

DAERA External Review

Phase 1: Final Report

9 January 2023



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1. Introduction

- 1.1. We have been engaged by the Department of Agriculture, Environment and Rural Affairs (“DAERA” or “the Department”) to conduct an external review of how it dealt with the concerns raised by a former Senior Veterinary Officer (“Claimant”) case (“the external review”).
- 1.2. The scope of our work, along with the contractual terms of our engagement under Crown Commercial Services Framework RM6188, is set out in the Order Form signed on 1 June 2022.
- 1.3. The external review is to be conducted in two phases.
- 1.4. The first phase of the external review is a fact-finding phase which will:
 - gather and present information, supported by evidence and/or clarification from relevant officials, on the actions taken by all persons involved in the case;
 - assess these actions against the agreed policies, procedures and processes for raising concerns in place at the time and the requirements of Managing Public Money NI and any other relevant policies, and determine the extent of compliance; and
 - consider the extent to which the actions taken reflected the NICS Code of Ethics and provide an assessment of compliance with that code.
- 1.5. The Terms of Reference for the external review highlight four key areas of focus for the first phase of work - handling of the concerns raised, the Industrial Tribunal complaint, the Industrial Tribunal and the Judgment - in addition to a number of key actions and/or decisions to be determined where possible (“key actions to be determined”).
- 1.6. As agreed with the Review Oversight Group¹, the focus of our work has been on review of relevant documentation provided to us for review. We were not responsible for identifying the relevant documentation, nor determining the completeness of the document population provided to us. In addition, we have not sought clarification from relevant officials on the actions taken by persons involved in the case. In the absence of doing so, it has not been possible to determine conclusively, the extent of compliance with relevant policies, procedures and processes.
- 1.7. Subsequent to the issue of our draft report, however, the Review Oversight Group asked key parties² to provide a written response to it. We have considered the comments made, updating our report to correct any potential factual inaccuracies identified or to add additional clarity. We have also considered additional documentation located by the Departmental Solicitor’s Office (“DSO”) when asked to respond to our draft report.

¹ Made up of the Head of the Civil Service, the Permanent Secretaries of DAERA and the Department of Finance (“DoF”) and the NICS Group Head of Internal Audit.

² Former Permanent Secretary, Claimant’s Line Manager, Chief Veterinary Officer and DSO.

- 1.8. This document has been prepared only for DAERA and solely for the purpose and on the terms agreed with DAERA. We accept no liability (including for negligence) to anyone else in connection with this document.
- 1.9. To the extent that our report touches on points of law it should not be taken as expressing a legal opinion nor providing legal advice. Following discussions with DoF, we have been instructed to omit from this report reference to any privileged information that we may have reviewed. Consequently, this may impact on some of the background detail provided and the completeness of some of the findings set out in this report, in particular the areas of the review which are centred on the advice and guidance provided to DAERA.
- 1.10. If you receive a request under freedom of information legislation to disclose any information we provided to you, you will consult with us promptly before any disclosure.
- 1.11. The remainder of our report is set out under the following headings:

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2. Executive Summary

Introduction and background

- 2.1. The Claimant submitted her resignation from the Northern Ireland Civil Service on 27 February 2018 and lodged a complaint with the Industrial Tribunal on 16 May 2018 claiming that she suffered detriment and was constructively dismissed by her employer, DAERA. Later, in September 2018, she claimed that this was as a result of raising protected disclosures.
- 2.2. Both sides agreed in the submissions hearing that the information conveyed in the concerns related to the following two issues:
 - Concern about welfare of animals in livestock markets particularly in Ballymena Livestock Market; and
 - Deletion of cattle moves in the recording carried out by livestock markets and the effect of that on traceability of cattle and the risk of Tuberculosis (“TB”) in particular.
- 2.3. The Industrial Tribunal found in favour of the Claimant’s complaint on 22 September 2021. A decision was subsequently taken to appeal the Tribunal finding, notice of which was lodged on behalf of DAERA on 2 November 2021. The appeal was withdrawn in April 2022 following receipt of legal advice.
- 2.4. We have been engaged by DAERA to conduct an external review of how it dealt with the concerns raised in the Claimant’s case.
- 2.5. The external review is to be conducted in two phases, the first phase of which is a fact-finding phase which includes review of the extent of compliance with relevant policies, procedures and processes. The second phase of work will look at lessons learned and will be the subject of a separate report.
- 2.6. As agreed with the Review Oversight Group³, the focus of our work has been on review of relevant documentation provided to us for review. We were not responsible for identifying the relevant documentation, nor determining the completeness of the document population provided to us. In addition, we have not sought clarification from relevant officials on the actions taken by persons involved in the case. In the absence of doing so, it has not been possible to determine conclusively, the extent of compliance with relevant policies, procedures and processes.
- 2.7. The Terms of Reference for the external review highlight four key areas of focus for the first phase of work - handling of the concerns raised, the Industrial Tribunal complaint, the Industrial Tribunal and the Judgment.
- 2.8. Our summary findings for each of these four key areas are set out below.

