p>On other matters, the Public Accounts Committee published a report in September 2015 on Advance Land Purchases and the handling of issues that arose in two particular schemes that received Advance Land Purchase grants. In both schemes DSD (via NIHE) had several years previously provided grants to the housing associations to allow them to purchase land to build on, in order to provide social housing, but no units were built on site. In one of these cases, a settlement agreement has been reached with Helm Housing Association for the full amount of £8.1 million over a three year period to 31 March 2017. At 31 March 2016, £3.6 million remained to be paid, £2.1 million more than what had been proposed in the settlement agreement. DSD told me that NIHE were in correspondence with HELM regarding the allowable costs and the Vesting value of the property. If these issues can be resolved they should be in a position to clear the account during 2016-17 as anticipated.</p> <p>In the other case, an agreement was reached with Oaklee Trinity Housing Association, later renamed as Choice Housing (Ireland) to recover the £835k grant less allowable expenses of £194k associated with costs incurred to develop the scheme. The full amount was repaid to DSD (via NIHE) in April 2015.</p> <p>https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dsd-resource-accounts-2016.pdf</p>

Section Two: Qualified Opinions and Reports on Accounts

Qualified Audit Opinions – other accounts

2.6 Since my last General Report I have qualified the financial statements of eight Arm's Length Bodies (ALBs) sponsored by central government departments. I note that all of these bodies (or their predecessor organisations) also received a qualified opinion in my last General Report. Four qualifications were in respect of the 2015-16 accounting period. The other four qualifications related to the 2014-15 accounting

period (for the purpose of this report, they are being termed as legacy).

Figure 6 illustrates the number of ALBs' accounts receiving a qualified audit opinion for the five year period 2011-12 to 2015-16. For comparative purposes, 2015-16 recorded the lowest number of qualifications since 2009-10.

2.7

Figure 7 contains brief details of the four other accounts which received qualified audit opinions for the 2015-16 financial year.

Figure 6: Number of other accounts receiving a Qualified Audit Opinion for Accounting Periods 2011-12 to 2015-16

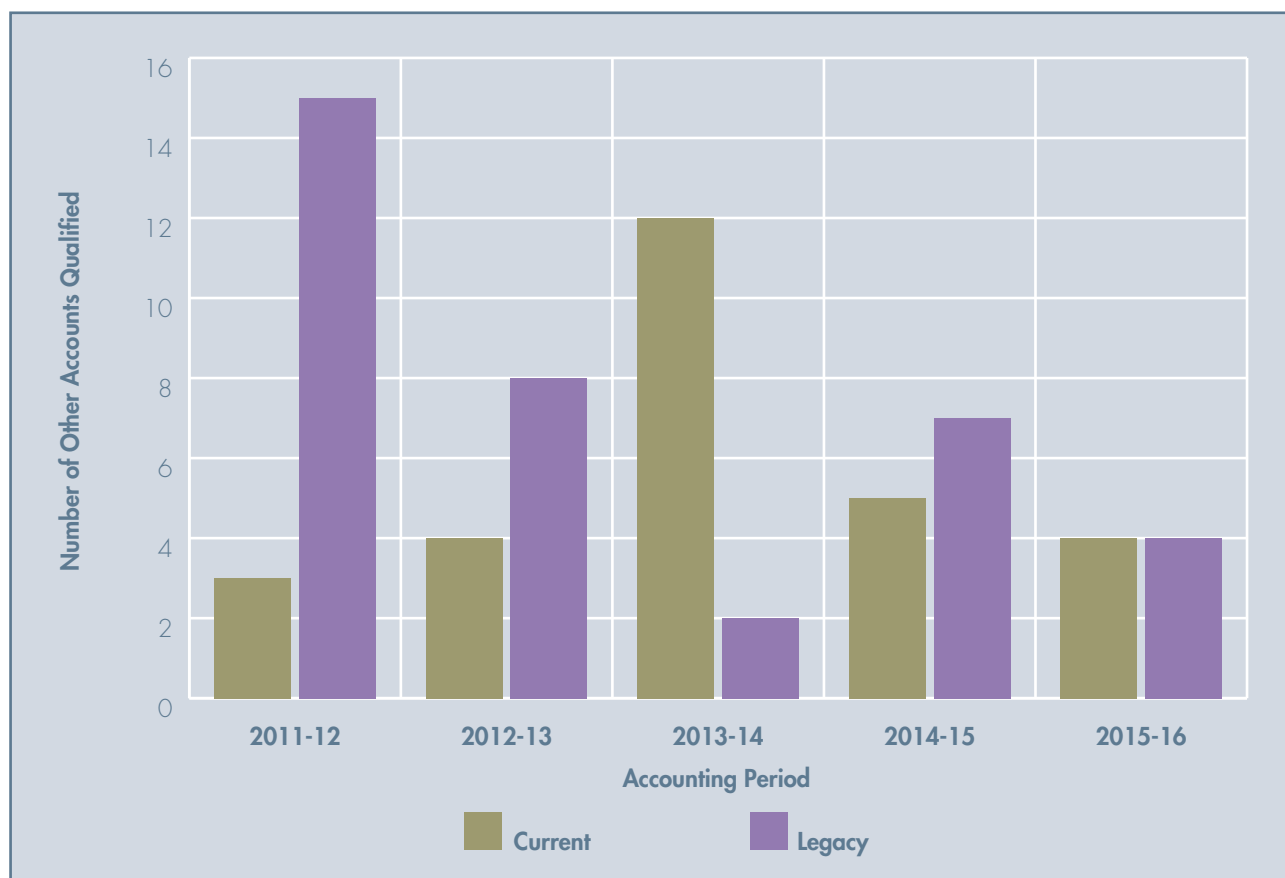


Figure 7: Other 2015-16 accounts receiving a qualified audit opinion	
Public Body	Nature of the Qualified Audit Opinion & C&AG's Report
Child Maintenance Service Client Funds	<p>The audit opinion on the Child Maintenance Service Client Funds accounts has been qualified for a considerable number of years and this year continues to be qualified in respect of two issues:</p> <ul style="list-style-type: none"> • The DSD is required to calculate maintenance assessments in accordance with the relevant legislation. My examination of maintenance assessments identified cases that have been calculated incorrectly. I considered the extent of estimated levels of error in maintenance assessments to be material. • There was a lack of evidence to substantiate £63.6 million (£69.0 million, 2014-15) of outstanding maintenance arrears. <p>https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dsd-resource-accounts-2016.pdf</p>
Legal Services Agency Northern Ireland	<p>The Legal Services Agency Northern Ireland (LSANI) was established on 1 April 2015 following the dissolution of the Northern Ireland Legal Services Commission (NILSC). LSANI has retained the functions of NILSC for administering legal aid in Northern Ireland. I have qualified the financial statements of LSANI on the basis of three limitations in scope on my work.</p> <ul style="list-style-type: none"> • There was insufficient evidence to support the eligibility of certain Legal Aid applications and payments to legal practitioners. Legal Aid expenditure in 2015-16 was made up of estimates of certificates granted plus charges or credits from provisions to reflect the bills received from practitioners. This gave a total expenditure of £98.5m (Civil £45.6m and Criminal £52.9m). Given the weaknesses that remain in the counter fraud arrangements for the eligibility of applicants and payments to practitioners, I have limited the scope of my audit opinion on regularity because I have been unable to obtain sufficient audit evidence to enable me to conclude that a material amount of Legal Aid expenditure has not been claimed fraudulently or in error. • I have continued to qualify my opinion on the truth and fairness of the amount provided for legal aid liabilities which are referred to as Legal Aid provisions. Key weaknesses on legal aid provisioning were identified in my previous audits. These relate to the assumptions used in the valuation of provisions. In 2015-16, LSANI was unable to ensure robust methodologies were established to determine the provision for legal aid liabilities. As a result, there remains insufficient audit evidence on the completeness and accuracy of the provision.

Section Two: Qualified Opinions and Reports on Accounts

Figure 7: Other 2015-16 accounts receiving a qualified audit opinion

Public Body	Nature of the Qualified Audit Opinion & C&AG's Report
<p>Legal Services Agency Northern Ireland</p>	<ul style="list-style-type: none"> Legislation which came into effect in 2012 is not being implemented by LSANI. The legislation provides for Orders for the recovery of defence costs to be made against legally aided defendants who have been convicted in the Crown Court. Its purpose is to recover a part of legal aid costs incurred under a criminal legal aid certificate as is reasonable in the financial circumstances of the defendant. <p>LSANI have advised me that the greatest difficulty in applying this legislation is its ability to identify cases that are suitable for applications for a recovery Order to be made. To date 28 referrals have been received by LSANI. Only one Order has been granted. Consequently, I have limited the scope of my audit opinion on the truth and fairness of income recorded in the accounts. I have been unable to conclude that a material amount of income in respect of the recovery of defence costs has not been excluded from the accounts.</p> <p>https://www.justice-ni.gov.uk/sites/default/files/publications/justice/lsani-annual-report-and-accounts-2015-2016-final.pdf</p>
<p>Northern Ireland Housing Executive</p>	<p>The audit opinion on the regularity of financial transactions in the Northern Ireland Housing Executive's (NIHE) accounts has been qualified due to:</p> <ul style="list-style-type: none"> Significant levels of estimated fraud and error in housing benefit expenditure. Total housing benefit expenditure in 2015-16 was £680 million (£671 million in 2014-15). <p>The Standards Assurance Unit in DSD has estimated that overpayments of housing benefit expenditure due to fraud and error were £19.5 million (2.9%) compared to £22.3 million (3.4%) in 2014-15. Underpayments due to official error were estimated to be £3.6 million (0.5%) compared to £4.4 million (0.7%) in 2013. I note that the Accounting Officer has provided comprehensive detail on the wide range of measures being undertaken to prevent and detect fraud and error in housing benefit in his Annual Governance Statement.</p> <ul style="list-style-type: none"> The lack of sufficient audit evidence on the adequacy of the operating controls over the management of planned maintenance expenditure of £100.1m.

