

FROM: JOHN MCGINNITY

DATE: 21 DECEMBER 2011

**TO: DEPARTMENTAL AND AGENCY ACCOUNTING OFFICERS AND
FINANCE DIRECTORS**

**MEMORANDA OF REPLY TO NI ASSEMBLY PAC REPORTS: ARRANGEMENTS FOR
ENSURING THE QUALITY OF CARE IN HOMES FOR OLDER PEOPLE (DHSSPS);
MEASURING THE PERFORMANCE OF NI WATER (DRD); PROCUREMENT AND
GOVERNANCE IN NI WATER (DRD) AND IMPROVING ADULT LITERACY AND
NUMERACY (DEL)**

1. Attached at Annex A are details of recent Memoranda of Reply (MORs) laid by DFP before the NI Assembly. As you will be aware, the MORs represent the DFP Minister's considered response to the Public Accounts Committee (PAC) recommendations.
2. On occasion, the Committee issues a major report which has a wide impact on the public sector; PAC's report on '**Procurement and Governance in NI Water**' falls into this category. Within this report I would draw your attention in particular to PAC Recommendation 15 and the DFP response, which deals with the audit of arm's length bodies constituted as companies not audited by the Comptroller and Auditor General. In addition, **I would strongly recommend that you read the MOR in its entirety.**
3. The relevant department(s) will have been involved in the drafting of the MOR and should be familiar with the response. Where PAC has made a general recommendation, DFP has responded on behalf of all departments. AFMD have tried to highlight those general issues (by recommendation number) which are of wider application. Although the reports may not relate to a department or agency's particular business area, **there are a number of PAC recommendations where DFP is required to draw the issue to the attention of Accounting Officers generally. This notification therefore represents DFP actioning the commitment given to the PAC in the MOR.**
4. We have included 'links' to the PAC Reports and MORs which will allow you to download either whole reports or relevant extracts. We have also attached links to recently published NIAO reports which you may find of interest.

5. Recipients of this letter should ensure that this is given appropriate circulation both within their own organisations and across sponsored bodies.

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ANNEX A

Memoranda of Reply 2010/11 session

4th Report: Arrangements for Ensuring the Quality of Care in Homes for Older People (DHSSPS)

No general lessons/key issues:

A copy of the PAC Report can be accessed at:

http://archive.niassembly.gov.uk/public/2007mandate/reports/2010/report_39_10_11r.htm

A copy of the MOR can be accessed at:

http://www.dfpni.gov.uk/index/finance/afmd/afmd-public-audit-and-pac/afmd-memoranda_of_reply/mor_4th_8th_reports_1011.pdf

5th Report: Measuring the Performance of NI Water (DRD)

Some general lessons/key issues:

(4): It is not helpful for new information to be introduced into evidence when a report has been only recently published and subject to formal clearance with the Comptroller and Auditor General (C&AG). The Committee recommends that DFP reminds departments of the need to agree all material facts with the C&AG in a prompt, timely and comprehensive manner.

The Department of Finance and Personnel (DFP) accepts this recommendation. It is important that the Comptroller and Auditor General (C&AG) is able to agree the content of his report with departments in a timely and comprehensive manner and that all material facts are agreed. Northern Ireland Audit Office (NIAO) has recently established a working group to consider the clearance of reports and DFP will ensure that this issue is considered further as part of this work. DFP also considers that as part of the 'sign-off' process for value for money reports, there would be merit in NIAO seeking formal assurance from accounting officers that all material facts that they are aware of have been brought to NIAO's attention. DFP will bring the Committee's views to the attention of departmental accounting officers.

A copy of the PAC report can be accessed at:

http://archive.niassembly.gov.uk/public/2007mandate/reports/2010/report_3740_10_11R_v011.htm

A copy of the MOR can be accessed at:

http://www.dfpni.gov.uk/index/finance/afmd/afmd-public-audit-and-pac/afmd-memoranda_of_reply/mor_5th_6th_reports_1011.pdf

Some general lessons/key issues:

(1): The Committee recommends that the Head of the Civil Service....communicates, in the strongest terms, to all permanent secretaries and senior civil servants the need to adhere to the Nolan principles and to respect the role of this Committee and all other Committees of the Assembly.

The Head of the Civil Service (HOCS) believes that in delivering public services, the NICS strives at all times to carry out its role in accordance with the principles and standards expected of the public service, with dedication and commitment. The HOCS has written to all Permanent Secretaries to remind them of the need to uphold the principles and standards expected of public servants, including the Nolan principles and the importance of respecting the role of all the Committees of the Assembly. He has asked them in turn to reinforce this message to the senior civil servants for whom they have responsibility.

