



Northern Ireland

Public Services

Ombudsman

Investigation of a complaint against the Department for the Economy

Report Reference: 202000405

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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Case Reference: 202000405

Listed Authority: Department for the Economy

SUMMARY

I received a complaint about the actions of the Department for the Economy (the Department). The complainant in this case was acting on behalf of his partner, who is referred to in this report as 'Ms A'.

The complainant said Ms A was dissatisfied with the Department's monitoring of an insolvency practitioner (the IP) who was the supervisor of an individual voluntary arrangement (IVA), into which she had entered in 2006. At that time, the Department was responsible for authorising the IP and for ensuring that he was 'fit and proper' to act as an insolvency practitioner. The Department no longer carries out this role. The complainant said Ms A considered the Department failed to monitor the IP effectively, and that this resulted in her sustaining a significant financial loss as a result of the IP's actions.

The complainant also said Ms A was dissatisfied with the Department's handling of a complaint she made to it in January 2012 about the IP's actions. In particular, Ms A was aggrieved that it took the Department more than two and a half years to complete its consideration of her complaint and notify her of the outcome.

My investigation considered only the actions of the Department. It did not examine the actions of the IP; these actions are not within my jurisdiction.

My investigation found a number of instances of maladministration in the Department's monitoring of the IP. Specifically, I found that in the majority of monitoring visits it conducted to the IP during the period 1994 to 2010, the Department did not review an appropriate sample of his insolvency cases. The Department also failed to make and retain an appropriate record of how, when and by whom case samples were selected for review. In addition, there was a lack of evidence to demonstrate that when concerns became apparent in 1996 and 1997 about certain aspects of the IP's conduct and performance, the Department took prompt and appropriate action to ensure it was satisfied he remained a fit and proper

person to hold a licence to practice as an insolvency practitioner. Significantly, I also found evidence that the Department failed to ensure that the staff members responsible for conducting monitoring visits to the IP had sufficient skills and training to perform that function comprehensively.

On the basis of the evidence available to me, I was unable to determine the extent to which the maladministration by the Department caused, or contributed to, the financial loss Ms A stated she had sustained as a result of the IP's actions. I considered this was a matter best determined by the County Court, as provided for in Sections 52 and 53 of the Public Services Ombudsman Act (Northern Ireland) 2016, should the Department and Ms A be unable to agree a resolution to her concerns that its failure to monitor the IP effectively resulted in her sustaining a financial loss.

In relation to the handling of Ms A's complaint about the IP, I found that, for the most part, during the two and a half year period the Department was dealing with the complaint, there was no evidence of periods of inaction or inactivity, or any indication the Department was reluctant to expedite the matter. However, I concluded that avoidable delay resulted from the need for the Department to appoint an external investigator to examine Ms A's complaint, due to an absence of a suitably trained and skilled internal investigative resource.

I also established there were failings in the Department's communication with Ms A, both during and at the conclusion of its consideration of her complaint. Specifically, the Department failed to keep Ms A updated regarding progress, and informed about key developments. It also failed to provide Ms A with information at an early stage about the factors that were contributing to the length of time it was taking to deal with her complaint, and to provide her with a meaningful explanation of the findings of the detailed investigation that had been conducted into it. In my view, better communication with Ms A may well have lessened the disappointment, uncertainty and frustration I am in no doubt she experienced, both while she waited to hear the outcome of her complaint and when she received notification of that outcome.

I recommended that the Department's Permanent Secretary provide a written apology to Ms A for the injustice she sustained as a result of the maladministration

disclosed by my investigation. I also recommended that the Department write to Ms A to inform her of the findings of the investigation into her complaint about the IP. In addition, I recommended that the Department ensure the learning highlighted by the failings I identified in relation to its handling of Ms A's complaint about the IP is embedded into its Insolvency Service complaints procedure.

I did not make any recommendations for service improvements in relation to the Department's monitoring of insolvency practitioners because it ceased to have the legal authority to licence insolvency practitioners a number of years ago. I did, however, recommend that the Department give careful consideration to whether its staff who have responsibility for the implementation of other regulatory functions within its remit, have the appropriate training and skills to fulfil that role effectively.

The Department accepted my recommendations.

THE COMPLAINT

1. I received a complaint about the actions of the Department for the Economy¹ (the Department). The complainant in this case was acting on behalf of his partner, who is referred to in this report as 'Ms A'.
2. The complainant said Ms A was dissatisfied with the Department's monitoring of an insolvency practitioner (the IP) who was the supervisor² of an individual voluntary arrangement³ (IVA) she entered into in 2006. The complainant said Ms A considered the actions of the IP, and the Department's failure to carry out its regulatory function in relation to him effectively, resulted in her sustaining a significant financial loss.
3. The complainant also said Ms A was dissatisfied with the Department's handling of a complaint she made to it in January 2012 about the IP's actions.

Background

4. Until 31 March 2017, the Department had statutory powers which enabled it to directly authorise insolvency practitioners. It undertook this function for a small number of insolvency practitioners, including the IP. The Department was also responsible for the monitoring and oversight of recognised professional bodies (RPBs) who themselves were responsible for authorising other insolvency practitioners.
5. The Department first authorised the IP to act as an insolvency practitioner in June 1992. As his authorising body, the Department had responsibility for monitoring the IP's conduct as an insolvency practitioner, to ensure he remained a fit and proper person to fulfil that role.
6. Ms A entered into an IVA in April 2006. The IP was appointed as supervisor of the IVA. On 26 April 2010, the IP 'failed' Ms A's IVA because he considered

¹ Formerly the Department of Enterprise, Trade and Investment, until the Department for the Economy came into effect on 9 May 2016. References in this report to 'the Department' refer both to the Department for Enterprise, Trade and Investment (DETI) and to the Department for the Economy (DfE).

² The 'supervisor' of an individual voluntary arrangement (IVA) is the individual appointed to administer the IVA on behalf of the IVA applicant and their creditors, to ensure all the terms and conditions of the IVA are being adhered to by all parties.

³ An IVA is a formal and legally binding agreement between an individual (the IVA applicant) and their creditors to repay debts over a period of time.

she had not implemented its terms. The High Court reinstated Ms A's IVA in November 2010, and the IP continued in the role of supervisor of the IVA.

7. Ms A complained to the Department on 9 January 2012, setting out her '*grave concerns about [her] IVA*'. She detailed several matters concerning the IP's actions in relation to his role as supervisor of her IVA, which she considered were inappropriate. The Department arranged an independent investigation of Ms A's complaint (and of other matters concerning the IP's conduct).
8. The Department wrote to Ms A on 15 August 2014 to inform her of the outcome of its consideration of her complaint about the IP. (By that time, Ms A's IVA was no longer live, as the IP had again failed it, on 26 September 2012.) The Department informed Ms A it had decided the IP was no longer a fit and proper person to act as an insolvency practitioner. The Department also informed Ms A that the IP had surrendered his insolvency licence (his authorisation to act as an insolvency practitioner) to the Department on 28 February 2014.
9. During the following six-year period, Ms A and others acting on her behalf (the complainant and several elected representatives) corresponded with the Department, seeking information about matters concerning the IP's supervision of Ms A's IVA; the Department's authorisation of him; and its handling of Ms A's complaint about his conduct. This contact with the Department included several requests for further information about the findings of the investigation into Ms A's complaint.
10. On 13 August 2020, Ms A complained to the Department about its regulation and monitoring of the IP. She stated her IVA had resulted in '*ongoing distressing unfair and inhumane financial, emotional and other unknown cost impacts to both [her] and her family, without answer.*' The Department dealt with Ms A's complaint under the first stage of its complaints handling process, providing its written response on 2 September 2020.
11. Ms A was dissatisfied with the Department's response to her complaint. The complainant, on her behalf, therefore wrote to the Department on 8 February

2021, raising a complaint under the second stage of its complaints handling process. The Department provided its final response to Ms A's complaint on 26 February 2021.

12. Being dissatisfied with the Department's final response, the complainant, on Ms A's behalf, complained to my Office.

Issues of complaint

13. I accepted the following two issues of complaint for investigation:

Issue One: Whether the Department's monitoring of the IP was carried out in accordance with relevant standards; and

Issue Two: Whether there was unreasonable and/or avoidable delay in the Department's handling of Ms A's complaint of 9 January 2012 about the conduct of the IP.

14. It is important I record that in submitting the complaint on Ms A's behalf, the complainant expressed his, and Ms A's, clear dissatisfaction with the conduct of the IP during the period he was supervisor of Ms A's IVA, and subsequently. I must emphasise that the actions of the IP are not a matter within my jurisdiction and were not examined within the context of my investigation of this complaint. Rather, my investigation and the findings I will set out later in this report are concerned solely with the actions of the Department.

INVESTIGATION METHODOLOGY

15. In order to investigate this complaint, I gave careful consideration to the documentation the complainant submitted to my Office in support of Ms A's complaint. I also reviewed the documentation I obtained from the Department, and I considered the Department's written comments on the issues the complainant had raised, as well as its response to the further enquiries I made of it during the course of my investigation.

16. I shared a draft of this report with the complainant and with the Department to enable them to comment on its factual accuracy and the reasonableness of my proposed findings and recommendations. The Department, and the complainant and Ms A provided comments in response. I gave careful consideration to all the comments I received before finalising this report.

Relevant Standards and Guidance

17. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. I refer to relevant regulatory, professional and statutory guidance.
18. The general standards are the Ombudsman's Principles:⁴
- The Principles of Good Administration; and
 - The Principles of Good Complaints Handling.

These Principles are reproduced at Appendix One and Appendix Two to this report.

19. The specific standards and guidance I refer to in this report are those which applied at the time the events complained of occurred. These standards and guidance governed the exercise of the administrative functions of the public authority whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- The Insolvency (Northern Ireland) Order 1989 (the NI Insolvency Order);
- DETI Insolvency Service Dear IP Letter 16, 21 January 2003 (the 2003 Principles for Monitoring);
- DETI Insolvency Service Principles for Monitoring Insolvency Practitioners, effective 1 May 2008 (the 2008 Principles for Monitoring);
- DETI Memorandum of Understanding between the Department of

⁴ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

Enterprise, Trade and Investment and the Recognised Professional Bodies, 2005 (the 2005 MOU);

- DETI Memorandum of Understanding between the Department of Enterprise, Trade and Investment and the Recognised Professional Bodies, effective 1 May 2008 (the 2008 MOU);
- DETI Memorandum of Understanding between the Department of Enterprise, Trade and Investment and the Recognised Professional Bodies, effective 1 October 2011 (the 2011 MOU);
- DETI Insolvency Practitioner Control Unit Procedures for Monitoring Visits, 1994 (the Monitoring Visit Procedures);
- DETI Insolvency Practitioner Unit Policy and Procedures for handling complaints – Making a complaint against an Insolvency Practitioner, 2012 (the 2012 Insolvency Practitioner Complaints Procedure); and
- DETI Insolvency Practitioner Unit Procedures for Dealing with Complaints about an Insolvency Practitioner Authorised by the Department of Enterprise, Trade and Investment, 9 May 2014 (the 2014 Insolvency Practitioner Complaints Procedure).

20. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the public authority whose actions are the subject of the complaint. I may only question the merits of a discretionary decision where there has been maladministration by the public authority in taking that decision, and the maladministration may have had an impact on the decision.
21. I did not include in this report all of the information obtained in the course of my investigation. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.

THE INVESTIGATION

Issue One:

Whether the Department's monitoring of the IP was carried out in accordance with relevant standards

Detail of Complaint

22. The complainant said Ms A was dissatisfied with the standard and effectiveness of the Department's monitoring of the IP. He pointed out that when the Department responded on 2 September 2020 to Ms A's stage one complaint, it advised that its regulation of insolvency practitioners included conducting monitoring visits to them at regular intervals; taking appropriate action in cases of non-compliance; and investigating any complaints received and taking appropriate action.
23. The complainant also highlighted that at both stages of its complaints handling process, the Department informed Ms A that it conducted monitoring visits to the IP but it did not provide specific details of those visits or information about the dates on which they had been conducted. He said the Department advised in its complaint responses to Ms A that her IVA file had not been selected for review during the monitoring visits it conducted to the IP, and that no issues had been identified during those visits which had given the Department cause to believe the IP was not a fit and proper person to act as an insolvency practitioner.
24. The complainant contended that the Department's monitoring of the IP consisted of it visiting his office and collecting what he (the complainant) described as '*handpicked files*'. He said the IP '*could hand pick files so that [the Department] could tick a box*'. The complainant maintained, '*this would never be considered monitoring on any level.*'
25. The complainant asserted that the Department '*knew there were issues with [the IP]*' but that it did not have '*the means, ability, or duty of care to discover wrongdoing*' until Ms A complained about the IP's conduct on 9 January 2012. He said this '*allow[ed] substantive and harrowing damage to be done*'.

26. In addition, the complainant expressed dissatisfaction that after Ms A complained on 9 January 2012 to the Department about the IP's conduct, it carried out no further monitoring visits to him, which, he considers, allowed '*the wrongdoing*' to continue.

Evidence Considered

Legislation, policies and guidance

27. I considered the following legislation, policies and guidance:
- the NI Insolvency Order;
 - the 2005 MOU;
 - the 2008 MOU;
 - the 2011 MOU;
 - the 2003 Principles for Monitoring;
 - the 2008 Principles for Monitoring; and
 - the Monitoring Visit Procedures.
28. Relevant extracts of the legislation, policies and guidance I considered are at Appendix Three to this report.

The Department's response to investigation enquiries

29. I made enquiries of the Department about this issue of complaint. Relevant extracts of the Department's written response to my enquiries are at Appendix Four to this report.

Documentation reviewed

30. I completed a review of the documentation the Department provided in response to my investigation enquiries. I also reviewed the documentation the complainant provided to me throughout the course of my investigation. Relevant extracts of the documentation I reviewed are at Appendix Five to this report.

31. I compiled a chronology of key events relevant to this issue of complaint, on the basis of the documentation and records examined during the investigation. The chronology of events (relating to the Department's monitoring of the IP) is at Appendix Six to this report.

Analysis and Findings

32. This issue of complaint concerns the Department's monitoring of the IP. Ms A considers that the Department failed to undertake that monitoring function in an effective manner and that it did not have '*the means, ability, or duty of care to discover wrongdoing*'. In addition, she is aggrieved that the Department did not complete any further monitoring visits to the IP after she had complained to it about his conduct.
33. Before setting out my findings on this issue of complaint, I consider it important to highlight that when he submitted Ms A's complaint to my Office, and during the course of my investigation, the complainant was highly critical of the fact that throughout the period the Department authorised the IP to act as an insolvency practitioner, it (the Department) had a 'dual role'. The complainant said this meant that the Department was responsible for authorising and monitoring (some) insolvency practitioners, while at the same time being responsible for authorising and regulating RPBs (who, themselves, were responsible for authorising other insolvency practitioners).
34. The complainant made it clear he considered these two responsibilities were conflicting. He highlighted the Department took steps in 2017 to amend its insolvency legislation to remove its authority to authorise insolvency practitioners. He contended this action supported his view that the Department's 'dual role' in authorising both insolvency practitioners and the RPBs was inappropriate.
35. I note the complainant's views on this matter. However, as I recorded earlier, my role in investigating this complaint is to examine the administrative actions of the Department against the standards that applied at the time of the events complained of occurred. This means that, notwithstanding that the Department took action in 2017 to remove its authority to licence insolvency practitioners, it

did, at the time the IP was supervisor of Ms A's IVA, have the statutory authority to authorise him, while simultaneously being responsible for regulating the RPBs. The question of whether that was an appropriate statutory power for the Department at that time is not a matter for consideration within this investigation.

36. The Department provided additional clarity on the rationale for the changes it made in 2017 to its regulatory oversight role. It explained that these changes were *'in response to similar changes made at Westminster'*. It explained that the Department's *'stated policy and practice has always been to maintain its insolvency regime in parity with that of England and Wales'*, and that *'the change in legislation to remove the Department as a competent authority for the licensing of Insolvency Practitioners was in line with similar changes made to the legislation applying in England and Wales'*. The Department commented that the changes it made to its regulatory oversight role *'had no relation to this case or the assertions made by the complainant'*.
37. Turning then to my findings on this first issue of complaint. My investigation established that throughout the period the IP was supervisor of Ms A's IVA, from 27 April 2006 to 26 September 2012, the Department, in its role as a 'competent authority'⁵ was responsible for the IP's authorisation as an insolvency practitioner. Previously, the Department had also been responsible for authorising the IP since 17 June 1992.
38. I found that, as the IP's authorising body, the Department had certain obligations and responsibilities to ensure the IP was a fit and proper person to act as an insolvency practitioner. During the period in which the IP acted as supervisor of Ms A's IVA, these obligations and responsibilities were set out in a series of memoranda of understanding, referred to in this report as 'the 2005 MOU', 'the 2008 MOU'⁶ and 'the 2011 MOU'.⁷ These MOUs set out the required standard of the Department's monitoring of the insolvency practitioners it authorised.

⁵ Under article 351 of the NI Insolvency Order

⁶ The 2008 MOU superseded the 2005 MOU on 1 May 2008.

⁷ The 2011 MOU superseded the 2008 MOU on 1 October 2011.

39. I note that the 2005 MOU, the 2008 MOU and the 2011 MOU each stipulated that the Department would only authorise individuals who were able to demonstrate they were a *'fit and proper'* person to act as an insolvency practitioner. The three MOUs required the Department to monitor the insolvency practitioners it authorised in order to *'make an objective assessment of the conduct and performance of the practitioner and to ascertain whether the practitioner is and continues to be fit and proper'*. The MOUs also required the Department to take *'prompt and appropriate action'* when it became aware of *'serious concerns about a practitioner's fitness'*.
40. In addition, the 2005 MOU, the 2008 MOU and the 2011 MOU each required the Department to ensure its monitoring of insolvency practitioners was carried out *'by individuals with appropriate training and skills'* and that the monitoring it conducted was in keeping with 'the Principles for Monitoring'.
41. Further detail of the standards the Department adopted for its monitoring of insolvency practitioners were set out in 'the Principles for Monitoring'. These standards were in place throughout the time the IP acted as supervisor of Ms A's IVA. The 2003 Principles for Monitoring took effect from January 2003 and were superseded in May 2008 by the 2008 Principles for Monitoring.
42. Both the 2003 and 2008 Principles for Monitoring described the purpose of monitoring as being to enable the Department to make an objective assessment of the conduct and performance of the insolvency practitioners it authorised and to establish whether the practitioner concerned was, and continued to be, *'fit and proper'* to act as an insolvency practitioner.
43. Both sets of Principles for Monitoring set out the Department's obligations in relation to 'desktop monitoring' and 'monitoring visits'. (The Department informed me that 'desktop monitoring' was the process whereby the different units within its Insolvency Service, all of which were responsible for carrying out different statutory functions, *'would refer [insolvency practitioners] to the [Department's] Insolvency Practitioner Unit for failure to comply with the Insolvency Rules and Legislation'*.)

44. I note that in relation to desktop monitoring, both the 2003 and the 2008 Principles for Monitoring required the Department to have in place a process for gathering from the insolvency practitioner, and from sources independent of the practitioner, information to assist in the achieving of the purpose of monitoring.
45. The Department informed me it did not have formal written procedures for desktop monitoring in place during the period 2006 to 2012, although it did, in response to my investigation enquiries, explain the process that followed its Insolvency Practitioner Unit's receipt of a referral about an insolvency practitioner.
46. In relation to monitoring visits, I note the 2003 Principles for Monitoring required the Department to complete a monitoring visit to each insolvency practitioner it authorised, generally, every three years. There was also provision for interim visits should the Department become aware of concerns about a practitioner's activities. The 2008 Principles for Monitoring required that monitoring visits, generally, took place every three years (although the Department could, if it considered it appropriate, conduct an early monitoring visit within the first 12 months of a practitioner's appointment).
47. Both the 2003 and the 2008 Principles for Monitoring provided that monitoring visits should examine the practitioner's compliance with relevant aspects of insolvency law and practice, as well as their professional competence.
48. The Department informed me that in 1994, it developed a written procedure manual in relation to monitoring visits (referred to in this report as the Monitoring Visit Procedures) and it provided details of subsequent procedural updates.
49. I note the Monitoring Visit Procedures explained that a sample of an insolvency practitioner's caseload was to be reviewed during each monitoring visit. The Procedures required that if the practitioner had a caseload of less than 15 cases, all cases were to be reviewed. If the caseload consisted of between 15 and 100 cases, a sample of 15 cases was to be reviewed. If the practitioner had more than 100 cases, 15% of the caseload, up to a maximum of 45 cases, was to be examined. In addition, the Monitoring Visit Procedures required that

if an insolvency practitioner dealt with different types of insolvency, such as, bankruptcies, compulsory winding ups, creditors' voluntary winding ups and IVAs etc, the monitoring team was to ensure that the sample of cases it reviewed reflected the composition of the practitioner's overall caseload.