Figure 7: Other 2015-16 accounts receiving a qualified audit opinion	
Public Body	Nature of the Qualified Audit Opinion & C&AG's Report
	<p>The qualification in the area of heating response maintenance has been removed. I am content that there has been sufficient progress in dealing with whistleblowing allegations raised last year and as results continue to improve I consider that I have sufficient evidence over the controls operating in heating maintenance.</p> <p>At this stage, I do not consider that the standard of planned maintenance to be at the improved standard that I have noted for response maintenance contracts. Furthermore, the inspection methodology which the NIHE concluded was flawed in 2014-15 is still in use. The recent internal audit report on new consultant led contracts also raises a number of significant issues which need to be addressed as a matter of urgency to strengthen the governance arrangements and control environment for these contracts.</p> <p>http://www.nihe.gov.uk/2016_annual_report.pdf</p>
Northern Ireland Social Security Agency	<p>The audit opinion on the former Social Security Agency (SSA) has been qualified for a considerable number of years and, whilst I acknowledge that SSA continues to address the matters which give rise to the longstanding qualification of my audit opinion, it is qualified again this year because of material levels of fraud and error in certain benefit expenditure.</p> <p>I note, that despite the initiatives used by SSA to counteract fraud and error, the level of overpayments remained at 1.0 per cent of total benefit expenditure, the same as in 2014 against a rise in annual benefit expenditure of 2.1 per cent. SSA continues to face a significant challenge to administer a complex benefits system to a high degree of accuracy in a cost effective way.</p> <p>The level of estimated fraud and error remains significant – out of total benefit expenditure (other than State Pension) of £3.0 billion, estimated over and under payments total £60.2 million. Overpayments due to fraud and error are estimated at £48.1 million (0.9 per cent of total benefits), compared to £50.6 million (1.0 per cent of total benefits) in the previous year. Underpayments due to official error are estimated at £12.1 million (0.2 per cent of total benefits), compared to £20.4 million (0.4 per cent of total benefits) in the previous year.</p> <p>https://www.communities-ni.gov.uk/sites/default/files/publications/communities/ssa-annual-report%202015-16-web.pdf</p>

Section Two: Qualified Opinions and Reports on Accounts

2.8 **Figure 8** contains brief details of four legacy accounts that have received qualified audit opinions.

Figure 8: Legacy Accounts –Arms Length Bodies receiving a qualified audit opinion	
Public Body	Nature of the Qualified Audit Opinion & C&AG's Report
Land & Property Services' Trust Statement – Rate Levy Accruals Account 2014-15	<p>The audit opinion on the Land & Property Services' Trust Statement – Rate Levy Accruals Account has been qualified for a number of years and is qualified again in 2014-15 on regularity grounds because of significant levels of fraud and error in housing benefit expenditure.</p> <p>Total housing benefit expenditure administered by Land & Property Services (LPS) in 2014-15 was £42.3 million. Within this, the levels of fraud and error estimated by DSD's Standards Assurance Unit amounts to £8.6 million in 2014-15.</p> <p>I also reported on the level of outstanding ratepayer debt at year end, and the amount written off in year. The ratepayer debt outstanding at 31 March 2015 was £156.4 million, compared to £162.1 million at 31 March 2014. The amount written off in 2014-15 was £25.3 million compared to £31.6 million in 2013-14.</p> <p>https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/LPS%20Annual%20report%20and%20accounts%20%202014%20-15.pdf</p>
Northern Ireland Courts and Tribunals Service 2014-15	<p>Since 2011-12, Northern Ireland Courts and Tribunals Service (NICTS) has produced a Trust Statement which shows income from fines and penalties, collection and administration costs and provisions for uncollectible amounts. I have qualified the audit opinion on each Trust Statement produced.</p> <p>For the 2014-15 Trust Statements, I have limited the scope of the audit opinion as I am concerned that there is insufficient evidence to substantiate the completeness and accuracy of the impairment of debt and therefore the collectability of the outstanding debt at 31 March 2015.</p> <p>Going forward, I am concerned that there is a risk fines may not be collected resulting in a significant loss to the Northern Ireland public purse.</p> <p>I welcome the Justice Act (Northern Ireland) 2016 which enables the Department to make provision for the commencement of a new fine collection and enforcement service. The Department must ensure that reform is implemented and the service addresses the weaknesses and inefficiencies identified by the audit, which could have a detrimental impact on the credibility of the justice system.</p>

Figure 8: Legacy Accounts –Arms Length Bodies receiving a qualified audit opinion	
Public Body	Nature of the Qualified Audit Opinion & C&AG's Report
	<p>The Public Accounts Committee took evidence on my report on the 2012-13 Trust Statement in October 2014 and reported its findings on 21 January 2015. I will continue to keep the implementation of the Committee's recommendations under review.</p> <p>http://www.courtsni.gov.uk/en-GB/Publications/Accounts/Documents/Trust%20Statement%2014%20-%2015/NICTS%20Trust%20Statement%2014_15.pdf</p>
Northern Ireland Legal Services Commission 2014-15	<p>I qualified the financial statements of the Northern Ireland Legal Services Commission (NILSC) on the basis of two limitations in scope on my work.</p> <ul style="list-style-type: none"> • There was insufficient evidence to support the eligibility of certain Legal Aid applications and payments to legal practitioners. Legal Aid expenditure in 2014-15 was made up of bills received from practitioners and charges or credits from provisions to give a total of £100.9m (Civil £51.2m and Criminal £49.7m). <p>Given the weaknesses that remain in the counter fraud arrangements for the eligibility of applicants and payments to practitioners, I have limited the scope of my audit opinion on regularity because I have been unable to obtain sufficient audit evidence to enable me to conclude that a material amount of Legal Aid expenditure has not been fraudulently claimed.</p> <ul style="list-style-type: none"> • I qualified my opinion on the truth and fairness of the amount provided for Legal Aid liabilities. These liabilities are referred to as Legal Aid provisions. Key weaknesses on Legal Aid provisioning were identified in our previous audits. NILSC was unable to make sufficient progress in 2014-15 to ensure robust methodologies were put in place to determine the provision for Legal Aid liabilities. As a result, there remains insufficient audit evidence to support the assumptions and judgements used and to provide assurance that material misstatement does not exist. <p>NILSC was dissolved on 1 April 2015 and a new Executive Agency within the DOJ – Legal Services Agency Northern Ireland (LSANI) was established and assumed responsibility for administering legal aid in Northern Ireland.</p> <p>https://www.justice-ni.gov.uk/sites/default/files/publications/doj/nilsc-annual-report-and-accounts-2014-15.pdf</p>

Section Two: Qualified Opinions and Reports on Accounts

Figure 8: Legacy Accounts –Arms Length Bodies receiving a qualified audit opinion	
Public Body	Nature of the Qualified Audit Opinion & C&AG's Report
NI Social Fund 2014-15	<p>I qualified my audit opinion on the Northern Ireland Social Fund accounts for 2014-15 because of significant levels of error in Social Fund benefit expenditure (except for Winter Fuel and Cold Weather payments which are considered less susceptible to error).</p> <p>Out of total expenditure (other than Winter Fuel and Cold Weather payments) of £85.2 million, estimated over and under payments total £1.3 million (1.5 per cent). Of that total, overpayments due to official error comprise £0.8 million (0.9 per cent of total expenditure) and underpayments £0.5 million (0.6 per cent of total expenditure).</p> <p>https://www.communities-ni.gov.uk/sites/default/files/publications/dsd/Social%20Fund%20Accounts.pdf</p>

Outstanding Accounts

2.9 In previous General Reports, I have referred to accounts which should have been covered by the scope of a particular Report, but had not yet been certified. Of the seven accounts outstanding at 30 September 2016, with a year-end more than one year ago, four are low value⁴ and the other three from 2014-15– Armagh Observatory and Planetarium, National Museums Northern Ireland and Sports Council Northern Ireland had not been completed on a timely basis due to a combination of governance reasons and the non-availability of staff to prepare accounts. I recently certified the 2014-15 accounts for National Museums Northern Ireland, on 31 October 2016. My audit opinion was unqualified, however I reported on a general matter. A copy of my report is at Appendix 2.

Conclusion

2.10 Most central government departments and their ALBs have continued to produce good quality accounts for audit scrutiny, resulting in unqualified audit opinions. This Report records the qualification of 12 accounts for which adequate audit evidence was not available to enable me to express an unqualified audit opinion or which led to a public interest report being attached to the accounts. Qualifications are usually indicative of weaknesses in internal control and compromise entities' ability to provide sound accountability to the Northern Ireland Assembly. Generally the type and nature of the qualifications arising are broadly consistent with previous years, such as irregular expenditure.

4 Land Purchase Trustee for 2013-14 and 2014-15, Land Purchase Account 2014-15 and RUC George Cross Foundation 2014-15

Section Three:
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Retention of Students in Higher Education Institutions in Northern Ireland

Background

3.1 Higher education has a central role to play in the NI Executive's plans for economic growth, investment and social inclusion. A key commitment in the 2011-15 Programme for Government was to increase the uptake in economically relevant Science, Technology, Engineering and Maths (STEM) places at Higher Education level.

3.2 The former Department for Employment and Learning (the Department's) two key strategic targets for higher education were:

- increasing the proportion of those people in employment with Level 4-8 skills⁵ and above to at least 44% by 2020, from a baseline of 33.2% in 2008; and
- increasing the proportion of those qualifying from local higher education providers with graduate and postgraduate level courses in Science, Technology, Engineering and Mathematics (STEM) subjects (with an emphasis on physical and biological sciences, mathematical and computer science, engineering and technology) to at least 22% by 2020, from a baseline of 18% in 2008.

3.3 In the 2014-15 financial year the Department paid more than £230 million in grant to Northern Ireland's four Higher Education Institutions (HEIs):

- Queen's University Belfast (QUB);
- Stranmillis University College;
- St Mary's University College; and
- University of Ulster (UU).

The Department's strategy – Access to Success – An integrated regional strategy for widening participation in higher education

3.4 The Department's vision for widening participation, outlined in its Access to Success strategy⁶, is that any qualified individual in Northern Ireland should be able to gain access to higher education, irrespective of their personal or social background. Since 2000, the Department has encouraged Northern Ireland's HEIs to produce their own widening participation strategies and has supported their implementation with an increase in the block grant. In 2014-15 the Department provided total funding of approximately £2.4 million to widen participation in Higher Education.