(5): NI Water made use of confidentiality clauses to keep embarrassing transactions secret. The Committee recommends that, as a point of principle, confidentiality agreements should not be used anywhere in the public sector. However, if in exceptional circumstances their use proves to be unavoidable, the Committee considers that these cases should be approved by the relevant departmental Accounting Officer and by DFP.

DFP notes this recommendation. Managing Public Money NI (MPMNI) makes it clear that the public should expect high standards in all public service and sets out a number of standards expected of public servants which include openness and transparency. The inappropriate use of confidentiality agreements is not in keeping with these particular principles. Therefore, DFP agrees with the Committee that confidentiality agreements should only be used in exceptional circumstances and where they are, they should be approved by the relevant departmental Accounting Officer and by DFP in those situations where the related expenditure requires specific approval in accordance with Chapter 2 of MPMNI.

(6): The Committee recommends that DFP reviews the use of confidentiality undertakings given to interviewees, sets out the circumstances where they should be used and issues appropriate guidance. The Committee expects this guidance to be principle based, requiring all public officials to follow and apply, at all times, the principle of honesty, openness, integrity and accountability.

DFP notes this recommendation. DFP agrees with and promotes the principles of openness and transparency in the public sector. The NICS promotes a culture of openness and accountability in terms of access to the information it holds and considers that it is only in exceptional circumstances that information should not be disclosed. DFP also agrees with the Committee's view that there should be a presumption that public officials will give open and honest disclosure to departmental enquiries and investigations without the cover of a promise of confidentiality. However, there will be occasions when it may be appropriate to offer a confidentiality undertaking, for example in cases related to whistleblowing or where there is a genuine fear of intimidation or reprisals.

In terms of principle based guidance, all civil servants must comply with the NICS Code of Ethics which states that they must carry out their role 'with dedication and commitment to

the Civil Service and its core values of integrity, honesty, objectivity and impartiality'; this is further reinforced by MPMNI which sets out the standards expected of all public servants which include honesty, openness, integrity and accountability. Therefore, DFP's view is that clear guidelines currently exist in terms of the principles to be applied by of all public servants and considers that it would be difficult to produce comprehensive and definitive guidance on this topic, due to the potential diversity and complexity of the possible issues involved. DFP therefore recommends that public bodies should operate on the presumption that confidentiality undertakings should not be given, but should they consider them appropriate in particular circumstances, then they should seek professional HR advice before providing them.

(7): The Committee strongly recommends that DFP issues clear guidance to all departments that any contracts, for the purpose of an inquiry or investigation, should provide the sponsor with ownership of the contractor's supporting documentation and the C&AG with full access to these papers.

DFP accepts this recommendation and will bring it to the attention of departmental accounting officers.

(8): The Committee recommends that all witnesses to this Committee must not only answer all questions put to them accurately, but also should not omit relevant and important facts. This Committee should not have to seek to draw out this information through cross examination. Only by receiving open, honest and full responses can this Committee make effective recommendations that help to improve the way the public sector serves the people of Northern Ireland.

DFP accepts this recommendation and agrees with the Committee on the importance of its receiving open, honest and full answers to its questions during its evidence sessions. MPMNI clearly states that the Public Accounts Committee 'expects witnesses to give clear, accurate and complete evidence'. DFP will bring to the attention of accounting officers the need to not only answer the Committee's questions openly and honestly, but also to ensure that they do not omit relevant and important facts.

(9): To improve transparency and accountability in the use of STAs the committee recommends that each departmental Accounting Officer should provide a statement of non-competitive contracts to both the relevant statutory Committee and to the C&AG on an annual basis. These statements should set out details of the subject or purpose of the contract, its value and the reasons for not having a competitive process.

DFP notes this recommendation. In June 2010, DFP issued guidance on the award of contracts without a competition – commonly known as 'single tender action (STA)'. The guidance makes it clear that the use of STA's should be 'limited to a few defined circumstances in which it is considered strictly necessary'; it also outlined the risks associated with STAs and recommended that 'single tender action should only be considered after the departmental accounting officer has agreed this course of action'.

DFP considers that it is appropriate for each departmental accounting officer to maintain a record of all non-competitive contacts, setting out the details proposed by the Committee, in respect of their department and sponsored bodies and that these should be both made available to and considered by the departmental board and audit and risk committee on at least an annual basis. NIAO will have access to this information both as attendees of audit

committees and during their normal audit work and relevant statutory committee will be able to request this information from departments, should they wish to do so.

(12): The Committee recommended in its February 2009 report on the legal practitioner fraud that internal audit, throughout the health sector, should give sufficient weight to the audit of contracts. Clearly this is a significant issue throughout the public sector. The Committee therefore recommends that contract audit is given greater prominence in the audit programmes of all government departments and NDPBs.