50. I note the Monitoring Visit Procedures also set out the various aspects of an insolvency practitioner's actions and office systems that the monitoring team was to examine in the course of a monitoring visit, as well as the compliance checklists and forms it was required to complete to document the monitoring activity.
51. In investigating this first issue of complaint, I considered the Department's monitoring of the IP against the requirements of the 2005, 2008 and 2011 MOUs, the 2003 and 2008 Principles for Monitoring, and the Monitoring Visit Procedures. I found evidence of a number of instances when the Department's monitoring of the IP did not meet the requirements of these standards. These are detailed below.
52. My investigation established that during, and just prior to, the period in which the IP acted as supervisor of Ms A's IVA, the Department conducted monitoring visits in November 2003 (the 2003 Monitoring Visit), August 2007 (the 2007 Monitoring Visit) and September/October 2010 (the 2010 Monitoring Visit). I note the Department had scheduled its next monitoring visit for March 2014 but that that visit did not take place because the IP had, by then, surrendered his insolvency licence. I am satisfied that the frequency of the monitoring visits to the IP was in keeping with the requirements of the 2003 and 2008 Principles for Monitoring. I am also satisfied that in the circumstances (that the IP had surrendered his insolvency licence) it was appropriate that the Department did not proceed with the planned March 2014 monitoring visit.
53. I note that at the time of the 2003 Monitoring Visit, the IP's caseload consisted of 22 cases – 11 bankruptcies and 11 IVAs. According to the Monitoring Visit Procedures, the monitoring team ought to have reviewed a sample of 15 cases, and the sample ought to have reflected the caseload's composition. However, the Department informed me that 13 cases – nine bankruptcies and four IVAs –

were examined. This means that neither of these requirements of the Monitoring Visit Procedures was met. Furthermore, the Department informed me that the report of the 2003 Monitoring Visit inaccurately documented that the monitoring team had examined 17 cases because *'closed bankruptcy cases were double counted'*. In my view, while this may have been an administrative error in presenting information in the monitoring visit report, the fact the Department did not identify this error in reviewing and finalising the report calls the thoroughness of its monitoring activity into question.

54. The records I examined relating to the 2007 Monitoring Visit document that at that time, the IP had a caseload of 18 cases, consisting of 10 bankruptcies, seven IVAs (including that of Ms A) and one compulsory liquidation. Again, according to the Monitoring Visit Procedures, a sample of 15 cases ought to have been reviewed. However, the report of the 2007 Monitoring Visit documents that the monitoring team reviewed only 12 cases (seven bankruptcies, four IVAs⁸ and one compulsory liquidation). Although the Department highlighted, in response to investigation enquiries, that one of each case type was selected for review, the sample size was still three fewer cases than ought to have been the case.
55. It is not possible for me to say definitively whether the findings of 2003 and 2007 monitoring visits would have been any different, had the monitoring team reviewed appropriate samples of the IP's cases, that is, whether the Department would still have concluded on those occasions that the IP was *'fully complying with the insolvency legislation and best practice requirements'*. However, in my view, the greater the number of cases reviewed, the greater the assurance on the outcome of the monitoring visit. It is a fact that the case samples reviewed in both the 2003 and 2007 Monitoring Visits did not meet the requirements of the Monitoring Visit Procedures. In my view, therefore, the Department's assessment of the IP's conduct and performance at those times was not as comprehensive as it ought to have been.

⁸ Ms A's IVA was not one of the four IVA cases the monitoring team reviewed.

56. In addition, it is not possible to be certain whether, even if an appropriate case sample had been reviewed in 2007, Ms A's IVA would have been one of those examined. That said, I am of the opinion that if the appropriate methodology had been applied, resulting in 15 of 18 cases being examined, given that the one compulsory liquidation case would have been reviewed, six of the seven IVA cases in the IP's caseload would have been selected. It is my view, therefore, that there is a high likelihood that Ms A's IVA would have been one of the cases reviewed. In this regard, the Department informed me it had no record of how cases were chosen for examination, pointing out that *'there was no requirement to record this'*. I found no record either, within the extensive monitoring visit documentation I examined, which showed when and by whom case samples were selected or which documented the rationale for the number of each type of case selected.
57. I acknowledge that the Monitoring Visit Procedures did not specifically require the Department to document how, when and by whom a sample of cases was selected for review. Nevertheless, I consider this was a clear requirement of the Principles of Good Administration, to which I referred earlier in this report. These principles are the standards against which the actions of a public authority within my jurisdiction are to be judged. They clearly require a public authority such as the Department to properly document this stage of the monitoring visit process. The absence of such a record could lead to a perception, such as that voiced by the complainant, that the sample of cases examined during monitoring visits was not selected fairly and appropriately, and without any influence or interference from the IP. I will return to the requirements of the Principles of Good Administration later in this report.
58. I am satisfied that the size and composition of the case sample reviewed in the 2010 Monitoring Visit was appropriate. At the time of the 2010 Monitoring Visit, the IP's case load consisted of 51 cases – two administration cases, one compulsory liquidation, 24 IVAs and 24 bankruptcies. The 2010 Monitoring Visit report documents that the monitoring team reviewed 17 cases – two administration cases, one compulsory liquidation, eight IVAs and six

bankruptcies. That said, there is again a lack of record to document how, when by whom the sample was selected for review by the monitoring team.

59. Furthermore, I note the Department's findings, on the basis of the 2010 Monitoring Visit – that the IP was *'in general, complying with the insolvency legislation and best practice requirements'* – were at odds with the findings of a subsequent independent investigation into the IP's conduct.⁹ That independent investigation found that in one of the cases the 2010 monitoring team reviewed, there was evidence of *'serious failings'* on the part of the IP, which were considered *'extensive'* and their *'seriousness ... grave'*, and that his work was of an *'extremely poor'* standard. In my view, the fact the Department's review of this same case at the time of the 2010 Monitoring Visit did not disclose any such failings on the part of the IP is a strong indication that its monitoring activity at that time did not have sufficient rigour and that it fell short of its intended purpose. In this respect, both the 2008 MOU and the 2008 Principles for Monitoring make clear that the purpose of monitoring activity is to assess the conduct and performance of an insolvency practitioner to determine whether they are a fit and proper person to act in that role.
60. I considered it important that my investigation of this issue of complaint also examined the Department's monitoring of the IP in the years prior to the period in which he acted as supervisor of Ms A's IVA. If, during that earlier period, the Department had not continued to consider the IP a fit and proper person to act as an insolvency practitioner, and therefore had continued to authorise him, he would not have been in a position to become supervisor of Ms A's IVA in 2006.
61. The Department informed me that following the IP's authorisation in June 1992, it conducted monitoring visits in June 1994 (the 1994 Monitoring Visit), March 1996 (the 1996 Monitoring Visit), March 1997 (the 1997 Monitoring Visit) and May/June 2000 (the 2000 Monitoring Visit).
62. I note that at the time of the 1994 Monitoring Visit, the IP had a caseload of one compulsory liquidation, three IVAs, seven bankruptcies and 11 creditors'

⁹ This was the independent investigation, by a qualified insolvency practitioner, of Ms A's January 2012 complaint about the conduct of the IP, and other matters, including two further complaints.

voluntary liquidations. This means, according to the Monitoring Visit Procedures, the monitoring team ought to have reviewed a sample of 15 cases. However, the report of the 1994 Monitoring visit documents that a sample of 12 cases was examined – three IVAs, four bankruptcies and five creditors' voluntary liquidations. It is evident, therefore, that the case sample was not appropriate, either in terms of its size or its composition. In addition, there was no record to document how, when by whom the sample was selected for review.

63. The sample reviewed in the 1996 Monitoring Visit was not appropriate either. At that time, the IP's caseload was 15 cases – seven IVAs, four creditors' voluntary liquidations, two bankruptcies, one deceased insolvency and one members' voluntary liquidation. The report of the 1996 Monitoring Visit documents that the case sample examined consisted of one bankruptcy, one creditors' voluntary liquidation, one IVA and one deceased insolvency. Again, this indicates that the case sample reviewed did not meet the requirements of the Monitoring Visit Procedures. As previously, the Department did not make a record of how, when and by whom the cases to be examined were selected.
64. I note the monitoring team in the 1996 Monitoring Visit found evidence that, in relation to a number of his insolvency cases, the IP had *'failed to date to put in place the remedial action determined by the [1994] monitoring visit'*. In addition, the monitoring team considered it *'imperative that [the IP] demonstrates immediately his ability to maintain administrative processes which match the agreed standard recommended by and agreed with the [1994 monitoring team]'*. The Department was unable to provide me with any records which documented the action it took subsequent to the 1996 Monitoring Visit, in follow up to these findings. This was despite the Department having retained other records relating to the 1996 Monitoring Visit, including some of its correspondence with the IP in the days immediately following the Monitoring Visit. As such, there is a lack of evidence that the Department, having identified concerns about the IP's conduct and performance at the 1996 Monitoring Visit, took the necessary follow up action to ensure that his conduct as an insolvency practitioner was appropriate.

65. The records I examined relating to the 1997 Monitoring Visit document that the IP had a caseload of 15 cases – nine IVAs, three bankruptcies, one creditors' voluntary liquidation, one company voluntary liquidation and one members' voluntary liquidation. The report of the 1997 Monitoring Visit documents that a sample of 12 cases were reviewed. Again, according to the Monitoring Visit Procedures, this was too small a sample. Once again, the Department did not record how, when and by whom the sample was selected.
66. In addition, the 1997 Monitoring Visits report documents that the monitoring team examined one administrative receivership, five bankruptcies, one creditors' voluntary liquidation, one company voluntary arrangement, two compulsory liquidations, one IVA and one deceased insolvency. Not only does this demonstrate the sample did not reflect the composition of the IP's caseload, but there is clear inconsistency between the documented number of bankruptcy cases in the sample reviewed (paragraph 1.2 of the 1997 Monitoring Visit report states five bankruptcies were examined) and the documented number of bankruptcy cases in the IP's caseload (paragraph 2.2 states he had three bankruptcies). Furthermore, Appendix I to the 1997 Monitoring Visit report lists four bankruptcy cases as having been examined by the monitoring team. I acknowledge these inconsistencies may be further administrative errors in another of the Department's monitoring visit reports. However, the fact the Department did not identify this inconsistency in finalising its report of the 1997 Monitoring Visit is another indication of a lack of thoroughness in its monitoring activity.
67. Significantly, the report of the 1997 Monitoring Visit documented that the monitoring team were *'of the opinion that [the IP] has failed to maintain the standards of fitness and propriety required by Regulation 4 of Insolvency Practitioners Regulations (NI) 1991'*. It further documented the monitoring team concluded that the IP *'has failed to maintain the standards of independence, integrity and professional skills appropriate for an insolvency practitioner'*.
68. It is evident that despite those findings, the Department continued to authorise the IP. The Department was unable to provide me with records that fully documented events and decisions that led to that situation, in other words, to

show how the Department became satisfied, subsequent to the 1997 Monitoring Visit, that it was appropriate to continue to authorise the IP to practice an insolvency practitioner. The Department did provide a copy of its correspondence with the IP's legal advisers, and a copy of a detailed submission from the IP, in response to the report of the 1997 Monitoring Visit, but it could produce no records documenting its consideration of that submission. The Department also provided a copy of a record of a staff member's telephone conversation with the Northern Ireland Audit Office (NIAO) on 23 November 1999. This documented that by that stage, the Department considered that the '*main concerns*' it had identified at the time of the 1997 Monitoring Visit '*had been addressed*'. However, I found no records that documented how the Department had come to reach that conclusion.