³ Made up of the Head of the Civil Service, the Permanent Secretaries of DAERA and the Department of Finance (“DoF”) and the NICS Group Head of Internal Audit.

Summary findings

Handling of the concerns raised

- 2.9. It appears that the concerns raised by the Claimant were not treated as protected disclosures, at least initially, neither by those to whom the Claimant raised the concerns, nor by the Claimant herself. As such, the DARD whistleblowing policy was not specifically invoked and, as a result, specifically followed.
- 2.10. It would appear that concerns about deleted cattle moves were taken seriously, at least initially, by senior Departmental Officials, including by those to whom the Claimant raised her concerns. There is evidence that discussions were held about possible actions open to the Department to deal with the issue.
- 2.11. However, over time, key Departmental Officials indicated that they believed other individuals, or parts of DAERA, were dealing with the issue as 'business as usual', which may have impacted how the Department responded to the concerns raised.
- 2.12. The majority of the concerns raised in relation to the welfare of animals, particularly at Ballymena Livestock Market, were made by the Claimant to her line manager, the Senior Principal Veterinary Officer (DAERA) ("Claimant's Line Manager"). The Claimant continued to repeat her concerns about Ballymena Livestock Market to her Line Manager. While agreeing with the need for enforcement action, he did not, however, agree with the level of enforcement proposed by the Claimant to address the issues raised.
- 2.13. The lack of escalation of these concerns by the Claimant's Line Manager is in contrast to how he (and the Chief Veterinary Officer) treated concerns raised by the Claimant about another livestock market, which included briefing the Permanent Secretary. Although the issues at the respective markets were different, given the seriousness of the issues at Ballymena Livestock Market, in our opinion, we might have expected that the Permanent Secretary in particular, would have been alerted to them during the regular stock-take meetings with senior Departmental Officials.
- 2.14. The Claimant also raised her concerns about Ballymena Livestock Market with the Chief Veterinary Officer on 1 November 2017. It could therefore be argued that by the point of escalation by the Claimant to such a senior DAERA employee, her concerns ought to have been treated as protected disclosures.
- 2.15. From the documentation available to us, however, it appears that the Claimant's Line Manager increasingly failed to respond to her and the issues raised, most notably in the period from December 2017 to February 2018.
- 2.16. Further, it appears that the Claimant's Line Manager, and the Chief Veterinary Officer, had a consistent preference for compliance actions other than formal enforcement in relation to the issues raised by the Claimant. Although the DARD enforcement policy, which was in place at the time, provides for a range of compliance actions, it is clear that a distinction must be made on the grounds

of severity. Based on the documentation available to us, it is difficult to determine the action taken to assess the severity of the issues raised and therefore which compliance option was the right course of action at the relevant time.

The Industrial Tribunal complaint

- 2.17. There is evidence of the original claim form to the Industrial Tribunal (ET1) being received on 12 June 2018 by the DoF NICS Employment Tribunals Team, and subsequently distributed to the individuals from DAERA named in the Claimant's statement.
- 2.18. The initial ET3 response form was lodged on behalf of DAERA on 3 August 2018. Based on the documentation reviewed, we have not seen any evidence of who, within DAERA, formally approved the ET3 response, although it appears from email correspondence sent from other DAERA staff to NICS HR that the Claimant's Line Manager and the Chief Veterinary Officer were said to be "*content*" with the response document in advance of it being lodged.
- 2.19. We note a retrospective email from the Employment Tribunals Team dated 14 February 2019 confirms that DAERA sought support from Counsel in relation to the ET3 response form and NICS HR cleared the draft as "*good to go*".
- 2.20. Similar to the original ET3 response form, we have not seen any evidence of who, within DAERA, formally approved the amended ET3 response, although we note that the views of both the Claimant's Line Manager and the Chief Veterinary Officer had also been sought prior to it being lodged.
- 2.21. In the documents reviewed, we have not identified evidence of legal advice in relation to defending the claim. The focus from the outset appeared to be on gathering the relevant information and instructing DSO and then Counsel in relation to the ET3 response form.
- 2.22. Following the lodging of the ET3 response, we have not had sight of any advice note to DAERA on the merits of claim from the legal team (i.e. DSO or Counsel) which, based on our experience, we would typically expect in a legal case such as this, setting out the weaknesses in the case, prospects of success and also the potential cost implications of proceeding with a hearing and being unsuccessful.
- 2.23. We have identified evidence of legal advice being sought in relation to the amendment of the original ET1 form. The Claimant's Line Manager and the Chief Veterinary Officer confirmed that they agreed to be led by Counsel in relation to this issue. There is no evidence that the Former Permanent Secretary (DAERA) was involved in this decision.
- 2.24. We note that the inclusion of whistleblowing claims meant that the financial cap on unfair dismissal (approximately £90,000) was removed as there is no limit on the compensation that can be awarded for unfair dismissal linked to whistleblowing.
- 2.25. In addition, more broadly, from the documentation reviewed, there appears to be a gap in notes of key meetings/consultations, or written follow-up notes by way of an alternative record of the meetings/consultations, which we would expect as a means of keeping an audit trail of key discussions

and decisions. We also note that there is no evidence of a communication to witnesses in relation to the preservation of emails, notes or any documents (whether held virtually or in hard copy) that could be considered relevant to the claim.