DFP notes this recommendation. Public sector internal audit should operate in compliance with GIAS, developing audit strategies and audit plans using a risk based approach. The audit of procurement contracts should therefore feature appropriately in internal audit strategies and plans where this is a key area of risk and expenditure for individual organisations. The level of audit coverage in this area is however a matter for individual HIAs, audit committees and accounting officers to consider and determine bearing in mind the range of risks facing their organisations and their relative priority for internal audit focus. DFP will advise departments of the Committee's view on this matter.

(15): The Committee recommends that DFP ensures that, in future, the external auditors of NI Water and any other arm's length bodies constituted as companies not audited by the C&AG, should be required to provide an opinion on the regularity of income and expenditure.

DFP accepts this recommendation. DRD has confirmed that it has put in place arrangements that from 2010-11 onwards the external auditors of NI Water will be required to provide an opinion on the regularity of income and expenditure. In addition, DFP will inform accounting officers that if they have arm's length bodies (ALBs) constituted as companies, then they should put such arrangements in place at the earliest practicable time.

(22): The Committee recommends that all public bodies constituted as companies and subject to companies legislation must be required to adhere fully to the good governance requirements now set out in the UK Corporate Governance Code. It should fall to the departmental Accounting Officer to ensure that this happens.

DFP notes this recommendation. The recommendation states that public bodies constituted as companies and subject to companies legislation must be required to 'adhere fully' to the good governance requirements set out in the UK Corporate Governance Code issued by the Financial Reporting Council in 2010, however the Code itself states that it is based on a 'comply or explain' approach, as opposed to the need to 'fully adhere' to it. This recognises the fact that smaller companies may judge that some of its provisions are disproportionate or less relevant in their particular case. In line with the approach adopted by HM Treasury, DFP considers that the HM Treasury 'Corporate governance in central government departments: code of good practice' is a more relevant document to public sector companies. This Code, which has been circulated by DFP to accounting officers, has been written in the context of the public sector corporate governance framework and recognises and adjusts for the uniqueness of the public sector. It is within this context that DFP considers that public sector companies should comply with the central government Code adapting as necessary for the circumstances of the company. DFP also considers the UK Code to be a valuable document which public sector companies may wish to consider in the

context of best practice. DFP will draw this to the attention of departmental accounting officers.

A copy of the PAC report can be accessed at:

http://archive.niassembly.gov.uk/public/2007mandate/reports/2010/report_3740_10_11R_v011.htm

A copy of the MOR can be accessed at:

http://www.dfpni.gov.uk/index/finance/afmd/afmd-public-audit-and-pac/afmd-memoranda_of_reply/mor_5th_6th_reports_1011.pdf

8th Report: Improving Adult Literacy and Numeracy (DEL)

General lesson/key issue:

(2): The Committee recommends a more co-ordinated approach, across the public sector, to tackling deficiencies in literacy and numeracy. Accordingly, it calls on the Department of Finance and Personnel and the Office of the First Minister and Deputy First Minister, in their central roles, to work with Departments in reviewing how such an approach might best be taken forward.

The Department of Finance and Personnel and the Office of the First Minister and Deputy First Minister notes this recommendation and acknowledges the importance of a cross departmental approach in effectively tackling deficiencies in literacy and numeracy. The Department of Education is the lead department in this area and has established the Literacy and Numeracy Taskforce to finalise a vision, strategy and targets for the promotion of literacy and numeracy building the capacity of all students. Both DEL and the Department for Social Development attended the meetings as observers.

With respect to adult literacy and numeracy, DEL engaged with the wider public sector in a workshop held in March 2009 to highlight the benefits of engaging in Essential Skills. This was attended by government departments, together with other public sector bodies. The outcome of this engagement was the promotion of Essential Skills within the Northern Ireland Civil Service (NICS) by the Training Commissioners. DEL is taking forward this promotion of Essential Skills within the Health Trusts. The newly established NICS Qualifications Strategy Group has been made aware of the Committee's recommendation in this area.

DEL also continues to work with the Department of Justice through its attendance and contribution to the joint Learning and Skills Forum.

A copy of the PAC report can be accessed at:

http://archive.niassembly.gov.uk/public/2007mandate/reports/2010/report_60_10_11r.htm

A copy of the MOR can be accessed at:

http://www.dfpni.gov.uk/index/finance/afmd/afmd-public-audit-and-pac/afmd-memoranda_of_reply/mor_4th_8th_reports_1011.pdf

Recently published NI Audit Office reports

NI Tourist Board – Review of Signature Projects

Health General Report

The BioScience and Technology Institute

The transfer of former military and security sites to the NI Executive

C&AGs General Report

The Use of Locum Doctors by NI Hospitals

Managing Criminal Legal Aid

Use of Consultants

Copies of these reports are available to download from NIAO's website.