69. This means there is a lack of evidence to demonstrate that having identified serious failings on the part of the IP in 1997, the Department took swift and appropriate action to determine whether he remained a fit and proper person to act as an insolvency practitioner. I am further persuaded of this by the content of an internal Departmental memo dated 27 June 2000, concerning the draft report of the next monitoring visit, in 2000. This memo states that during the 2000 Monitoring Visit, the IP spoke to the monitoring team about the 1997 Monitoring Visit, advising he considered '*the matter had never been fully concluded*' and that '*the contents of [the 1997 Monitoring Visit] report are still in limbo*'. The internal memo further states the IP had informed the 2000 monitoring team that he had acted in accordance '*with a number of verbal recommendations*' the 1997 monitoring team had made. In my view, these comments indicate that *all* the concerns the Department had identified in 1997 about the IP's conduct had not been comprehensively addressed.
70. I considered the other available evidence relating to the 2000 Monitoring Visit. The report of the 2000 Monitoring Visit documents the IP's caseload as comprising one creditors' voluntary arrangement, 28 IVAs, two company voluntary arrangements, 17 bankruptcies, one administration and four partnership voluntary arrangement. I note the report inaccurately documents the total number of cases in the IP's caseload as 89. Again, this indicates a

lack of care and/or attention to detail on the part of the Department in reviewing the final report for issue.

71. The report of the 2000 Monitoring Visit documents that the monitoring team reviewed a sample of 13 cases, two less than the required 15. This sample comprised one creditors' voluntary arrangement, one company voluntary arrangement, two bankruptcies and nine IVAs. It is evident the composition of the sample did not reflect the composition of the caseload. As such, the case sample reviewed in the 2000 Monitoring Visit did not meet the requirements of the Monitoring Visit Procedures.
72. In addition to the Department's failure to review appropriate samples of the IP's caseload, my investigation found a lack of evidence to confirm that the Departmental officials who conducted the monitoring visits were appropriately skilled and/or trained. In this regard, the Department informed me that its staff *'are not and never have been qualified insolvency practitioners'*. Furthermore, the Department was unable to demonstrate how, throughout the period it authorised the IP, it was satisfied that the individuals who conducted the monitoring visits to him had the necessary training and skills to fulfil that function. It said that because the individuals concerned no longer worked for its Insolvency Service, it was now not possible to determine what skills and training they had. By way of clarification of this comment, the Department informed me that its retention and disposal schedule requires *'training and development records to be destroyed two years after closure of the training file'*. It added, *'As the relevant individuals have left the Insolvency Service their training records have not been retained'*.
73. In responding to my consideration of the evidence relating to this matter, the Department informed me that *'a further review of [its] records relating to the organisation of the Insolvency Service from circa 1996'* had identified two documents *'relating to members of staff who conducted the monitoring visits from 2000 to 2010'*. The Department provided me with a copy of these documents – an organisation chart dated 7 May 1996 for its Official Receiver's office and a list of staff in post within the Insolvency service on 8 April 1997. The Department said these documents *'detail that [the members of staff who*

conducted the monitoring visits during the period 2000 to 2010] were skilled and experienced insolvency examiners as well as being qualified accountants at that time'. It also said that, as such, it was 'satisfied that they had the necessary knowledge, skills, experience and professional expertise to conduct monitoring visits'.

74. Subsequently, the Department provided further explanation of why it considered the Official Receiver's office organisation chart and the Insolvency Service staff list demonstrated the monitoring teams' knowledge, skills and experience. It said:

- *the staff list 'confirms that the staff members who undertook the monitoring visits from 2000 to 2010 were members of the Institute of Chartered Secretaries and Administrators [and] therefore held professional qualifications';*
- *the organisation chart 'shows that one member of staff who undertook the monitoring visits was a Deputy Official Receiver (DOR) within the Official Receivers unit ... that role has always been key within the senior management team of the Insolvency Service [and] in order to carry out this role the individual required a significant level of knowledge, skills and experience in a wide range of insolvency casework'; and*
- *the organisation chart 'shows that one member of staff who undertook the monitoring visits [between 2000 and 2010] was a Staff Officer Examiner within the Official Receiver's unit ... In order to carry out this role, the individual required a significant level of knowledge, skills and experience in a wide range of insolvency casework'.*

75. The Department also said that one of the members of staff who undertook monitoring visits to the IP during the period 1994 to 1997, while not a member of the Institute of Chartered Secretaries and Administrators, *'had extensive insolvency experience'*. The Department subsequently explained the basis for this assertion. It said that this individual *'joined the Insolvency Service, at the latest, in 1988 and by the time [they] had undertaken [their] first monitoring visit, had, at a minimum, 6 years' of relevant insolvency experience'*. The

Department also said that roles the individual held within the Insolvency Service meant they *'would have been responsible for ensuring that cases were administered according to the relevant insolvency legislation and processes'*.

76. I accept that the further information the Department provided on this matter indicates it is very likely that the individuals who conducted monitoring visits to the IP during the period 1994 to 2010 had insolvency knowledge and experience. However, due to the Department's (appropriate) application of its retention and disposal schedule, and the resulting destruction of HR records, it is not possible at this time to be certain of the level or extent of those individuals' insolvency knowledge and experience.
77. I am, however, mindful that the nature and level of insolvency expertise within the Department was highlighted during preparatory work for the investigation of the complaint Ms A made in January 2012 about the conduct of the IP, a matter I will address later in this report. Specifically, I note that in its April 2012 business case for the appointment of an independent investigator to examine Ms A's complaint (and other matters), the Department drew senior management's attention to the fact that it *'[did] not have the expertise to say whether any of the work carried out by [the IP] [was] superfluous or indeed necessary resulting in the charging of excessive fees'*. The business case also noted that the Department found it *'difficult to assess whether advice offered at the outset represented the best way for the client'*, given its staff were not practicing insolvency practitioners.
78. In my view, an assessment of the appropriateness of the advice an insolvency practitioner offered to a client, and of the level of fees they charged subsequently, are fundamental factors to be considered in making a determination of whether a particular insolvency practitioner is a fit and proper person to fulfil that role. The fact the Department considered it did not have the expertise to assess such matters during the period it acted as a competent authority is, therefore, of great concern.

In summary, my investigation of this first issue of complaint established that during the 22-year period the Department authorised the IP, from 1992 to 2014,

it conducted seven monitoring visits. I found that in all but one occasion (the 2000 Monitoring Visit), the size of the sample of cases the monitoring teams reviewed was too small. In addition, on most occasions, the composition of the sample reviewed did not reflect the composition of the IP's caseload. As such, the majority of the case samples the monitoring teams examined failed to meet the requirements of the Monitoring Visit Procedures. The Department also failed to make and retain an appropriate record of how, when and by whom case samples were selected. While there was no explicit obligation within the Monitoring Visit Procedures to do so, I consider this was a clear requirement of good administrative practice, and in the interests of openness and transparency. My investigation did not find any evidence to support the complainant's contention that the IP 'hand-picked' cases for the Department to examine during its monitoring visits. It is also the case, however, that because the Department's monitoring visit records do not demonstrate that a clear methodology was used to select cases for review, it is not possible to assure the complainant that this was not the case.

79. In addition, I considered that the anomalies and inconsistencies I found in some of the information presented in the reports of the 1997, 2000 and 2003 Monitoring Visits suggest a lack of care and/or attention to detail on the part of the Department when it reviewed and quality assured those reports before issue.
80. My investigation also found a lack of evidence to demonstrate that when, in 1996 and 1997, concerns became apparent about certain aspects of the IP's conduct and performance, the Department took prompt and appropriate action to ensure it was satisfied he remained a fit and proper person to hold an insolvency licence. Furthermore, the evidence I considered suggests that, at times, the Department adopted a '*wait and see*' approach when concerns about the IP's performance were identified. In particular, I note the Department's record of its conversation with NIAO in November 1999 about the findings of the 1997 Monitoring Visit, which records the Department informed NIAO that its '*main* [my emphasis] *concerns had been addressed*' and that '*it did not intend to pursue any matters arising out of the [1997 Monitoring Visit] at present but*

that a further visit would be conducted [the following] year'. In my view, this suggests a preferred approach of waiting until the next planned monitoring exercise, rather than taking decisive action to ensure all concerns about the IP's conduct were addressed promptly or, as a minimum, utilising the provision within the Monitoring Visit Procedures for 'targeted interim [monitoring] visits'.

81. I note the independent investigator, who was appointed in 2012 to review the Department's handling of a number of earlier complaints about the IP's conduct (as well as to investigate Ms A's January 2012 complaint) (the Independent Investigator), identified a similar theme in relation to the Department response to concerns about the IP's conduct. The Independent Investigator noted that, in some of the complaints the Department had already examined, *'even where findings expressed concern regarding various matters, an intimation was made to the IP that a review of the case would be conducted within 12 months ...'*
82. Significantly, I also found evidence that the Department failed to ensure that staff members tasked with conducting monitoring visits to the IP had sufficient skills and training. This lack of an appropriate level of expertise - a clear contravention of the requirements of the 2005, 2008 and 2011 MOUs - was highlighted in the Department's business case for the appointment of an independent investigator to examine Ms A's complaint (and other matters). It was also exposed by the Independent Investigator's finding in a case the Department had reviewed during the 2010 Monitoring Visit. Despite the Department having identified no issues, the Independent Investigator found evidence that the IP *'had failed to demonstrate that appropriate advice had been given ... at the outset and that advice to proceed to a Company Voluntary Arrangement pre-administration was wholly inappropriate.'*
83. As I recorded earlier, the Principles of Good Administration are the standards against which the actions of a public authority within my jurisdiction are to be judged. These Principles (which are reproduced at Appendix One to this report) require public bodies to get it right; be customer focused; be open and accountable; act fairly and proportionately; put things right; and seek continuous improvement.