The Industrial Tribunal

- 2.26. Based on the documentation we have reviewed, there is limited evidence of DSO undertaking an assessment of the level of preparedness of the officials providing oral testimony prior to the hearing. However, there is evidence that a consultation was held between Counsel and the witnesses on 4 February 2020 (seven days prior to the hearing).
- 2.27. In addition to this, there is limited evidence of guidance provided to DAERA and to the officials about oral testimony. However, there is evidence which indicates that Counsel arranged consultations with the witnesses to review and discuss their draft witness statements. The witnesses were also provided with generic guidance in relation to completion of their statements.
- 2.28. It is not Counsel's role to draft witness statements, typically that is done by the witness, with some guidance from their legal advisor. Counsel might then provide some additional comments. We note that legal advice was sought on the contents prior to their exchange with the Claimant's legal representatives.
- 2.29. The Tribunal ultimately assesses the evidence on the basis of documentary and witness testimony. Generally, there may be pre-hearing consultations with Counsel when key issues are discussed and legal advice on case merits provided. Counsel may also explain what witnesses can expect on the day of the tribunal hearing in terms of formalities. However, Counsel would not provide any witness coaching, beyond confirming matters such as how the Tribunal judge should be addressed, what to do if a witness is referred to a document etc.
- 2.30. It is not the role of Counsel to advise a witness on how to respond to particular questions or advise them to change their evidence on a particular point. It should be noted that witness preparation is typically a matter for the witnesses themselves i.e. familiarising themselves with the Hearing bundles, key dates, reviewing contemporaneous notes etc. Consequently, it may be difficult to make a retrospective objective assessment of witness preparation.
- 2.31. Based on the comments in the Judgment, it is apparent that a number of the Officials providing oral testimony were not as prepared as we would routinely expect them to be. In our view, it would be reasonable to expect the legal team to be cognisant of the level of preparedness of the witnesses, albeit (as set out in paragraph 2.30 above) it is ultimately the witnesses' responsibility. Subject to the limitations of our review (as set out in paragraph 1.6), we cannot comment further on this area.

Judgment and appeal

- 2.32. The notice of appeal was lodged by DSO on 2 November 2021. Based on the initial documentation we reviewed, in addition to that subsequently provided, it remains unclear who made the decision to do so. There is a suggestion that the decision to appeal was taken by the legal team (Counsel and DSO) and based solely on legal arguments. However, in our view, it is extremely unlikely that DSO and Counsel would have made decisions about an appeal without taking instructions from DAERA.
- 2.33. It would be considered best practice to document the rationale and approval processes followed in reaching any key decision, including recording who made, and ultimately was responsible for making the decision, and when that decision was made. In regard to the initial decision to appeal, there is a paucity of documentation currently available to support this decision and therefore to determine whether it was a transparent process, such as would be required by Managing Public Money Northern Ireland (“MPMNI”).
- 2.34. We note that the Chief Veterinary Officer was in attendance at the consultation with Counsel on 28 September 2021 when the decision to appeal may have been taken or, at the very least, when the question of whether there ought to be an appeal was discussed. It follows that his involvement or attendance at a consultation with Counsel when a decision to appeal was being discussed could amount to a conflict of interest. Although there is no documentary evidence to suggest that attempts were made to manage this conflict of interest, Counsel retrospectively noted that *“the [Chief Veterinary Officer] stated that he felt that he was too close to the case and that he would take a step back.”*
- 2.35. It appears that the former Permanent Secretary of DAERA was not aware of the decision to appeal (but may retrospectively have agreed with the decision to do so). Therefore, an established approval process does not appear to have been followed. We note that good governance, as defined in MPMNI, involves having a clear governance structure which allows the department to operate with propriety and regularity in all transactions. Based on the information available to us, it is not possible to determine whether the governance structure in place at the time in DAERA was unclear, or whether, instead, it was not fully observed. In contrast, there is evidence to suggest that the decision to withdraw the appeal was taken by him following receipt of advice from Senior Counsel.