3.5 This strategy aims to contribute to the achievement of the Department's future vision, which states that by the year 2020, Northern Ireland will be internationally recognised as a region where participation in higher education is accessible to all citizens based on academic potential and regardless of social background.

5 Level 4-8 skills are, broadly, those awarded as a result of undertaking a higher education course. Examples of level 4 skills are certificates of higher education or higher national certificates. Level 8 skills are doctoral degrees.

6 Access to Success: An integrated regional strategy for widening participation in higher education, Department for Employment and Learning (September 2012).

3.6 In order to deliver the vision a programme of implementation has been developed which has been mapped against five key themes:

- 1) Understanding the demand side needs;
- 2) Raising aspiration and attainment;
- 3) Enhancing recruitment and selection;
- 4) Improving the quality and relevance of support for retention and progression; and
- 5) Streamlining the structures for involvement and investment.

3.7 This review specifically looks at theme 4, Improving the quality and relevance of support for retention and progression.

3.8 Student retention is one of a range of statistical performance indicators intended to offer an objective measure of how a higher education institution is performing. Failure to complete a chosen course of study can be expensive for all involved. Expensive for the student who will have paid fees with no valuable outcome; expensive for the institution that will have invested time, money and other resources; and expensive for society with the loss of a valuable place that cannot be taken up by another student at a time of very high demand for higher education.

3.9 Student retention (or non-continuation) figures are calculated by considering students who start an academic course and determining whether they are still in higher education one year later (in the case of full-time students) or two years later (for part-time students).

In 2008, Northern Ireland Higher Education Institutions had the highest student non-continuation rates in the United Kingdom

3.10 In 2007-08, Northern Ireland had both the highest participation rates and the lowest student non-continuation rates in higher education in the UK. With participation rates from young people at almost 50 per cent, the Department's "Review of Widening Participation Funded Initiatives"⁷ concluded that "Northern Ireland had an enviable record in widening participation in Higher Education". However by 2008-09, Northern Ireland also had the highest levels of non-continuation after the first year of higher education (10.2 percent in 2007-08 in comparison to 8.6 percent for the UK).

⁷ Review of Widening Participation Funded Initiatives Report, FGS McClure Watters (October 2010).

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Since 2009, there has been a significant improvement in the retention of students by Higher Education Institutions in Northern Ireland

3.11 Since 2009, there has been considerable improvement in the retention of students by Higher Education Institutions across the UK and especially in Northern Ireland which has had the lowest non-continuation rates for three of the last four years (see **Figure 9**). This improvement begins from the time of the Department's strategic intervention. From December 2009, the Department has required the HEIs to submit an annual 'Widening Participation Strategic Assessment' to review their progress to date and to determine future priorities. Since the introduction of Access to Success in 2012, the Department has required HEIs to submit Widening Access and Participation Plans to provide a greater level of detail and transparency of progress.

3.12 The Department has also implemented a range of specific funding mechanisms to support widening participation in higher education. These include premium funding which is paid to the universities and project funding for specific pre-recruitment outreach opportunities. The changes in higher education funding (ie; the increased cost to the student for university education) have contributed to a much improved performance over the last seven years across the UK. In Northern Ireland, the focused approach by the Department has resulted in the highest rate of improvement across the UK.

3.13 In 2013-14, Northern Ireland had the joint highest average student retention rates in the UK. This improvement means that in the 2013-14 year alone, more than 130 students remained in Higher Education than would otherwise have been the case without the improvement in retention since 2009. This increased level of retention benefits both these individuals and the economy as a whole.

Figure 9: There has been substantial fall in the non-continuation rate of students in Northern Ireland Higher Education Institutions over 5 years.

	2008-09 (%)	2009-10 (%)	2010-11 (%)	2011-12 (%)	2012-13 (%)	2013-14 (%)	2014-15 (%)
UK	8.6	7.9	8.6	7.4	6.7	7.0	7.2
Northern Ireland	10.2	9.0	8.3	6.0	6.3	6.5	7.3
England	8.4	7.8	8.4	7.3	6.6	7.0	7.1
Scotland	9.9	9.0	9.4	8.9	7.9	7.6	8.0
Wales	9.2	9.3	9.0	8.0	6.5	6.5	7.1

Source: Based on data from the Higher Education Statistics Agency

Figure 10: Two HEIs in Northern Ireland are currently performing better than their expected non-continuation benchmark.

	2008-09 (%)	2009-10 (%)	2010-11 (%)	2011-12 (%)	2012-13 (%)	2013-14 (%)	2014-15 (%)	2014-15 Benchmark (%)
St Mary's College	7.1	7.6	4.3	4.7	3.0	2.8	6.3	4.6
Stranmillis College	7.7	7.9	2.4	1.2	4.5	3.6	1.6	4.7
QUB	7.1	7.7	4.6	3.6	3.5	4.9	4.5	4.9
UU	13.2	10.0	11.8	8.4	8.8	8.3	9.9	8.1

Source: Based on data from Higher Education Statistics Agency

3.14 To allow comparisons to be made between HEIs, the Higher Education Statistics Agency (HESA) benchmarks the sector average and adjusts this to take account of the differing retention rates for subjects and the entry profile of the institution's students.⁸ As the benchmarks are sector averages small differences above or below it are to be expected and may not be significant. Whilst the non-continuation rates of two HEIs were below their sector benchmark and other HEIs were performing above their benchmark, these differences were small and not significant. All Northern Ireland HEIs have been successful in improving their retention rates in the last five years (see **Figure 10**).

3.15 The data collated by the HESA on HEIs non-retention rates also highlights that the range of non-retention levels between institutions is considerably narrower in Northern Ireland than in England, Scotland or Wales (see **Figure 11**). Whilst this may be in part due to the small number of institutions,

this does suggest that interventions by the Department and HEIs have been successful in bringing about improvements across all institutions.

Figure 11: The range of non-continuation in HEIs across the UK is narrowest in Northern Ireland (2014-15)

	Average (%)	Range (%)
Northern Ireland	7.3	1.6 - 9.9
England	7.1	0 - 20.6
Scotland	8.0	1.8 - 18.5
Wales	7.1	3.9 - 14.2

Source: Based on data from the Higher Education Statistics Agency

Coleraine to Londonderry Rail Upgrade

3.16 The upgrade of the Coleraine to Londonderry train line is a key Programme for Government commitment. It was originally intended to be completed in 2013 at an estimated cost of £75 million.

8 Factors included in the benchmark include subject of study, entry qualifications and age on entry.

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- 3.17 The 2010 Comprehensive Spending Review resulted in funding constraints which delayed the project. The original appraisal was revisited in September 2011 and the total project was divided into three phases:
- Phase 1 to relay the end section of the line at Coleraine and Londonderry including bridge works;
 - Phase 2 involves the full signalling of the Coleraine to Londonderry line section and the addition of a passing loop;
 - Phase 3 involves a full relay of the middle sections of the track between Coleraine and Londonderry and the potential introduction of a half-hourly train service.
- The three-phase project was estimated at £78 million: £27 million for phase 1; £20 million for phase 2; and £31 million for phase 3. The phases had planned completion dates of March 2013, the end of 2015 and 2021 respectively.
- 3.18 Phase 1 was delivered on time and within budget and the line was officially reopened on 22 March 2013. However, the total costs of Phase 2 are now approximately £46.4 million and have more than doubled from the original estimate.
- 3.19 The initial procurement process for Phase 2 was carried out in early 2013 and the tender exercise produced only one bidder. The value of this bid was £14.6 million but only covered 40 per cent of the work required for the project. Translink acknowledged that their original specification was too high level and they carried out further cost analysis and estimated the actual overall cost of Phase 2 to be £23 million (after inclusion of cost items that had not been included in the original tender). Using the same methodology and the daily rates included in the tender bid, Translink calculated that the projected cost of the bid for the revised scope would have risen to £27 million. In July 2013 Translink decided that the bid should be rejected as it did not represent value for money and a new procurement approach should be adopted.⁹
- 3.20 The costs of the initial aborted procurement exercise, including an estimate of Translink staff time, were £70,000.¹⁰
- 3.21 The procurement strategy was reviewed and Translink decided to split Phase 2 into two distinct projects:
- Signalling; separate design and construction
 - Passing loop work; combined design and construction
- This delayed the planned project completion from late 2015 to late 2016.
- 3.22 In June 2014 the design and costing for Phase 2 was completed and a revised estimate of £35 million was produced. Following the failed procurement

⁹ Project Assessment Review (PAR) Report (September 2014)

¹⁰ DRD Committee response to questions on Coleraine to Londonderry Rail Track (January 2015)

exercise and significant change in estimate the Minister commissioned a project assessment review (PAR) through the major projects authority of the Cabinet Office.

3.23 The PAR was completed and issued to the Minister in September 2014. One of the key conclusions of the review was that the original cost projection was a high-level estimate not backed up by any detailed planning or design work. The review also concluded that Translink was right not to proceed with the original bid.

3.24 The estimate of £35 million included an optimism bias of 20 per cent (approximately £5m). One of the recommendations of the PAR report was that the optimism bias should be increased in line with Department for Transport guidance. This recommendation was accepted and the estimate revised upward to £40 million; that is £30 million plus a £10 million contingency. The Chief Operating Officer of Translink confirmed that the £40 million was the target estimated cost for phase 2 in its entirety at that time.¹¹

3.25 A procurement exercise was carried out in early 2015. Initially four firms expressed interest in the project but ultimately only one submitted a tender. The best and final offer increased the overall project cost to £46.4 million. Neither the Translink Accounting Officer nor the DRD Accounting Officer could sign off the bid as representing value for money given the independently assured

estimate of £40 million. A Direction from the Minister was sought and received to enable Translink to accept the tender. The Direction was approved by the Department of Finance (formerly the Department of Finance and Personnel) on 19 May 2015.¹²

3.26 Phase 2 is due to be completed in December 2016.

3.27 A wider issue is the apparent limited market for this type of project in Northern Ireland. The two competitions to award this contract both produced a single bidder. Limited market interest brings with it the potential to have to pay a premium for the work and poses a risk to the value for money obtained through the procurement process.