84. The First Principle of Good Administration, '*Getting it Right*', requires a public service provider to act in accordance with the law, policy and guidance. This means it should follow its own policy and procedures, whether published or internal. It also means the public body should act in accordance with established good practice and provide effective services with appropriately trained and competent staff. The Second Principle, '*Being Customer Focused*' means a public authority should do what it says it is going to do. In other words, if it makes a commitment to take certain action, it should keep to that commitment, or explain why it cannot. The Third Principle, '*Being Open and Accountable*', requires a public body to create and maintain reliable and usable records as evidence of their activities.
85. For the reasons set out above, the failings disclosed by my investigation of this first issue of complaint indicate that in monitoring the IP, the Department did not always meet the standards required by these Principles. I consider this to be maladministration on the part of the Department.
86. Given the available evidence, and the lack of some key records and a clear rationale for what occurred, I do not have confidence in the decisions the Department took, up to the point the IP's insolvency licence was withdrawn in 2014, that he remained a fit and proper person to act as an insolvency practitioner. This means I am concerned that the Department failed to meet its key obligation in relation to the authorisation of insolvency practitioners. Ms A had a reasonable and justifiable expectation that the Department, as the IP's authorising body, would monitor his conduct and performance effectively, and in accordance with its own standards and procedures. My investigation established that this expectation was not met.
87. I have identified maladministration in the Department's monitoring of the IP and I am satisfied this maladministration caused Ms A to sustain the injustice of a loss of opportunity to have the IP, the supervisor of her IVA, monitored in an effective manner. Consequently, I uphold this first issue of complaint.

Issue Two:

Whether there was unreasonable and/or avoidable delay in the Department's handling of Ms A's complaint of 9 January 2012 about the conduct of the IP

Detail of Complaint

88. Ms A complained to the Department on 9 January 2012 about a number of matters concerning the IP's actions in relation the IVA she had entered into in 2006. She complained that the IVA had been 'mis-sold' to her, both in terms of timescale and cost. Ms A also complained about the IP's communication with her, and about conflicts of interest and breaches of insolvency code of ethics. In addition, Ms A complained about the circumstances of the reinstatement of her IVA in November 2010, after the IP had failed it approximately six months previously.
89. The Department wrote to Ms A on 15 August 2014 to advise that a *'thorough and independent'* investigation of her complaint had concluded. The Department also informed Ms A that *'[her] case was considered by an independent panel'* and it provided her with a copy of the panel's report, *'as far as it relates to [her].'* The Department further informed Ms A that it had decided the IP was no longer a fit and proper person to act as an insolvency practitioner, and that he had surrendered his insolvency licence to the Department on 28 February 2014.
90. The complainant said Ms A was dissatisfied with how long it had taken the Department to deal with her complaint about the IP. He asked, *'Why would it take 2½ years from [Ms A's] 9th January 2012 grave complaint for an outcome 15th August 2014 by [the Department]?''*
91. The complainant also said that the Department failed to take action *'by way of sanctions or protection given to [Ms A]'* after the independent investigation of her complaint concluded that the IP was not a fit and proper person to hold an insolvency licence.

Evidence Considered

Legislation, policies and guidance

92. I considered the following legislation, policies and guidance:

- the NI Insolvency Order;
- the 2005 MOU;
- the 2008 MOU;
- the 2011 MOU;
- the 2012 Insolvency Practitioner Complaints Procedure; and
- the 2014 Insolvency Practitioner Complaints Procedure.

93. Relevant extracts of the legislation, policies and guidance I considered are at Appendix Three to this report.

The Department's response to investigation enquiries

94. I made written enquiries of the Department about this issue of complaint. Relevant extracts of the Department's written response to my enquiries are at Appendix Four to this report.

Documentation reviewed

95. I completed a review of the documentation the Department provided in response to my investigation enquiries. I also reviewed the documentation the complainant provided to me throughout the course of my investigation. Relevant extracts of the documentation I reviewed are at Appendix Five to this report.

96. I compiled a chronology of key events relevant to this issue of complaint, on the basis of documentation and records that were examined during the investigation. The chronology of events (relating to the Department's handling of Ms A's complaint about the IP) is at Appendix Seven to this report.

Analysis and Findings

97. This issue of complaint concerns the Department's handling of the complaint about the IP's conduct, which Ms A submitted to it on 9 January 2012. In particular, it is about the length of time it took the Department to conclude its consideration of the complaint. Ms A is also aggrieved that the Department did not take action to 'give her protection' or to impose a sanction on the IP as soon as the independent investigation of her complaint concluded that he was not a fit and proper person to act as an insolvency practitioner.
98. My investigation established that the 2005, 2008 and 2011 MOUs¹⁰ set out the Department's obligations in relation to the handling of complaints about the insolvency practitioners it authorised. The MOUs required the Department to ensure that complaints were *'progressed expeditiously and impartially'*. The MOUs also required the Department to ensure that complaints were *'investigated by individuals with appropriate training and skills'*, and that *'those investigating and considering complaints [were] independent of and seen to be independent of the subjects of the complaints'*. The 2008 and 2011 MOUs further required the Department to write to a complainant *'within fifteen working days of the conclusion of a complaint'*, setting out *'its findings in respect of the complaint [and] and indication of proposed further action, if any'*.
99. The Department provided me with details of the procedures and guidance relating to complaints about the actions of insolvency practitioners, which were in operation during the period in which it considered Ms A's complaint (January 2012 to August 2014). These were the 2012 Insolvency Practitioner Complaints Procedure (which I note was actually guidance for complainants on making a complaint about an insolvency practitioner rather than a policy and/or procedure on how the Department was to deal with such a complaint) and the 2014 Insolvency Practitioner Complaints Procedure, which came into effect on 9 May 2014.

¹⁰ These MOUs detailed the required standard of the Department's monitoring of the insolvency practitioners it authorised.

100. Both the 2012 Insolvency Practitioner Complaints Procedure and the 2014 Insolvency Practitioner Complaints Procedure provided a brief overview of the process the Department would follow on receipt of a complaint. Neither Procedure was specific in relation to Department's timescale for concluding its consideration of a complaint, although the 2014 Insolvency Practitioner Complaints Procedure did provide an undertaking that the Department would write to the complainant within 15 working days of the conclusion of an investigation, setting out *'the findings in respect of the complaint'*; *'an indication of proposed further action, if any'*; and *'options that may be available should the Complainant be dissatisfied with the Department's findings'*.
101. In relation to the Department's communication with a complainant during the course of an investigation of a complaint, the 2014 Insolvency Practitioner Complaints Procedure stated that the Department would *'regularly update the complainant'* and would *'issue at least a quarterly update to the complainant'*.
102. Even at the outset of my investigation, it was clear, from the supporting documentation the complainant had provided, that it took the Department significantly longer to conclude its consideration of Ms A's complaint about the IP's actions than either party would have anticipated. It was evident that although Ms A complained to the Department on 9 January 2012, it was not until 15 August 2014 that the Department informed her of the ultimate outcome. The Department, in response to my investigation enquiries, acknowledged this delay, stating the main reasons for it *'were ensuring that the investigation was handled fairly, robustly and independently'*.
103. In investigating this second issue of complaint, I examined the chronology of the Department's handling of Ms A's complaint to establish whether this delay in bringing the matter to a conclusion was unreasonable in the circumstances and/or avoidable.
104. My investigation found that shortly after Ms A submitted her complaint about the IP, the Department recognised that it would not itself be able to investigate the matters she had raised. I note that by 8 February 2012, the Department had prepared a business case to its senior management, proposing an

independent investigation of Ms A's complaint and of a further complaint about the IP's actions, which it had received from another individual (referred to in this report as 'Complainant X') on 15 November 2011. That business case highlighted that the Department *'[did] not have the expertise'* to determine whether the work the IP had carried out was *'superfluous or indeed necessary resulting in the charging of excessive fees'*. The business case also noted that it would be difficult for the Department's staff, who were not insolvency practitioners, *'to assess whether or not the advice offered [by the IP] at the outset represented the best way forward for the client'*.

105. My investigation found that it took a further three months, until mid-May 2012, for the Department to redraft and finalise its business case, liaise with the Department of Finance's Central Procurement Directorate regarding a tendering exercise for the independent investigation, and seek the approval of the (then) Minister of Enterprise, Trade and Investment (the Minister) for such a tender. During this period, the Department expanded the remit of the proposed independent investigation to include a review of the Department's handling of eight previous complaints and matters of concern relating to the IP, as well as the provision of guidance on the procedures to be followed, and the skills required, in the conduct of investigations into complaints against insolvency practitioners the Department authorised. The Minister gave her approval for the tendering process in mid-August 2012. It then took a further two months after that for the tendering process to be completed, resulting in the appointment of the Independent Investigator on 7 November 2012. I am in no doubt that, had she been aware of it at the time, it would have been completely unsatisfactory, from Ms A's perspective, that the Department was only in a position to commence an investigation into her complaint ten months after she had first submitted it.

106. That said, I am satisfied, on the basis of my examination of the extensive documentation I obtained from the Department, that there is no evidence of periods of inaction on the part of the Department during that ten-month period. It is the case, nevertheless, that the necessary procurement and approval processes associated with the appointment of an external investigator

contributed significantly to the length of time it took to get the investigation underway. That delay could have been avoided had the Department had an appropriately trained and skilled internal resource that would have enabled it to conduct the investigation itself. It was a further consequence of the Department's failure to ensure it had sufficiently trained and skilled staff to fulfil all responsibilities associated with regulating insolvency practitioners.

107. I established that the Independent Investigator submitted a number of draft reports to the Department on 17 December 2012, approximately six weeks after his appointment on 7 November 2012. Three of these reports set out the Independent Investigator's findings on his investigations into Ms A's complaint and Complainant X's complaint, and on his case administration and costings review of Ms A's IVA. Other draft reports concerned the Independent Investigator's findings on his review of the Department's handling of eight previous complaints and matters of concern about the IP, which had been brought to its attention during the previous ten years, and his advice on the action the Department should take in respect of his findings on the IP's actions.
108. I note that in relation to Ms A's complaint, the Independent Investigator's draft report recorded, *'there is much merit in the majority of the complaints made by [Ms A]...'*. In addition, the Independent Investigator's draft report on his case administration and costings review of Ms A's IVA recorded his finding that *'the IP has been paid fees grossly in excess of those which in my opinion would have been more appropriate in all of the circumstances of this case'*. The draft report of the investigation into Complainant X's complaint documented the Independent Investigator's opinion that part of that complaint should be upheld. In addition, the draft report of the Independent Investigator's examination of the Department's handling of eight previous complaints and matters of concern about the IP identified weaknesses in the Department's investigative approach and in the action it had taken when concerns had been identified.
109. Despite the Independent Investigator reporting these findings to the Department in mid-December 2012, my investigation found insufficient evidence to fully explain the action, if any, the Department took during the following weeks and months to expedite its consideration of Ms A's complaint.

Rather, according to the information the Department provided to me, other than its receipt on 22 May 2013 of a draft report from the Independent Investigator on his case administration and costings review of Complainant X's insolvency case, the next action the Department took was to obtain approval on 19 June 2013 to expand the Independent Investigator's terms of reference to include an investigation into a further complaint about the conduct of the IP. The Department had received that further complaint, from an individual referred to in this report as 'Complainant Y', on 4 March 2013.

110. I established that it was on 17 September 2013 that the Independent Investigator submitted his draft report on his investigation into Complainant Y's complaint and that subsequently, on 4 October 2013, the Department received his final composite report (the Independent Investigator's Report). This incorporated the Independent Investigator's separate final reports on his investigations into the three complaints received from Ms A, Complainant X and Complainant Y, and his reports on the other matters the Department had asked him to examine.
111. I note the Independent Investigator's Report included his opinion that the IP was not a fit and proper person to hold an insolvency licence. In submitting Ms A's complaint to me, the complainant said the Department failed to take action *'by way of sanctions or protection given to [Ms A]'* as soon as the Independent Investigator reached that conclusion, which, as stated above, was on 4 October 2013.
112. In this regard, I am mindful that Ms A's IVA failed in September 2012, more than a year before the Independent Investigator submitted his final findings to the Department (and several months before he submitted his draft findings). As such, by the time the Department received the Independent Investigator's final (and indeed, his draft) findings, the IP was no longer the supervisor of Ms A's IVA. I consider, therefore, that the Department did not fail to 'protect' Ms A as soon as it learned of Independent Investigator's conclusion that the IP was not a fit and proper person to act as an insolvency practitioner.

113. In relation to the imposing of a sanction on the IP, I consider that given the Independent Investigator's conclusion about the IP's fitness to practice, there was a particular onus on the Department to take swift and decisive action in relation to the IP's continuing authorisation to act as an insolvency practitioner. That said, I am also mindful that any action the Department proposed to take in that regard was subject to the provisions of Part XII of the NI Insolvency Order, in particular, Articles 352, 353 and 354.
114. I note Article 352 of the NI Insolvency Order gave the Department the authority to withdraw the IP's authorisation if it considered he was *'no longer a fit and proper person to act as an insolvency practitioner'*. Article 353 required the Department, if it proposed to withdraw the IP's authorisation, to give him *'written notice of its intention to do so, setting out the particulars of the grounds on which it propose[d] to act'*. Article 354 gave the IP the right to make representations to the Department *'within 14 days from the date of service [of the notice of intention to withdraw his authorisation]'* and it required the Department to *'have regard to any representations so made in determining whether to ... withdraw the authorisation ...'*
115. My investigation found that in the days following receipt of the Independent Investigator's Report, the Department initiated action, both in relation to notifying the IP of its intention to withdraw his authorisation and with regard to establishing an independent panel to consider any representations he might make.
116. With regard to the statutory requirement to notify the IP of its intention to withdraw his authorisation, I note the Department made a submission to the Minister on 18 October 2013, informing her that it was to advise the IP of its intention to take this action. In doing so, the Department highlighted to the Minister that it was required, under Article 354 of the NI Insolvency Order, to have regard to any representations the IP made and that an independent panel was to be established to consider any such representations. I note the Minister indicated on 7 November 2013 that she was content with the action the Department was proposing to take.

117. The Department liaised regularly with its legal advisers during the following weeks in relation to the requirement to notify the IP of the planned withdrawal of his authorisation and with regard to the wording of the written notification it would issue to him, in accordance with Article 353 of the NI Insolvency Order. I established that the Department completed its work in relation to this intended action by 17 December 2013.
118. In relation to its statutory obligation to have regard to any representations from the IP in response to the notified intention to withdraw his authorisation, I established that just days after its receipt of the Independent Investigator's Report, the Department initiated contact with the (then) Department of Agriculture and Rural Development (DARD) and the Insolvency Service in Great Britain (Insolvency GB), seeking advice about the convening of an independent panel. The Department received the requested advice from DARD on 14 October 2013. In the days that followed, there was an exchange of correspondence within the Department, raising and addressing queries about the proposed independent panel. This work culminated in the Department making a draft submission to senior management on 24 October 2013.
119. Over the following weeks, there were numerous exchanges of correspondence between the Department and Insolvency GB regarding the administrative arrangements associated with establishing an independent panel, and between the Department and its legal advisers regarding the selection of panel members. The Department was also engaged in making the appropriate contractual arrangements for the appointment of panel members.
120. I note that by 19 December 2013, preparatory work for the convening of an independent panel was complete. At that time, the Department sought its Permanent Secretary's approval to establish a panel and to award contracts to the panel members. The Permanent Secretary gave his approval for this on 20 December 2013.
121. My investigation established that on 22 January 2014, the Department notified the IP of its intention to withdraw his authorisation and of the grounds on which it proposed to act. It also advised the IP of his right, under Article 354 of the NI

Insolvency Order, to make representations within 14 days. I note the IP provided an initial response to the Department on 27 January 2014 and that, subsequently, the Department extended the deadline for any substantive representations to 21 March 2014.

122. The independent panel the Department had convened to assist it in reaching a determination as to whether the IP's authorisation to act as an insolvency practitioner should be withdrawn (the Independent Panel) met on 23 April 2014 to consider the Independent Investigator's Report and the initial representations the IP had submitted to the Department. By that stage, the IP had, on 28 February 2014, surrendered his insolvency licence to the Department.
123. I note the Independent Panel's work continued during the months that followed, culminating in its report dated 4 July 2014 (the Independent Panel's Report), in which it concluded there was *'a considerable body of evidence that [the IP] is no longer a fit and proper person to act as an Insolvency Practitioner ...'*
124. My investigation established that during the period 21 July 2014 to 11 August 2014, the Department liaised with its legal advisers regarding its intended communication with Ms A, Complainant X and Complainant Y. On 12 August 2014, the Department made a submission to the Minister, updating her on the action it was taking in relation to the withdrawal of the IP's authorisation.
125. I note the Department wrote to the IP on 14 August 2014 to inform him of its decision to withdraw his authorisation to act as an insolvency practitioner. It then wrote to Ms A on 15 August 2014, informing her that her complaint *'has been subject to a thorough and independent investigation which has now concluded'*. The Department also advised Ms A, *'Your case was considered by an Independent Panel'*. It further advised it had decided the IP was *'no longer a fit and proper person to act as an Insolvency Practitioner'*, and that he had surrendered his licence to the Department on 28 February 2014.
126. It is apparent then that there was a period of nine months from the date the Independent Investigator informed the Department that he was of the opinion that the IP was not a fit and proper person to hold an insolvency licence (4 October 2013) until the Independent Panel reached the same conclusion

(4 July 2014). There was then a further period of six weeks before the Department was in a position to inform the IP of its decision to withdraw his authorisation and to then inform Ms A of the outcome of its consideration of her complaint.

127. I am satisfied the action the Department took to establish the Independent Panel was reasonable in the circumstances, particularly given its statutory obligations, under the NI Insolvency Order, in relation to any proposed removal of an insolvency licence, and the potential impact of such action on the individual concerned. I am also satisfied there is no evidence of periods of inactivity by the Department in the six months leading up to the convening of the Independent Panel or in the further six week period between receiving the Independent Panel's Report and writing to Ms A. Furthermore, I found no indication of reluctance on the part of the Department to expedite the regulatory process regarding the IP's continuing authorisation.
128. Having said that, it is of note that despite the Department's statutory powers and obligations in relation to its authorisation of insolvency practitioners, it appears that prior to its consideration of Ms A's complaint, there was no administrative process in place to deal with the need to consider the withdrawal of an insolvency practitioner's licence. In my view, if the 'groundwork' the Department undertook during the period October to December 2014 regarding the setting up of an independent panel for this purpose - that is, the seeking of advice from DARD and Insolvency GB on the necessary administrative arrangements, and the addressing of related issues and queries raised within the Department - had been completed previously, it may have been possible to conclude the regulatory process more quickly than was the case.
129. I note that when the Department wrote to Ms A on 15 August 2014, it provided her only with a copy of the Independent Panel's Report, which had been redacted to obscure those elements that concerned Complainant X's and Complainant Y's complaints. The Department did not provide Ms A with any information about the Independent Investigator's findings on his investigation into her complaint. I will return to this matter later in this report.

130. In summary, my investigation of this second issue of complaint found that, for the most part, there is no evidence of periods of inaction or inactivity on the part of the Department during the prolonged period in which it dealt with Ms A's complaint. For reasons already described in this report, I am satisfied that, for the majority of the period between receiving Ms A's complaint (on 9 January 2012) and informing her of the outcome (on 15 August 2014), the Department was actively taking steps to ensure the complaint was investigated fairly and thoroughly, and to ensure the action it proposed to pursue in response to the investigation findings was appropriate in the circumstances, and taken in accordance with relevant legislative provisions.
131. However, I consider there is insufficient evidence to fully explain an apparent lack of action during the six-month period between the Department's receipt, on 17 December 2012, of the Independent Investigator's draft report on his investigation into Ms A's complaint (and draft reports on other matters the Department had asked him to examine) and its decision on 19 June 2013 to expand the Independent Investigator's remit to include the investigation of the further complaint received from Complainant Y at the beginning of March 2013.
132. That said, I am mindful that Ms A's IVA failed on 26 September 2012, almost three months before the Independent Investigator submitted his draft findings to the Department. Consequently, I cannot conclude this period of apparent inactivity (from December 2012 to June 2013) resulted in the IP continuing in his role of supervisor of Ms A's IVA any longer than ought to have been the case.
133. It is evident, however, that the absence of suitably trained staff within the Department, who had the necessary skills and experience to effectively and fairly investigate all complaints about insolvency practitioners, meant that the Department had to embark on a lengthy procurement process to appoint an external investigator. Inevitably, this resulted in it taking significantly longer than ought to have been the case for the Department to conclude its consideration of Ms A's complaint and inform her of the outcome.