Confidentiality agreements in the Northern Ireland Public Sector

Confidentiality agreements seek to restrict disclosure of information

3.28 A confidentiality agreement is a legal contract between two or more parties which seeks to prevent the disclosure of certain aspects of the agreement or information obtained during the course of their relationship. Confidentiality requirements may also be included in various types of contract to restrict or prevent the release of information.

¹¹ DRD Committee evidence session: Translink (November 2014)

¹² DRD Minister Statement (June 2015)

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3.29 Confidentiality can take a variety of forms and will often include one or more of the following elements:

- The requirement for one or more parties to the contract to keep the existence, negotiation and/or terms of the agreement confidential;
- The protection of information which has been gained during the course of the relationship; and
- The prevention of one or more parties from making derogatory comments about another party after the relationship has ended.

3.30 Confidentiality clauses may be used in settlement agreements¹³ as a means of reaching resolution when dealing with issues such as termination of employment, complaints, disputes or grievances. In particular, confidentiality may be especially attractive where an organisation seeks to settle claims out of court in order to save legal costs and time, and avoid the stress and potential reputational impact of attending a court or tribunal hearing. Such agreements may be included to the benefit of one party, or may be mutually beneficial, for example where they support both parties to move on after a dispute or where sensitive or personal information is involved.

3.31 Often linked to a settlement agreement is a 'special payment', which is over and above the statutory or contractual entitlement. These payments may seek to compensate a party for damage, for

example due to loss of employment, failure to abide by the terms of a contractual agreement or service failure. There will usually be conditions attached to these payments which require the recipient to abide by the terms of the contract, including any confidentiality requirements, or face potential legal action by the other party to recover the payment. Certain agreements may also include an additional payment specifically for the confidentiality element.

Confidentiality agreements put the key public sector principles of openness, transparency and accountability at risk

3.32 There is a perception that confidentiality agreements may be used by organisations to prevent information about maladministration or poor performance from reaching the public domain. The inappropriate use of such agreements have received significant media coverage in the UK in recent years, with the use of so-called "gagging clauses" in public sector settlement agreements (or "pay-offs") in particular grabbing the headlines.

3.33 Public sector organisations are expected to operate openly and transparently, and to be accountable for their use of public resources. Openness, transparency and accountability are key concepts within the public sector and are essential for strengthening people's trust in government and encouraging greater

¹³ Settlement agreements are documents which set out the terms and conditions agreed by those involved (the two parties) when they agree to settle a potential employment tribunal claim or claims or other court proceedings.

public participation in decision-making. In this regard, should there be failures or mistakes, the public expects the government to be open about what went wrong, why and what actions are being taken to remedy the situation or learn lessons.

- 3.34 The importance of openness and accountability has long been emphasised by government and are held

as two of 'the seven principles of public life' (often referred to as 'the Nolan Principles')¹⁴. These principles (**Figure 12**) apply to anyone who works as a public office-holder, as well as all those in other sectors that deliver public services, and highlight the expectation for public officials to behave in the public interest and to high ethical standards.

Figure 12: The Seven Principles of Public Life

1. Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

2. Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

3. Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

4. Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to the scrutiny that is appropriate to their office.

5. Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

6. Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

7. Leadership

Holders of public office should promote and support these principles by leadership and example.

¹⁴ The 'seven principles of public life' were set out by the Committee for Standards in Public Life at Westminster in 1995, which was established in response to concerns over the conduct of public officials.

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- 3.35 These principles are enshrined within Managing Public Money Northern Ireland (MPMNI), which is a key document for public officials in setting out the need to manage and deploy public resources responsibly in the public interest. MPMNI highlights the need for openness stating that *'all public sector organisations should operate as openly as is compatible with the requirements of their business'*.
- 3.36 MPMNI also provides guidance with respect to how public sector organisations should deal with special payments i.e. transactions outside the usual planned range, including those made in settlement agreements. The guidance also covers the factors to consider in ensuring the best possible course of action is identified and the requirements under which organisations should consult the Department of Finance and Personnel (now the 'Department of Finance'¹⁵) beforehand. With regard to transparency, MPMNI advises that any proposal to keep a special payment confidential needs to be justified especially carefully since confidentiality could appear to mask underhand dealing.
- 3.37 The Northern Ireland Audit Office (NIAO) and the Northern Ireland Assembly's Public Accounts Committee (PAC) have previously questioned the use of confidentiality agreements.
- 3.38 In 2002, a NIAO report on Compensation Payments for Clinical Negligence¹⁶ identified a number of compensation cases against the health service in Northern Ireland, where settlements were made out of court and included confidentiality clauses within the terms of the agreements. In that report we said that the use of such clauses was questionable and, while there may occasionally be exceptional circumstances for their use, in the majority of cases confidentiality seems inappropriate when payments of public money are involved. At this time the Department of Health and Social Services and Public Safety (DHSSPS) acknowledged the inappropriateness of such clauses.
- 3.39 In 2011, the Public Accounts Committee (PAC) reported on Procurement and Governance at Northern Ireland Water (NIW)¹⁷. This followed the Committee's request for the NIAO to conduct an examination of procurement breaches raised by NIW's Internal Auditors. Our examination¹⁸ identified a number of out of court settlements agreed by NIW which contained confidentiality clauses. In their subsequent report, the Committee highlighted a number of these including:
- The settlement of a contractual dispute resulting in a payment of £10.6 million to the main contractor and £2.1 million to a sub contractor;

As a point of principle, confidentiality agreements should not be used anywhere in the public sector in Northern Ireland

15 Following a commitment in the Stormont House Agreement, the Northern Ireland Civil Service Departments were restructured and reduced from twelve to nine as of 9 May 2016 after the Assembly elections.

16 *Compensation Payments for Clinical Negligence*, Northern Ireland Audit Office, 5 July 2002

17 *Measuring the Performance of NI Water and Procurement and Governance in NI Water*; Public Accounts Committee, 03 March 2011

18 *Examination of Procurement Breaches in Northern Ireland Water*; Northern Ireland Audit Office, 14 December 2010

- Compensation for loss of office paid to the former Chief Executive of NIW of £162,000;
- The settlement of a dispute over a bonus payment to a contractor at £243,550 (including interest and VAT); and
- The settlement of a compensation claim for river pollution with another public body at £500,000.

3.40 The Committee condemned the widespread use of confidentiality clauses in NIW, highlighting that their use restricted openness and accountability. The Committee's view was that NIW made use of confidentiality clauses to keep embarrassing transactions secret and that this was not in accordance with the Nolan principles. The Committee stated that, as a point of principle, confidentiality agreements should not be used anywhere in the public sector. If, however, in exceptional circumstances their use proves to be unavoidable, the Committee recommended that these cases should be approved by the relevant Departmental Accounting Officer and DoF.

3.41 In the Memorandum of Reply to the Committee, DoF agreed that the inappropriate use of confidentiality agreements is not in keeping with the principles of openness and transparency and therefore they should only be used in exceptional circumstances. DoF made a commitment that all such clauses should be approved by the relevant Departmental Accounting Officer and by

DoF in those situations where the related expenditure requires specific approval in accordance with MPMNI.

Confidentiality clauses are still in use within the Northern Ireland Public Sector and the agreed approvals for their use are not always obtained

3.42 During recent financial audits NIAO has identified a number of cases where confidentiality clauses continued to be used by public sector bodies within settlement agreements. Figure 13 below sets out some examples.

3.43 In these examples the organisations were unable to demonstrate that the inclusion of the confidentiality clause within the settlement had been specifically approved by the Departmental Accounting Officer or DoF, in line with the commitment given to the PAC in 2011.

3.44 As set out within MPMNI and the Northern Ireland Financial Reporting Manual (FReM)¹⁹, public sector bodies are required to report a summary of all special payments within their annual accounts, with disclosure of individual items of more than £250,000. There should also be disclosure of summary data on the use of exit packages across the whole organisation, and any special severance payments for senior staff should be itemised. FReM contains provisions for non-disclosure of special severance payments in circumstances in which disclosure would conflict with

¹⁹ The Government Financial Reporting Manual (FReM) is the technical accounting guide to the preparation of financial statements for Central Government bodies.

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legal or other specific requirements. However FReM requires the reason for non-disclosure to be stated.

- 3.45 As a consequence of the confidentiality agreements, the organisations in question felt unable to fully disclose the details of the settlements within

their accounts due to concerns that this would conflict with their legal commitments. Therefore, in these cases, the organisations were prevented from giving full disclosure, and the resulting disclosures within their annual report and accounts lacked detail and substance.

Figure 13: Examples of confidentiality clauses recently employed by NI Public Sector Bodies

<p>Agri-Food and Biosciences Institute (AFBI)</p> <p>In 2014-15, AFBI settled a legal claim relating to royalty income received by AFBI. The terms of the settlement are referred to in AFBI's financial statements as 'confidential'.</p> <p>Disclosure within AFBI's 2014-15 accounts was limited to acknowledgement of the settlement and the fact that the terms are confidential.</p> <p>AFBI informed us that there were clear and justifiable business reasons for the need for confidentiality in this case</p>
<p>Victims and Survivors Service (VSS)</p> <p>A settlement agreement was reached by VSS with the organisation's former Chief Executive Officer whose employment finished in July 2014. The terms of the settlement are confidential.</p> <p>Disclosure within the 2014-15 account was limited to noting the Chief Executive's departure, although VSS acknowledged within its Governance Statement that the use of a confidentiality agreement is not encouraged and that full compliance with the disclosure requirements was prevented by the agreement.</p>
<p>Department of Finance and Personnel (DFP)</p> <p>In November 2014, DFP settled a significant compensation claim relating to an administrative error in the Land Register. In May 2015 the Department reached a further out of court settlement in respect of a significant procurement case. Both settlements included a confidentiality clause.</p> <p>The payments associated with both settlements received the required approvals, however there was no evidence available that the inclusion of the confidentiality clauses had been subject to specific approval by DFP's Accounting Officer and DFP Supply Division.</p> <p>In the 2014-15 Resource Account, the Department disclosed that the settlements had occurred and that the amounts were in excess of £250,000, however the disclosure in relation to the procurement case lacked detail as to the nature of the case and potential lessons to be learned.</p> <p>The Department acknowledged within its Governance Statement that such clauses should have been subject to Accounting Officer and DFP Supply approval following the commitment made to the PAC in 2010-11.</p>

3.46 The above examples offer a demonstration of a number of significant cases that were encountered during the course of recent audits. Given that, by their nature, confidentiality clauses discourage open disclosure, the extent of their use across the public sector has not been ascertained with certainty.