134. The Principles of Good Complaint Handling, which are reproduced in Appendix Two to this report, require public bodies to get it right; be customer focused; be open and accountable; act fairly and proportionately; put things right; and seek continuous improvement. The First Principle, *'Getting it Right'*, requires public bodies to ensure its staff are equipped and empowered to act decisively to resolve complaints. The Second Principle, *'Being Customer Focused'*, requires them to deal with complaints promptly, avoiding unnecessary delay.
135. I consider the avoidable delay in the Department's handling of Ms A's complaint, which resulted from the lack of a suitably trained and skilled investigative resource within the Department is maladministration. I am satisfied this maladministration caused Ms A to sustain the injustice of frustration, uncertainty and disappointment over an unnecessarily prolonged period.
136. Furthermore, it may have been the case that with appropriately trained and skilled staff and pre-planning for the regulatory process envisaged in Article 352 of the NI Insolvency Order, the Department could have been in a position, while Ms A's IVA was still live, to have completed its investigation into her complaint and commenced its consideration of whether the IP was a fit and proper person to act as an insolvency practitioner.
137. Given Ms A had to wait more than two and a half years to learn of the outcome of her complaint about the IP, I consider there was a particular onus on the Department to remain in regular contact with her throughout its consideration of her complaint, and to ensure she was kept up to date on developments. In addition, given the length of time Ms A had to wait, I consider the Department had a particular responsibility to ensure it provided her with an appropriate explanation of the investigation findings. My investigation therefore examined the Department's communication with Ms A, both during the investigation of her complaint and at its conclusion.
138. In this regard, my investigation found that after an initial written acknowledgment on 20 January 2012 of its receipt of Ms A's complaint, the Department did not contact Ms A again until 3 April 2012. That communication

with Ms A was prompted by the Department's receipt of a copy of correspondence she had sent to Insolvency GB on 28 March 2012. The Department informed Ms A on this occasion that the investigation into her complaint about the IP was '*continuing*' and that she would be advised of the outcome in '*due course*'.

139. I note there was no further communication between the Department and Ms A, until she sent an email to the Department on 29 June 2012, requesting that it prevent the IP from failing her IVA, and seeking an update on the timescale for the investigation of her complaint. The Department responded to Ms A on 30 July 2012. In relation to her complaint, the Department advised that it was '*being investigated*' and that she would be '*advised of the outcome of this investigation in due course*'.
140. I note the Minister wrote to Ms A on 2 August 2012, in response to her email of 29 June 2012 (which Ms A had copied to the Minister) and correspondence the complainant had sent, on Ms A's behalf, to the Minister on 17 February 2012. The Minister advised Ms A that her complaint was '*being investigated*' and that the Department would be '*in contact with [her] in due course*'.
141. My investigation established that during the following months, elected representatives made enquiries of the Department, on Ms A's behalf, about progress on the investigation of her complaint. On 22 August 2012, 'MLA A' wrote to the Minister. MLA A advised that Ms A was '*disappointed that the matter had still not been resolved*' and asked the Minister to '*engage [the Department] to complete this matter as soon as possible*'. I note that when the Minister responded to MLA A on 6 September 2012, she advised that Ms A's complaint was '*being thoroughly investigated by [the Department]*' and that the Department would '*be in contact with [Ms A] in due course.*'
142. Subsequently, on 5 December 2012, 'MLA B' wrote to the Minister, highlighting Ms A's concern that the Department was yet to address her complaint. I note that when the Minister responded on 4 January 2013, she informed MLA B that Ms A's complaint was '*being thoroughly investigated by [the Department]*' and that the Department '*would be in contact with Ms A in due course*'.

143. I established MLA B's office later contacted the Department, on 30 July 2013, asking a number of questions about the Department's handling of Ms A's complaint. When it responded on 1 August 2013, the Department advised, *'The reason why the complaint has taken so long with no conclusion is because other matters concerning [the IP] have arisen. These other matters have unfortunately impacted on the time taken to conclude the investigation of the complaint you refer to, which will be considered together with the other matters'*.
144. I note the Department's response of 1 August 2013 prompted correspondence from MLA B herself to the Minister on 9 August 2013. In her letter, MLA B asked the Minister to *'communicate with [the Department] and work to ensure that the investigation [of Ms A's complaint] is progressed as a matter of urgency'*. I note the Minister's response of 2 September 2013 advised that *'significant progress'* in the investigation of Ms A's complaint had been made since the Minister had last written to MLA B, on 4 January 2013. The Minister further informed MLA B that Ms A's complaint *'was one of a number of matters being looked at by [the Department] concerning [the IP]'* and that the Department anticipated *'a further six months may be needed to bring some conclusion to this investigation'*.
145. There was no further communication between the Department and Ms A (or third parties acting on her behalf) regarding Ms A's complaint until she wrote to the Minister's Office on 15 October 2013, highlighting her concern about the length of time it was taking for the Department to complete its investigation. I note that before the Minister's Office responded, a further MLA, 'MLA C', wrote to the Minister, on 16 October 2013, referring to Ms A's concern about the Department's *'inordinate delay'* in dealing with her complaint.
146. I established the Minister wrote to Ms A on 31 October 2013, in response to her correspondence of 15 October 2013. The Minister noted her *'regret that the conclusion of [Ms A's] complaint is taking so long'*. The Minister also informed Ms A, *'the current position is that the investigation is complete and a report has been sent to the Department's legal advisers for advice and directions'* and that the Department would *'advise [Ms A] of the position concerning [the IP] when*

the outcome is known'. The Minister provided the same information to MLA C in her response of 7 November 2013 to his letter of 16 October 2013.

147. I note MLA C wrote to the Minister again, on 16 January 2014, seeking an update on the Department's consideration of Ms A's complaint. The Minister responded to MLA C on 7 March 2014, advising that the Department was *'actively considering [Ms A's] case, and a number of other matters relating to [the IP]'* and that she (the Minister) was *'hopeful ... that a final determination can be made in the near future'*.
148. I note the next update the Department provided to Ms A was in response to a telephone call she made on 9 April 2014, enquiring if the IP had by then surrendered his licence. At that time, the Department informed Ms A that *'the case was still under review'*.
149. The Department had no further contact with Ms A until it spoke to her about her complaint on 19 June 2014. The Department provided me with a copy of an internal email dated 19 June 2014, which referred to a member of staff having given Ms A an update on her complaint that day. However, the Department provided no record that documented the detail of the conversation, or which showed whether it had been the Department, or Ms A, that had initiated the contact at that time.
150. I note Ms A's next contact with the Department was a telephone call she made on 31 July 2014. The Department did not provide a record of that call but it is referenced in a letter that Ms A and the complainant sent to the Department on 1 August 2014 and in the Department's response of the same date. In its letter of 1 August 2014 to Ms A, the Department reiterated information apparently provided during the previous day's telephone conversation. This was that the Department had passed the Independent Panel's Report to its legal adviser. The Department also informed Ms A that it hoped to be in a position *'by the middle of August'* to *'advise her formally of the outcome'* of its consideration of her complaint.
151. The Department provided a further written update, by email, to Ms A on 11 August 2014. I note the Department's email of 11 August 2014 refers to a

telephone conversation with Ms A earlier that day, during which she had asked for confirmation that the Department would provide a response to her complaint by the end of that week. It is not clear from the Department's email which party initiated that telephone contact. I note the Department's email also informed Ms A that the Department hoped *'to be in a position to write to [her] formally by the end of [that] week'*. In the event, the Department wrote to Ms A four days later, on 15 August 2014, informing her of the outcome of her complaint.

152. In my view, the events and actions described above indicate that throughout the two and a half year period in which it was dealing with Ms A's complaint, the Department was not sufficiently proactive in keeping her informed about developments and progress towards concluding the matter. The evidence I examined indicates that the Department only provided updates to Ms A when she, or third parties acting on her behalf, specifically sought them. This is not in accordance with the Department's specific obligation, under the Insolvency Practitioner Complaints Procedure, to *'regularly update the complainant'* and to *'issue at least a quarterly update to the complainant'*. I do not consider the Department's 'reactive' provision of updates was sufficient to meet that obligation. Furthermore, when the Department did provide updates to Ms A, these were often, at best, minimal in detail and, on some occasions,¹¹ inaccurate, in that they informed her that the investigation of her complaint was *'continuing'* or that her complaint was *'being investigated'* when, in fact, the investigation had not yet got underway.

153. In response to my view on the accuracy of its updates to Ms A, the Department said it was *'important to bear in mind that although the independent investigation [of Ms A's complaint] had not commenced'* at the time of its updates, *'the Department had begun its own process of examination of the issues [she had] raised'*. In this regard, the Department pointed out that a business case to make an independent appointment to investigate Ms A's complaint (and other matters) was drafted on 8 February 2012. It contended that *'its process of investigation had commenced by the earliest date of 3 April*

¹¹ Updates provided on 3 April 2012, 30 July 2012, 2 August 2012 and 6 September 2012.

2012', and that, *'Accordingly, there is no inaccuracy in what was relayed to [Ms A]'*.

154. I do not accept the Department's position. I acknowledge that during the period I have highlighted (3 April to 6 September 2012) the Department was undertaking work to consider the nature of Ms A's concerns about the IP's conduct, and to put in place appropriate arrangements to investigate those concerns. However, I do not accept that the work the Department completed during that period constituted an investigation of Ms A's complaint, in the sense conveyed within the updates the Department provided to her. It is my view, therefore, that the particular updates referenced above included inaccurate information.
155. I also consider there is evidence that the Department failed to take steps to update Ms A on 'milestone' developments in its consideration of her complaint. For example, although the Department received the Independent Investigator's Report on 4 October 2013, which signified the completion of the investigation of Ms A's complaint (albeit the Department had yet to consider the way forward on the Independent Investigator's conclusion that the IP was not a fit and proper person to hold an insolvency licence), it did not take action to inform Ms A of this significant development until the Minister wrote to her on 31 October 2013, in response to her email of 15 October 2013. Likewise, although the Department received the Independent Panel's Report on 4 July 2014, it did not inform Ms A of this until on 31 July 2014, and even then, this was only because she had contacted the Department. It is also my view that the Department could have informed Ms A in December 2012 that it had received the Independent Investigator's draft report. While I acknowledge it would not have been appropriate at that point for the Department to have disclosed any detail of the Independent Investigator's proposed findings, I consider it could have informed Ms A of this significant development in the investigation and advised her that the draft investigation report was being considered.
156. Furthermore, I see no reason why the more detailed information the Department provided to the office of MLA B on 1 August 2013, which included an explanation of why it was taking so long to deal with Ms A's complaint, that

is, that that *'other matters concerning [the IP] have arisen'* which were to be considered at the same time as Ms A's complaint, could not have been disclosed to Ms A at an earlier stage. In my view, even this limited and circumspect additional information, had it been shared sooner, may well have assisted in Ms A's understanding of how her complaint was being handled and why this was impacting on the timescale for its conclusion.