Guidance for the Northern Ireland Public Sector on the use of confidentiality clauses has been limited

3.47 During discussions with the audited bodies it was apparent that there is a lack of clarity as to the requirements surrounding confidentiality agreements in Northern Ireland. Other than the commitment given by DoF in its Memorandum of Reply to the PAC's report on NI Water, which DoF circulated to public bodies in 2010, my staff were unable to trace any specific guidance issued to public bodies in Northern Ireland on the appropriate use and approval of confidentiality agreements until 2016.

3.48 There has been guidance published elsewhere in the UK which has highlighted some key principles and considerations regarding the use of confidentiality agreements, although this has focussed specifically on severance cases.

3.49 In February 2015, following a recommendation by the Westminster

Committee of Public Accounts, the Cabinet Office issued guidance on '*Settlement agreements, special severance payments and confidentiality clauses*'. The Committee's recommendation followed a National Audit Office report²⁰ on the topic, which highlighted a potential high prevalence of confidentiality clauses set against a lack of central government guidance and records on their content and use. The Committee's report²¹, which followed detailed evidence sessions on the NAO report, concluded that confidentiality clauses had been used by public sector bodies in settlement agreements to cover up failure and that, while their use may be appropriate in some circumstances, they had been used inappropriately to deter former employees from speaking out about serious and systematic failures within the public sector.

3.50 While the Cabinet Office guidance focuses on severance cases, it makes clear that the principles apply to all confidentiality clauses regardless of whether these are linked to termination of employment. The guidance sets out the approval and reporting requirements regarding confidentiality agreements, and outlines a number of key messages on their use. In particular, confidentiality clauses should:

- only be used when necessary, after taking legal advice, and should not be included in agreements as a matter of course;

20 *Confidentiality clauses and special severance payments*; Report by the Comptroller and Auditor General, 21 June 2013

21 *Confidentiality Clauses and Special Severance Payments*; House of Commons Committee of Public Accounts, Thirty-sixth Report of Session 2013-14, 24 January 2014.

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- not seek to stifle or discourage staff from raising concerns and, if used, must expressly remind the individual of their right of disclosure under the Public Interest Disclosure legislation²²; and
- not override the organisation's obligations for disclosure e.g. where required by law or under government guidance, and should therefore include suitable exceptions to allow for publication in appropriate circumstances.

3.51 There has been similar guidance issued by the Health Service organisations across England, Wales and Scotland²³, following a number of high profile cases in the NHS, and in particular the Report of the Mid-Staffordshire NHS Foundation Trust Public Inquiry, which recommended that "gagging clauses" or non disparagement clauses should be prohibited in the policies and contracts of all healthcare organisations, regulators and commissioners; insofar as they seek, or appear, to limit bona fide disclosure in relation to public interest issues of patient safety and care.

The Department of Finance has sought to address the information gap in Northern Ireland through the provision of guidance during the year

3.52 Since the issues raised during the course of the audits of 2014-15 financial statements, my staff have been liaising with the Department of Finance about confidentiality agreements. The Department accepted that further guidance was necessary to ensure clarity and consistency across the public sector.

3.53 DoF issued in January 2016 a circular to Finance Directors²⁴ as a reminder that all further confidentiality agreements are subject in advance to approval by the Accounting Officer and where applicable by DoF. DoF followed up this guidance when it issued a letter to Accounting Officers in October 2016²⁵, emphasizing the general principles which should be considered when utilising confidentiality clauses/agreements.

22 Under the Public Interest Disclosure Act 1998 (Public Interest Disclosure (Northern Ireland) Order 1998), any clause in a settlement or compromise agreement is void if it seeks to prevent a party from making a protected disclosure i.e. blowing the whistle.

23 *The use of settlement agreement and confidentiality clauses*; NHS Employers, April 2013 (revised December 2013), *The use of settlement (compromise) agreements and confidentiality clauses, NHS Wales, July 2013*; and *The use of Confidentiality Clauses and Derogatory Statement Clauses within Settlement Agreements: The rights and responsibilities of NHS Scotland and employees and employers*; NHS Scotland, March 2016

24 *Response to PAC recommendations on the use of confidentiality agreements*; FD (DFP) 02/16, January 2016

25 *Use and approval of confidentiality clauses/agreements in dispute settlements*; DAO (DoF) 08/16

Conclusion

3.54 I repeat the message from the 2002 report that confidentiality seems inappropriate when payments of public money are involved. I recognise that there may be exceptional circumstances where the use of confidentiality clauses in agreements is justified, their inclusion should be restricted only to situations where they are absolutely necessary. The acid test for an organisation is whether the Accounting Officer could justify the clause if asked to defend it.

3.55 I welcome the renewed interest in this topic and the recent guidance issued by DoF to draw upon the key messages raised elsewhere in the UK public sector. It is vitally important that the principles of openness, transparency and accountability are safeguarded, alongside the reputation of public sector bodies in upholding these key values. A clear and defensible process is required for determining firstly whether a confidentiality clause is necessary and justified, and if so, for obtaining the necessary support and approval for its use.

undertaking measures to safeguard Northern Ireland's built heritage²⁶. This includes a statutory duty to compile lists of buildings of special architectural or historic significance, known as 'listed buildings', of which there are currently around 8,500 in Northern Ireland.

3.57 Most listed buildings are in private ownership but around 10 per cent are owned by public bodies. Listed buildings are afforded statutory protection and in most cases owners proposing to carry out alterations or demolition must first obtain statutory consent. Functions related to built heritage conservation are the responsibility of the Department's Historic Environment Division, which include identifying, protecting, conserving and promoting listed buildings. These functions are primarily carried out by the listing of buildings and through awarding grant aid.

3.58 Northern Ireland's historic environment is also a vital and non-renewable component of our economy which has scope to tackle poverty, create jobs, and encourage community enterprise. In 2012 it was shown to generate an estimated £532 million annually, and create and sustain around 10,000 jobs²⁷. Our Historic Environment is also considered to make a significant contribution to a number of outcomes in the draft Programme for Government Framework 2016-2021 including:

- encouraging prosperity through a strong, competitive regionally balanced economy;

Protecting Northern Ireland's Built Heritage

Introduction

3.56 Northern Ireland's built heritage, which includes historic buildings and monuments, is an irreplaceable cultural asset. The Department for Communities (the Department) is responsible for

26 This work was undertaken by the Northern Ireland Environment Agency's Historic Environment Division within the Department of the Environment. The Division transferred to the Department for Communities in May 2016.

27 *Study of the Economic Value of Northern Ireland's Historic Environment*, DOE, June 2012

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- promoting a confident, welcoming and outward looking society; and
- providing a framework for participation, engagement and learning about our diverse history.

In 2012 the Public Accounts Committee made key recommendations aimed at safeguarding listed buildings

3.59 In 2012, the Assembly's Public Accounts Committee (PAC) published a report "*Safeguarding Northern Ireland's Listed Buildings*"²⁸. The report followed an NIAO report in 2011²⁹ and an evidence session examining:

- progress on the survey to identify buildings suitable for listing (known as the Second Survey);
- the performance of the historic grant scheme in improving listed buildings; and
- enforcement of measures to safeguard buildings from damage or destruction.

3.60 Progress has been made on all of the recommendations made by PAC in 2012. Detail on recommendations considered in this report, with an update on progress is at **Appendix 3**.

3.61 A key concern for PAC was the Second Survey, originally due for completion in 2008, was at the time of the report not expected to be finished until 2020, taking a total of 25 years. The Committee recommended that a formal plan should be put in place to ensure that the listed buildings survey is completed as soon as practicable and by 2020 at the latest. The Committee also considered that it was important there was no further slippage in the timetable for completing the survey.

3.62 An additional key area of concern for the Committee was the need for grant schemes to have clear objectives and outcomes and the expenditure properly evaluated to ensure that schemes are targeted at the most vulnerable and valuable buildings.

Reductions in the Department's budget have significantly impacted on meeting NIAO and PAC recommendations

3.63 The 2011 NIAO report supporting the 2012 PAC evidence session (paragraph 3.60) included a recommendation that the Department should formally prioritise for survey those buildings that are most at risk. The Department included this approach in an appraisal of options. After consideration of the appraisal in terms of both costs and of time to complete the survey, the Department concluded that, on balance, the area based approach was the preferred option.

28 A copy of the PAC Report can be found at <http://www.niassembly.gov.uk/globalassets/documents/reports/public-accounts/nia-64-11-15.pdf>

29 NIAO Report "*Safeguarding Northern Ireland's listed buildings*", 2 March 2011 <https://www.niauditoffice.gov.uk/publication/safeguarding-northern-irelands-listed-buildings>.

3.64 In October 2013 the Department appointed a contractor for the completion of the Second Survey. The contract had a value of £957,000 and was based on the survey of historic buildings within five geographical district council areas over three years.

3.65 Significant reductions in the Department's budget for 2015-16 resulted in the Department deciding to terminate the contract. To that point it had made payments for work completed and work in progress by the contractor totalling £503,000. However, early termination of the contract led to the Department also paying an additional compensatory payment of £80,000 to the contractor³⁰.

3.66 At the point of the termination of the contract around 65 per cent of Northern Ireland had been surveyed. Structures awaiting a listing decision are at risk of alteration or demolition because they do not have the protection afforded by listing. In March 2016 the Department's Internal Audit raised concerns over the delay between the completion of survey work and a listing decision being made. At the end of 2014-15, there were 1,400 records awaiting processing. This was slightly lower than the projection in the agreed programme for the survey.

3.67 While there is no statutory obligation for owners of listed structures to maintain them in good condition³¹, the Department offers repair grant aid to the owners of listed buildings. PAC recommended that in targeting grant payments the Department should formally prioritise buildings on the Built Heritage

at Risk Register³². The Department commissioned a baseline survey of the condition of all Northern Ireland's listed buildings in 2013 and from this developed a formal performance measurement framework for its grant aid scheme. However, to manage Departmental spend within what was expected to be a significantly reduced budget for 2015-16, no new letters of offer under the grant aid scheme have been issued since August 2014. The results of the measurement framework have therefore not been updated since 2014.

The Department has put in place a revised plan to complete the Second Survey

3.68 Following the termination of the contract for completion of the Second Survey, a revised proposal was approved by the Departmental Board in December 2015. Future work on the Second Survey will be carried out in-house. The Department has also revised the approach to be adopted towards targeting resources on listing structures that are at the greatest risk. The revised proposals have three key elements:

- a pilot exercise to establish the work that can be done each year;
- prioritise those buildings to be surveyed in order of risk by 2020; and
- completion of the entire second survey by 2026.

30 All values exclude VAT

31 There are provisions for urgent work notices e.g. if a building becomes dangerous.

32 A comprehensive online Built Heritage at Risk Northern Ireland Register (BHARNI) has been compiled in a partnership between the Ulster Architectural Heritage Society and the Department for Communities.

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3.69 The Department's recent decision to target its scarce resources towards buildings not yet surveyed but highly likely to meet the legislative test for listing status aligns with our view that buildings at risk should be prioritised. However, the Department's revised plans to fully survey those buildings at risk by 2020, means that the completion date for the second survey has slipped a further six years to 2026.

3.70 The Department has established a Project Board to oversee the project. This is an important governance and oversight arrangement ensuring that targets and milestones established for the completion of the Second Survey are met. I will monitor the progress of the revised plan and report if necessary.

The Department has considered the response to a public consultation exercise to inform creation of an Historic Environment Fund

3.71 In March 2016, the Department issued a consultation document on the creation of an Historic Environment Fund to provide a strategic direction to the funding of Northern Ireland's historic environment. It proposed that the 2016-20 Fund will encompass four key strands: Heritage Research, Heritage Regeneration, Heritage Repair and Heritage Revival. Following an analysis of the responses to the consultation, the Department opened the Fund for applications in September 2016. It aims to open a funding scheme in the autumn of 2016.

Control Failures in the administration of European Funding under the Rural Development Programme

The Department of Agriculture, Environment and Rural Affairs is an accredited Paying Agency for the European Agricultural Funds under the Common Agricultural Policy

3.72 The European Union's Common Agricultural Policy (CAP) is designed to provide a stable, sustainably produced supply of safe food at affordable prices for consumers, while also ensuring a standard of living for European farmers and agricultural workers. With an annual budget of approximately €59 billion³³, the CAP aims to strengthen the competitiveness and sustainability of agriculture in Europe by financing a range of support measures through the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD).

3.73 The Department of Agriculture, Environment and Rural Affairs (DAERA) is an accredited Paying Agency for the European Agricultural Funds in Northern Ireland and distributes approximately £300m each year. The majority of this (c. £230 million) relates to the EAGF and has been used to fund the Basic Payment Scheme in 2015 (previously the Single Farm Payment Scheme). The EAFRD is used to fund the delivery of the Northern Ireland Rural Development Programme (NIRDP) which, over the term

33 http://ec.europa.eu/agriculture/cap-overview/index_en.htm

of the 2007-13 programme, contributed £506 million³⁴ to Northern Ireland schemes.

- 3.74 As an accredited Paying Agency, the Department has responsibility for ensuring that funding is administered in line with the extant European Regulations and, by implementing a series of control measures, ensuring that expenditure is both legal and regular.³⁵ As a result of weaknesses in the operation of key controls identified by European auditors during audit missions, the Department has, in the past, been subject to disallowances³⁶ of EU funding and has repaid approximately £80 million across Area Aids Schemes for claim years 2004 to 2012.

The Northern Ireland Audit Office is the Certification Body for the European Agricultural Funds in Northern Ireland

- 3.75 The European Agricultural Funds are audited, on behalf of the European Commission (EC), under a consortium arrangement between the audit authorities in the four regions of the UK (the National Audit Office, Wales Audit Office, Audit Scotland and the Northern Ireland Audit Office). The consortium is led by the National Audit Office (NAO) and the account is certified by the Comptroller and Auditor General in England, with each audit body acting as a certification body, performing

specified EC audit procedures relating to the Paying Agency within their region.

- 3.76 In arriving at our opinion, we test a sample of grant payments under both the EAGF and the EAFRD in line with the requirements set out in EC Guidelines. Our testing is required to confirm not only the accuracy of grant payments as recorded in the accounts, but also that grants have been administered in line with the EU regulations and the rules relevant to each particular scheme. In doing so, we consider the completeness, accuracy and veracity of the annual accounts of the accredited Paying Agency, the proper functioning of its internal control system and the legality and regularity of the expenditure for which reimbursement has been requested from the EC.
- 3.77 The Department's expenditure on the EAF is also accounted for within its Annual Resource Account and audit testing of grant payments during the EAF audit informs my annual opinion on the Resource Account.

The Northern Ireland Rural Development Programme seeks to improve the quality of life in rural areas and support diversification of the rural economy

- 3.78 The 2007-13 NIRDP provided a range of funding measures under six defined themes (Axes). Axis 3 was a strand of

34 NI Assembly Research and Information Service Briefing Paper 'RDP 2007-13 – progress made since mid-term evaluation and overview of issues/difficulties with the Programme'; February 2016.

35 The concept of regularity is key within the public sector and refers to expenditure having been applied to the purposes intended and transactions in conformance with the authorities which govern them.

36 Disallowances represent a loss of public funds as a consequence of not complying with the required EU regulations in the administration of European funding and as a result is considered irregular. My opinion on the Department's Resource Accounts has been qualified as a result of disallowances since 2009-10.

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the programme aimed at improving the quality of life in rural areas and diversification of the rural economy. This axis was delivered through six key measures:

- 3.1 – Diversification into non-agricultural activities;
- 3.2 – Business creation and development;
- 3.3 – Encouragement of tourism activities;
- 3.4 – Basic services for the economy and rural population;
- 3.5 – Village renewal and development; and
- 3.6 – Conservation and the upgrading of rural heritage.

3.79 Axis 3 was administered under the LEADER³⁷ approach through a system of delegated agents. The main concept behind the Leader approach is that, given the diversity of European rural areas, development strategies are more effective and efficient if decided and implemented at local level by local actors, accompanied by clear and transparent procedures, the support of the relevant public administrations and the necessary technical assistance for the transfer of good practice.

3.80 In Northern Ireland, the LEADER programme was delivered by Joint Council Committees (JCCs) formed by local councils acting together as a joint entity. Under contract with DAERA

(formerly Department of Agriculture and Rural Development), JCCs were designated the lead administrative and financial party in overseeing the implementation of the local rural development strategy, although in practice the day-to-day responsibilities for the administration of the schemes was delegated to Local Action Groups (LAGs), composed of a locally based and representative selection of partners drawn from different socio-economic sectors. The LAGs were responsible for the initial assessment of grant applications, with JCC approval required for final decisions. LAGs were also responsible for carrying out the range of administrative checks required under the EU regulations and scheme rules.

Our testing of a Rural Development grant during the 2015 audit identified some significant concerns around the Department's administration of the payment

3.81 When testing the 2015 EAF expenditure, my staff reviewed a claim relating to the administration of a grant payment made under Axis 3.1 which supports the diversification of existing farm businesses into non-agricultural activities. The 'Farm Diversification Scheme', which was fully financed by the EU, offered applicants a contribution of up to 50% towards the cost of their project (up to a maximum of £50,000) with the remainder to be 'match funded' by the applicant. The payment in question related to an application for grant aid to fund the purchase of quarry

37 LEADER stands for 'Links between actions of rural development'; in French, *Liaison entre actions de développement rural*.

equipment (a 3-way screener) to assist in the expansion of an on farm quarry. The farm business submitted the application in August 2012, seeking funding of £50,000 towards the cost of a screener estimated at a total cost of £107,000.

3.82 A Letter of Offer (LoO) was issued in September 2013 which set out the terms and conditions of the funding and, similar to a contract, by accepting the LoO the applicant confirmed agreement to comply. The LoO was in the name of the limited company which operated the quarry business and listed the aim of the project as the establishment of a sand and gravel quarry. The LoO stipulated that the entire project, as assessed, must be completed otherwise the claimant may face clawback of the full grant payment. In addition, it required that all equipment must be in place and operational before any claim could be made for reimbursement of expenditure.

3.83 The applicant submitted their claim in June 2014 against a screener costing £115,000. As required by the LoO, the claim was supported by invoices, bank statements and procurement information. A grant of £50,000 was paid in December 2014.

3.84 On 5 August 2015, we notified the LAG that this grant payment had been selected for testing. We carried out a review of the grant file and, as a result, a number of significant concerns were identified and raised with the Department. The key issues are summarised below:

- The claim was paid without a prepayment site visit being carried out. This is a key administrative control under European Regulations which is required as part of the detailed administrative checks on all claims. The purpose of this visit is to inspect the equipment or facilities to be purchased through grant aid and validate its existence. Photographic evidence was instead accepted by the LAG, as agreed by the Department, in lieu of a visit, subject to a follow up visit being undertaken soon after payment. Despite payment being made in December 2014, the site visit was not carried out until 5 August 2015.
- The purchased equipment was not located on the applicant's site at the time of payment. The LoO clearly stated that the funding for the project was awarded on the basis that the equipment was for excavation and supply of sand and gravel from lands owned by the applicant. A letter from the applicant dated November 2014 (two weeks before payment of the grant) informed the LAG that the equipment had been relocated to a quarry in Dublin for the previous four months as the business had a verbal contract with a third party to operate the machine on a quarry based in Dublin. The equipment was not returned to the applicant's farm business until August 2015 and therefore, during this period, was not being used for the purposes intended. The terms and conditions

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of funding³⁸ states that the Grant Aid shall be used only for the purposes of the project as defined in the Applicant's application, and that assets funded by the grant aid must not be leased out or changed from the purpose intended without prior written agreement of the JCC.