157. My investigation established that when it wrote to Ms A on 15 August 2014, to inform her of the outcome of her complaint, the Department provided no information on the Independent Investigator's findings on the various matters of concern she had raised in her complaint. Rather, the Department stated only that Ms A's complaint had been *'subject to a thorough and independent investigation which has now concluded'*. The remaining content of the Department's letter concerned its decision that the IP was no longer a fit and proper person to hold an insolvency licence.
158. I consider the Department's formal notification to Ms A about the outcome of her complaint did not meet the requirements of the 2008 and 2011 MOUs, and the 2014 Insolvency Practitioner Complaints Procedure, all of which required the Department to write to a complainant *'within fifteen working days of the conclusion of a complaint'* setting out the *'findings in respect of the complaint [and] and indication of proposed further action, if any'*. Furthermore, it is of note that the Department's failure to inform Ms A of the investigation findings was contrary to the Independent Investigator's recommendation to the Department¹² that *'Both the [insolvency practitioner] and the Complainant must in all instances be advised of the eventual findings'*.
159. I acknowledge that the Department provided Ms A with a copy of the Independent Panel's Report, in so far as it related to her complaint about the IP. However, it is evident that the Independent Panel's Report considered Ms A's complaint from the perspective of whether the IP was a fit and proper person to act as an insolvency practitioner and what might be an appropriate sanction, should that conclusion be reached. In my view, this meant the

¹² As set out in the Appendix 4 to the Independent Investigator's Report – 'Report on Review of Eight Prior Complaints and Advice Going Forward'

provision of the Independent Panel's Report to Ms A was not a suitable substitute for proper notification of the findings of the Independent Investigator's investigation into her complaint.

160. In responding to my consideration of the evidence relating to communication of the findings of the investigation of Miss A's complaint with her the Department said it considered it was '*not wholly accurate*' that I had concluded it had failed to inform Ms A of the findings of the investigation into her complaint. The Department said this was because Ms A was '*advised of the key finding, namely that [the IP] was no longer considered a fit and proper person to act as an insolvency practitioner*'. I do not accept that the Department's decision to withdraw the IP's authorisation to act as an insolvency practitioner was 'a key finding' of its investigation into her complaint. Rather, that decision was the outcome of the Department's consideration of the Independent Investigator's findings on his investigation into Ms A's complaint, and a number of other matters concerning the IP's conduct. Nevertheless, I am pleased to note that the Department also said it is '*happy to share the Independent Investigator's findings in full*'.

161. The First Principle of Good Complaint Handling, '*Getting it Right*', requires a public authority to comply with the law and have regard for the rights of those concerned. This Principle means the authority should act according to its statutory powers and duties, and any other rules governing the service it provides. It also means the public authority should follow its own policy and procedural guidance on complaint handling, whether published or internal. The Second Principle of Good Complaint Handling, '*Being Customer Focused*', means a public service provider should keep complainants regularly informed about progress and the reasons for any delays. The Third Principle, '*Being Open and Accountable*', requires a public body to be open and honest when accounting for its decisions and actions and to give clear, evidence-based explanations, and reasons for its decisions.

162. I consider the Department's failure to regularly update Ms A regarding the investigation into her complaint and provide timely information about key developments, and its failure to provide her with an appropriate and meaningful

account of the findings of the investigation into her complaint, is maladministration. I consider these failings caused Ms A to experience frustration, uncertainty and disappointment over a prolonged period of time.

163. In summary, I have identified maladministration in the Department's handling of Ms A's complaint about the IP, in that there was avoidable delay in the Department commencing its investigation into Ms A's complaint and a lack of appropriate communication with her throughout its consideration of the complaint, and at its conclusion. I am satisfied this maladministration caused Ms A to sustain the injustice of frustration, uncertainty and disappointment. Consequently, I uphold this second issue of complaint.

CONCLUSION

164. I received a complaint about the actions of the Department in relation to its monitoring of the IP and its handling of Ms A's complaint about the IP's conduct.
165. In relation to the first issue of complaint, the Department's monitoring of the IP, my investigation found that in nearly all the monitoring visits the Department made to the IP during the period 1994 to 2010, the size of the sample of cases examined was too small and did not reflect the composition of the IP's caseload. This meant that the majority of the case samples the monitoring teams examined failed to meet the requirements of the Monitoring Visit Procedures. I also found the Department failed to make and retain an appropriate record of how, when and by whom case samples were selected.
166. I also considered that the anomalies and inconsistencies in the reports of the 1997, 2000 and 2003 Monitoring Visits suggests a lack of care and/or attention to detail on the part of the Department in reviewing and quality assuring those reports.
167. In addition, my investigation found there was a lack of evidence to demonstrate that when, in 1996 and 1997, concerns became apparent about certain aspects of the IP's conduct and performance, the Department took prompt and appropriate action to ensure it was satisfied he remained a fit and proper

person to hold a licence to practice as an insolvency practitioner. A further significant finding of my investigation was that the Department failed to ensure that the staff members responsible for conducting monitoring visits to the IP had sufficient skills and training to ensure all relevant aspects of the IP's conduct and performance could be comprehensively monitored, with a view to making a determination of whether he was a fit and proper person to fulfil the role of insolvency practitioner.

168. I consider the Department's failure to monitor the IP in an effective manner, and in accordance with its own standards and procedures, is maladministration. I am satisfied this maladministration caused the complainant to sustain the injustice of a loss of opportunity to have the IP, the supervisor of her IVA, monitored appropriately, and in a manner consistent with the purpose of the Department monitoring responsibilities, that is, to establish whether he was, *'fit and proper'* to act as an insolvency practitioner.
169. In relation to the matter of injustice, I should also highlight that in submitting Ms A's complaint to me, the complainant maintained Ms A had sustained a considerable financial loss as a result of the IP's actions. It is important to emphasise that my role in investigating this complaint concerns the Department's actions and not those of the IP. My investigation considered whether there was maladministration by the Department in its monitoring of the IP. As described above, I found there was maladministration on the part of the Department. The extent to which that maladministration contributed to the financial loss Ms A states she has sustained is not a matter I consider I can determine; in my view, this is an issue best determined by the County Court, as provided for in Sections 52 and 53 of the Public Services Ombudsman Act (Northern Ireland) 2016. I would, however, urge the Department to work constructively with Ms A to find a resolution to her concerns that its failure to monitor the IP effectively resulted in her sustaining a financial loss.
170. Nevertheless, having found maladministration in the Department's monitoring of the IP, which I consider caused Ms A to sustain injustice of loss of opportunity, I uphold the first issue of complaint.

171. With regard to the second issue of complaint, the Department's handling of the complaint Ms A made on 9 January 2012 about the IP, for the most part, I found no evidence of periods of inaction or inactivity on the part of the Department during the two and a half year period in which it was considering the complaint. However, I concluded the investigation of Ms A's complaint could have got underway much sooner than was the case if the Department had had an appropriately trained and skilled internal resource that would have allowed it to investigate Ms A's complaint itself, rather than having to resort to the lengthy approval and procurement processes associated with the appointment of an external investigator. In addition, my investigation established that the Department's communication with Ms A, both during, and at the conclusion of, its consideration of her complaint, was unsatisfactory and not in keeping with the requirements of good administration and the Department's own standards and procedures for dealing with complaints about insolvency practitioners.
172. It was also the case the Department did not have in place, at the time it received the Independent Investigator's Report, the necessary processes and procedures to give effect to the requirements of the NI Insolvency Order regarding the withdrawal of a insolvency practitioner's licence, although I acknowledge that the Department took swift action, on receipt of the Independent Investigator's Report, to establish the required arrangements.
173. I consider the failings I identified in the Department handling of Ms A's complaint are maladministration, which caused Ms A to sustain the injustice of disappointment, uncertainty and frustration. I therefore uphold the second issue of complaint.
174. Having upheld both the first issue of complaint (the Department's monitoring of the IP) and the second issue of complaint (the Department's handling of Ms A's complaint about the IP), overall, I uphold Ms A's complaint.

Recommendations

175. I recommend that within one month of the date this report, the Department's Permanent Secretary provide Ms A with a written apology, made in accordance

with NIPSO's 'Guidance on issuing an apology'¹³ for the injustice she sustained as a result of the maladministration disclosed by my investigation.

176. I also recommend that within one month of the date of this report, the Department write to Ms A to inform her of the Independent Investigator's findings on his investigation into her January 2012 complaint about the IP, and on his case administration and costings review of her IVA.
177. I also recommend that within three months of the date of this report, the Department take action to ensure the learning highlighted by my investigation, in relation to the importance of timely and meaningful communication with complainants, is communicated to relevant staff and embedded into its Insolvency Service complaint procedure.
178. Given the Department no longer has any role in relation to the authorising and monitoring of insolvency practitioners, I do not make any recommendations for service improvements in relation to that particular regulatory function. However, given this is not the first time that similar findings of maladministration have been made against the Department in relation to its regulatory functions, I recommend that within three months of the date of this report, the Department give careful consideration to whether staff who have responsibility for the implementation of other regulatory functions within its remit, have the appropriate training and skills to fulfil that role effectively.
179. The Department should within four months of the date this report, provide me with an update on action it has taken in relation to its implementation of my recommendations. The update should be supported by evidence to confirm that appropriate action has been taken.
180. The Department accepted these recommendations.
181. In addition, although not a formal recommendation, it is my expectation that the Department reflect on my observation¹⁴ that it had not previously completed any preparatory work for a process to address the potential need to consider

¹³ [NIPSO Guidance on issuing an apology, July 2019](#)

¹⁴ Paragraph 128

the withdrawal of an insolvency practitioner's authorisation, in accordance with its statutory power under Article 352(4) of the NI Insolvency Order, and that it take steps to consider whether there is learning in this for its other regulatory functions.

MARGARET KELLY
Ombudsman

March 2025

Principles of Good Administration

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.

- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

Principles of Good Complaint Handling

Good complaint handling by public bodies means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learned from complaints.
- Including complaint management as an integral part of service design.
- Ensuring staff are equipped and empowered to act decisively to resolve complaints.
- Focusing the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure in the right way and at the right time.

2. Being customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including where appropriate co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

3. Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

4. Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions and actions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

6. Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on learning from complaints.

- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and the changes made to services, guidance or policy.