- We were advised that the Department's project office had been made aware that the equipment had been relocated and had advised the LAG that the matter should be raised with the applicant. The LAG in turn notified the applicant of the stipulations set out within the terms and conditions but at no point was the applicant advised of the consequences of the breach of LoO or asked to provide a written request for amendment. The JCC was therefore not made aware of the change and no approval or amendment to the Letter of Offer was issued. In addition, no further action was taken by the Department to follow this matter up. The resulting non-compliance was therefore not detected or acted upon through the Department's controls³⁹. We considered that the leasing of the equipment to an off-site quarry was a material change to the agreed terms and conditions of the grant offer and, having not received the

necessary prior approval, the grant therefore did not meet the conditions for payment.

- On comparing the photographic evidence of the equipment, taken firstly on the site in Dublin and secondly during the site visit in August 2015, we identified significant differences in the equipment that was initially funded and the equipment which had subsequently returned back to the claimant's site from Dublin. These included a different serial plate and changes in the physical appearance of certain elements of the machine including guard rails, stone hopper, doors and handles, and stickers. In addition, the general condition of the machine in the later photographs appeared, in our opinion, to indicate an older piece of equipment. This had not been identified or investigated by the LAG during their administrative checks or during site inspection of the machine. As a result, in our view, there was insufficient evidence to support the existence of the original equipment which was funded in the agreement.
- We raised a number of queries about the adequacy of the evidence in support of match funding, inconsistencies in bank account

38 Section 4.4 of the terms and conditions for Axis 3 funding states that the 'Grant Aid shall be used only for the purposes of the project as defined in the Applicant's application and set out in Annex 1 of the Letter of Offer. Any intended change to the project or project timescales must be notified in writing in advance to the Joint Council Committee. Continuation of the Grant Aid will be subject to the written approval of the Joint Council Committee and formal amendment to the Letter of Offer.' Section 23.3 states that 'Any other asset for which Grant Aid is being provided shall not be sold, leased or changed from the purpose intended within a clawback period of 5 years from the date on which the last payment of Grant Aid was made, without the prior written agreement of the Joint Council Committee.'

39 The Department is designated 'Managing Authority' (MA) for the Rural Development Programme. Under the EU Regulations, when parts of its tasks are delegated to another body, the MA shall retain full responsibility for the efficiency and correctness of management and implementation of those tasks, including ensuring that the eligibility of requests for and the procedures for allocating aid and their compliance with Community rules are checked before payment is authorised.

information and the accounting transactions supporting the disclosure of the machinery in the business accounts.

The Department's initial response to our concerns was slow and failed to recognise the seriousness of the issues raised

3.85 Following our notification of the issues identified in August 2015, the Department initiated a review of the case by its internal Programme Compliance Unit who are responsible, as part of the required quality assurance process, for re-performing a sample of the administrative checks completed by LAGs over the grant claims. This included a site visit to physically inspect the equipment.

3.86 On completion of this review, the Department responded in December 2015 advising that it was satisfied that the equipment procured and purchased by the applicant was in line with the terms and conditions of the LoO and that there was no obvious risks to funding. In addition, in response to our queries over the apparent visual differences of the machine in the photographs, the Department advised that it had obtained confirmation from the machine supplier that the serial plate had been replaced due to the original plate being stolen, and that the supplier had also replaced the guard rails, side motor, doors and handles. At this stage the Department was content that the evidence of the

supplier was convincing and that no further action was required.

3.87 We had highlighted to the Department a number of indicators of potential fraud, including the theft and subsequent replacement of the serial plate, however the Department had taken no action at this point to refer the matter for investigation despite this being stipulated in the operating rules⁴⁰.

3.88 A period of further consultation followed when my staff advised the Department of our continuing concerns surrounding this case and our view that these had not been adequately resolved. As a result we concluded that, due to the failure of key controls, the £50,000 grant payment was ineligible for EU funding as it was not paid in conformity with the applicable rules and regulations. In summary:

- there was a failure to physically verify the equipment through completion of a site visit prior to payment. This is a key control (compliance) failure;
- the equipment was not used for the intended purposes under the Letter of Offer and this was not rectified by the Department's control processes. This is a key control (compliance) failure and a financial error; and
- there was insufficient evidence to prove that the equipment purchased using EU funding existed. This is a key control (compliance) failure and a financial error.

⁴⁰ Chapter 10 of the Operating Rules outlines that where there is any possibility that a fraud may have been committed, irrespective of irregularity reporting thresholds the case must immediately be referred to the local office who will then notify the Head of Internal Audit and forward to the Department's Central Investigation Service (now replaced by the NI Civil Service Central Group Fraud Investigation Service). Prompt action is essential in referring a suspected fraud case.

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3.89 The serious implications of this finding could have led to a material misstatement in the accounts and therefore to a significant financial correction from the EC. However, following considerable additional testing which resulted in a clear audit opinion, the proposed correction from the Commission has been limited to the grant amount of £50,000.

The Department's Internal Audit Service and the Group Fraud Investigation Service concurred with our assessment and highlighted weaknesses in the Department's administrative controls

3.90 Having taken into account all the issues identified and detailed discussions during the course of the audit, the Department ultimately accepted that there were compliance failures and financial errors associated with this case. As a result, in January 2016 the Department instructed its Internal Audit Service to undertake a preliminary review of the case. In their report, Internal Audit echoed our conclusion that the £50,000 grant should not have been approved and paid, due primarily to the absence of a prepayment site visit and the use of the equipment outside of the terms of the Letter of Offer without approval. In addition Internal Audit highlighted a number of avenues of potential fraud and concluded that there was not an adequate level of evidence to confirm that the equipment more recently inspected was the same as that purchased.

3.91 The Department then referred the matter to the NI Civil Service Group Fraud and Investigation Service (GFIS) to conduct an investigation into the grant claim, including seeking to establish a complete audit trail for the equipment and, if possible, to determine if the machine photographed in Dublin was the same as the machine inspected on the site visit.

3.92 Following the provision of initial findings, the Department requested the GFIS to carry out some additional investigative work to assist it in drawing final conclusions. The final GFIS report was received in April 2016 and concluded that there was insufficient evidence to prove fraudulent or criminal intent on the part of the claimant and therefore no criminal investigation should be pursued. The report also highlighted the weaknesses in the Department's management of the case as being a contributory factor in arriving at this conclusion. Furthermore, GFIS stated that the administrative failings and the advice provided to the applicant during the process undermines the Department's potential to recover the grant paid and recommended that the Department should liaise with the LAG to redress the procedural issues that were highlighted during audit.

3.93 In relation to why the screener had been contracted out to a firm in Dublin, the claimant advised GFIS that he'd started to use the machine but was struggling to find a suitable market for the material he was producing. During a site visit, GFIS observed a screener in operation and noted there was another static machine

in operation on the premises. The claimant advised that this machine was purchased for the purposes of washing the stone, an issue which had initially been a problem in terms of meeting customer requirements.

- 3.94 In our opinion, a number of conflicting and contradictory explanations were obtained over the time this case was being reviewed such as the lack of clarity surrounding the contracting arrangements, including financial implications, for the use of the equipment in Dublin.

The Department's current position

- 3.95 The Department sought advice from the Departmental Solicitor's Office (DSO) on 5 October 2016 in respect of the potential for a debt recovery action regarding a breach of the terms and conditions of the Letter of Offer for European Agriculture Fund for Rural Development (EAFRD) funding. The DSO sought further information from the Department which has been provided and the Department awaits further advice from the DSO before determining how best to proceed.

It is vital that public sector bodies responsible for administering grant payments learn lessons from cases of maladministration to avoid future irregular payments and losses of public funds

- 3.96 I have highlighted this case as it demonstrates the importance of public

bodies administering grant funding in line with the relevant authorities, whether National or European rules. The Department's controls in this case did not work due to failure to take action when breaches of the Letter of Offer were identified and failure to act promptly when potential fraud indicators were highlighted during our audit. As a result there is a potential loss to the Department as it has been unable to recover the funds to date from the claimant. The Commission has applied a financial correction of £50,000 in respect of the LEADER grant paid to the applicant.

- 3.97 Public bodies should consider the lessons to be learned from this case example and consider how controls in this area can be strengthened, particularly as Northern Ireland moves forward into the 2014-20 European funding period. In particular:

- Control processes are designed to ensure payments have been subject to all the necessary checks and have therefore been administered correctly. They should not be circumvented. In addition, where the organisation delegates functions to third parties, it retains responsibility for ensuring compliance with the relevant rules and regulations. It is therefore necessary to ensure that there are adequate oversight controls in place.
- There must be adequate procedures to ensure that there is a thorough assessment, and sufficient evidence obtained, at the application stage to determine the likely feasibility of the

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proposed project. Where relevant, the Letter of Offer should clearly set out claw back conditions specific to the project in question and, where grants are given for equipment which is suitable for resale, there should be scope within the LoO for proportionate claw back where the equipment has not been, and cannot be, used for the purpose intended.

- Where an organisation receives notification of potential irregularities or fraud indicators, it is vital that prompt action is taken to address these through the appropriate channels. Public sector organisations must demonstrate their commitment to the 'zero tolerance' fraud policy. Investigations must be undertaken on a timely basis and be thorough, ensuring that all possibilities, including the potential for collusion, are considered and issues adequately resolved. Results should be communicated at appropriate levels, and across the wider public sector as appropriate, to ensure that lessons are learned.

3.98 It is critical that cases of maladministration are avoided. In particular, public sector bodies involved in the management of EU funding must ensure that all key controls are in place and operating effectively, as failure to do so can lead, as has happened in this case and previously, to disallowance fines from the European Commission.

Appendix 1: NI Supply Figures Received by Department in 2015-16 and 2014-15

Department	2015-16 (£m)	2014-15 (£m)
DHSSPS	4,490.1	4,403.8
DSD	3,899.0	3,817.8
DE	2,301.3	2,271.1
DoJ	1,217.5	1,247.3
DEL	1,007.3	1,043.5
DRD	714.2	744.6
DFP	340.9	283.6
DETI	274.5	215.5
DARD	220.4	234.1
DOE	138.0	123.6
DCAL	114.4	132.1
OFMDFM	85.3	131.3
NIAC	40.2	42.9
PPS	36.4	39.4
FSA	8.2	7.9
NIAO	7.7	8.1
AOCC	2.0	1.9
NIAUR	1.3	1.5
TOTAL	14,898.7	14,750.0

Appendix 2: C&AG's Report – National Museums Northern Ireland Annual Report and Accounts (2014-15 and 2015-16)

On 3 November 2014, evidence supporting an allegation that a copy of the signature of a director (the Director of People and Performance) of National Museums Northern Ireland (NMNI) had been used without her knowledge to complete a Fulbright Commission⁴¹ application for the then Chief Executive, Mr Tim Cooke, was presented to other NMNI directors.

Mr Cooke told me that the director in question was not in the office on the afternoon of the deadline for submission of the application. He openly asked for a copy of her signature and there was no attempt to hide the purpose for this unusual request. It was, in his view, a presumptive and expedient response to a misunderstood deadline. He assumed that his colleague would not have objected to the request and it was always his intention to make his colleague aware of the matter and seek their support at the earliest opportunity – and to withdraw the application if required.

However, on 4 November 2014, the director commenced a preliminary investigation into the allegation (in line with the approach taken under NMNI's Fraud Response Plan although the Fraud Response Plan was not formally invoked). This included consultation with the senior members of NMNI's Fraud Investigation Oversight Group. Mr Cooke met with the director to discuss this on 14 November 2014. Mr Cooke told us that he was unaware that he was the subject of any investigation but had been "open, transparent and offered on three occasions to withdraw the application".

The Chairman of NMNI was notified on 20 November 2014, and immediately informed NMNI's then sponsoring Department, the Department of Culture, Arts and Leisure (DCAL).⁴² NMNI told us that the Chairman met with Mr Cooke on Friday 21 November 2014 and read him notice of precautionary suspension. Mr Cooke told us that the notice of precautionary suspension was withdrawn at that meeting and that following the offer of a compromise agreement he offered to resign. NMNI's Chairman told us that after the notice of preliminary suspension, Mr Cooke offered to resign forthwith, and the Chairman agreed to accept this at the meeting. Mr Cooke was paid three months' salary in lieu of notice with effect from his resignation date of Tuesday 25 November 2014.

Mr Cooke told me that the application was "expeditiously and voluntarily withdrawn" from the Fulbright Commission and that "there was no financial loss to the organisation, no intended loss and no question that there could ever have been a loss." In his view, this was not an issue of fraud, but a case of procedural irregularity.

DCAL subsequently carried out its own investigation which had two specific objectives, namely (a) to determine whether the initial investigation conducted by NMNI was carried out appropriately and (b) to determine whether there was any evidence that there may have been other instances where similar activity had been committed or attempted by Mr Cooke in other areas of activity. The DCAL investigation concluded that (a) appropriate evidence was collected during the NMNI initial investigation and (b) the investigation did not identify any evidence of other instances of similar activity having been attempted or perpetrated in any of the other areas reviewed.

41 The US-UK Fulbright Commission is a transatlantic awards programme offered to 50 UK and 50 US citizens annually to study, lecture, research or focus on professional development at leading institutions in the US and UK respectively. Fulbright requires applications to be signed by an officer from the applicant's "company".

42 On 9 May 2016, responsibility for National Museums Northern Ireland transferred from the Department of Culture, Arts and Leisure to the Department for Communities.

Appendix 2: C&AG's Report – National Museums Northern Ireland Annual Report and Accounts (2014-15 and 2015-16)

Mr Cooke told us that he has not seen the report compiled by DCAL.

The investigation did however identify a number of weaknesses in NMNI's procedures and made a number of recommendations including:

- any allegation of fraud/irregularity relating to the Chief Executive of an organisation should be immediately brought to the attention of the organisation's Board and the sponsor Department; and
- investigations should not be undertaken by any individual connected to the circumstances around the allegation.

The Chairman of NMNI commissioned a further investigation carried out by their internal auditors, to review the whistle-blowing procedures in NMNI, how they operated in relation to this particular incident and whether there were any lessons to be learned for the future. The NMNI Board has accepted the findings and all of the recommendations from both investigations.

It is concerning and disappointing that a situation such as this arose in relation to an Accounting Officer. The role of Accounting Officer carries with it personal responsibilities in relation to regularity and propriety and an Accounting Officer's conduct should be beyond reproach. In my view, Mr Cooke fell short of this high standard. It is also important that, as was the case in this situation, all arms length bodies have whistle-blowing policies and procedures in place to ensure that any matters involving senior personnel are dealt with appropriately. Such procedures should be set out by the Department for Communities and training provided so that Board members and senior staff in arms' length bodies are clear on how to apply expected procedures in future.

Appendix 3:

Update on progress on PAC Recommendations contained in PAC 2012 Report “Safeguarding Northern Ireland’s Listed Buildings”⁴³

PAC Recommendation	Memorandum of Reply (official ministerial response to PAC report) November 2012	Department for Communities update August 2016
<p>Recommendation 1.</p> <p>The Committee recommends that NIEA puts in place a formal plan to ensure that the listed buildings survey is completed as soon as practicable and by 2020 at the latest. The plan should specify the remaining work to be done; the associated budgetary and personnel requirements; and delivery milestones against which to measure performance on an ongoing basis.</p>	<p>The Department of the Environment (DOE) accepts this recommendation. Following a detailed review of the Second Survey in 2006 a revised programme and plan to complete the project by 2020 was put in place. Although this still remains achievable, budget reductions in 2010-11 affected that programme and prompted a review of the plan and its delivery timescales. A revised plan has been drawn up which retains the target to complete the second survey by 2020 at the latest. DOE will continue to seek to ensure that there is a stable funding stream in place in future years to enable the completion of the survey by the target date of 2020.</p> <p>Although DOE is likely to face further budgetary constraints in the coming few years, it acknowledges the priority of this work and the importance of bringing the exercise to a conclusion as soon as practicable. Funding consistent with the revised plan has been allocated in the present financial year and staff numbers working on the project have been increased. DOE will also consider where appropriate milestones could be incorporated in the plan against which performance can be measured.</p>	<p>A revised plan with milestones to meet the 2020 target was agreed by the NIEA Board in April 2013; a contract for survey work was put in place and additional staff applied to the programme to achieve this. A programme of work was included in the Board paper.</p> <p>Significant budget reductions were applied to the Departmental budget for 2015/16 by the Executive. Following extensive Departmental consideration of how to address the reductions, the Second Survey contract was terminated in June 2015.</p> <p>In December 2015, the DOE Management Board approved a revised plan with milestones which took into account the Departmental budget and resource position and brought the survey work in house. The plan recognised the particular risks of buildings not yet listed which meet the listing criteria, and lower grade listings, and includes this work as phase 1, to be completed by 2020. Work has progressed on the programme, and in particular on a pilot scheme in South Belfast to ensure that the methodologies employed in the in-house survey are as productive as possible.</p>

43 This table includes those recommendations which are referenced in this report.

Appendix 3:

Update on progress on PAC Recommendations contained in PAC 2012 Report “Safeguarding Northern Ireland’s Listed Buildings”⁴³

PAC Recommendation	Memorandum of Reply (official ministerial response to PAC report) November 2012	Department for Communities update August 2016
<p>Recommendation 3.</p> <p>It is essential that grant schemes have clear objectives and that the outcomes of the expenditure can be properly evaluated. The Committee recommends that NIEA puts in place a formal performance measurement framework for the listed buildings grant scheme that will allow the results achieved from this element of its expenditure to be quantified and used to revise the scheme.</p>	<p>DOE accepts this recommendation. The current grant scheme has the following objective: <i>‘To bring listed buildings up to a reasonable / good state of repair (condition) and thereafter, maintain them in a good state of repair (condition) through preventative maintenance’</i>. Current policy is to seek to maximise the impact of the grant paid by distributing it as widely as possible and particularly to private owners of listed buildings who would not normally have access to other sources of support such as lottery funding or investment in publicly owned buildings.</p> <p>Work is underway to commission a baseline survey of the condition of all Northern Ireland’s listed buildings and this will be completed by December 2013. This will allow for the performance of DOE’s grant scheme, as well as other sources of investment in conserving listed buildings, to be measured over time. This will allow the development of a performance measurement framework for the scheme. In addition, all grant aided schemes are inspected, both during and after grant aid works to ensure they meet the required standards in the schedule of requirements (SOR) which is prepared for each project prior to commencement. The overall objectives for the scheme will also be reviewed and revised/refined as necessary as part of the current grant review process.</p>	<p>A formal performance measurement framework was put in place, following the completion of the baseline survey. This was published by DOE as part of the background papers to the public consultation on a new Historic Environment Fund in March 2016. The framework can be downloaded from www.communities-ni.gov.uk/publications/listed-building-grant-evaluation-framework</p>

PAC Recommendation	Memorandum of Reply (official ministerial response to PAC report) November 2012	Department for Communities update August 2016
<p>Recommendation 4.</p> <p>It is important that grant is targeted on the most vulnerable and valuable buildings. The Committee recommends that NIEA formally prioritises the structures on the Built Heritage at Risk Register and actively encourages owners to access available grant aid in order to undertake the improvements necessary to remove them from the register.</p>	<p>DOE accepts this recommendation. NIEA has drawn up a prioritised list of buildings / structures on the Built Heritage at Risk Register. This is being reviewed to identify how we can further encourage and increase applications for grant aid from such building owners to enable them to undertake the improvements necessary in order to remove their buildings from the at Risk Register. NIEA will also seek to encourage owners of structures on the Built Heritage at Risk Register to identify and avail of other sources of financial support to repair and maintain their properties.</p>	<p>Structures on the Built Heritage at Risk Register are categorised in order of risk.</p> <p>The Department works with the Ulster Architectural Heritage Society to focus on this issue, including the encouragement of applications from owners of buildings at risk. Evaluation of the Grant Scheme as published in the performance measurement framework shows that a proportionally high amount of grant assistance was spent in support of this category of listed buildings over recent years.</p>

NIAO Reports 2015 and 2016

Title	Date Published
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2016	
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