3. Background

- 3.1. We understand that the Claimant joined the Department of Agriculture⁴ in 1999 as a Veterinary Officer and is a qualified Veterinary Surgeon. She was appointed as a Supervisory Veterinary Officer in April 2016.
- 3.2. The Claimant was responsible for the approval of livestock markets and their licensing together with their operations and bio-security in relation to livestock markets and the associated enforcement activities.
- 3.3. The Claimant submitted her resignation from the Northern Ireland Civil Service on 27 February 2018 and lodged a complaint with the Industrial Tribunal on 16 May 2018 claiming that she suffered detriment and was constructively dismissed by her employer, DAERA. Later, in September 2018, she claimed that this was as a result of raising protected disclosures. The thirteen protected disclosures related to a series of emails sent by the Claimant in the period from 28 February 2017 to 21 February 2018. A summary of the protected disclosures is included at **Appendix 1**.
- 3.4. Both sides agreed in the submissions hearing that the information conveyed in the protected disclosures is encapsulated in the following description:
 - Issues of concern about welfare of animals in livestock markets particularly in Ballymena Livestock Market; and
 - Issues about the deletion of cattle moves in the recording carried out by livestock markets and the effect of that on traceability of cattle and the risk of Tuberculosis (“TB”) in particular.
- 3.5. The respondent’s case was that the Claimant resigned and was not dismissed; that she was not unfairly dismissed; that any dismissal was not by reason of her having made protected disclosures. The respondent also denied that she suffered detriment as alleged (or at all) and if she suffered detriment it was not on grounds of her having made protected disclosures.

Protected disclosures

- 3.6. The law on protected disclosures was changed with effect from October 2017. The period under scrutiny in this case is from February 2017 to February 2018 and the protected disclosures in this case fall under both the old and the new law. It was agreed between both parties that the change in the law which took place in October 2017 was of no material significance.
- 3.7. The Public Interest Disclosure (Northern Ireland) Order 1998 amended the Employment Rights (Northern Ireland) Order 1996 (“the ERO”) and introduced provisions protecting workers from suffering detriment on grounds of having made protected disclosures.

⁴ The Department of Agriculture was renamed as the Department of Agriculture and Rural Development (“DARD”) in December 1999 and granted a slightly reduced remit. DAERA came into effect on 8 May 2016 retaining most of the roles and responsibilities of DARD.

3.8. The relevant ERO provisions are Articles 67B(1)(a), (b) and (d) which list (in an exhaustive list) the categories of what are termed ‘relevant failures’. The relevant provisions state the following:

“67B. (1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following –

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

(d) that the health and safety of any individual has been, is being or is likely to be endangered.”

The Industrial Tribunal

3.9. The Industrial Tribunal concluded that the Claimant had suffered a detriment as a result of having raised protected disclosures; that she was dismissed unfairly; and that the reason for dismissal was that she had raised protected disclosures.

3.10. The Head of the Civil Service and the Permanent Secretaries of DAERA and the Department of Finance (“DoF”) subsequently agreed for DAERA to commission an external review of how the Department dealt with the concerns raised in this case and of the decision-making of both DAERA and DoF following notification by the Industrial Tribunal that a claim had been made and throughout the period from notification of that claim to 15 April 2022 when the agreed terms of settlement were signed.

3.11. The purpose of the external review is not to investigate the concerns raised by the complainant as these have already been considered and addressed by the Tribunal. DAERA accepts in full the findings of the Judgment and has instructed the external review to be carried out under this assumption. Further, the review is to be restricted to the actions taken by the Northern Ireland Civil Service (“NICS”), including DAERA, NICS HR and DSO and not those taken by others outside the NICS⁵.

Methodology

Relevant documentation

3.12. As discussed at paragraph 1.6, as agreed with the Review Oversight Group⁶ the focus of our work has been on the review of the relevant documentation.

3.13. Four categories of documentation were provided to us for review (“relevant documentation”).

- DAERA container - an audit fieldwork exercise was conducted by the Group Internal Audit and Fraud Investigation Service (“GIAFIS”) to identify the documents considered relevant for

⁵ Though technically outside the NICS, reference to Counsel is made on the basis of his retention by DSO and as such, his actions are viewed as an extension of its work.

⁶ Made up of the Head of the Civil Service, the Permanent Secretaries of DAERA and DoF and the NICS Group Head of Internal Audit.

review; access to the relevant documentation was provided to us in electronic form in Content Manager⁷.

- Hard copy documentation relating to the Industrial Tribunal was made available for initial relevancy review by us on site at Dundonald House. We identified approximately 12 lever arch files for scanning by DAERA. Access to this documentation was subsequently provided to us in electronic form in Content Manager.
- Departmental email request - on 19 May 2022, the Senior Information Risk Owner (DAERA) emailed all DAERA employees detailing the scope of the external review. In his email, the Senior Information Risk Owner (DAERA) stated, *“I ask everyone in DAERA to identify any information that may be relevant which is not held in Content Manager. You are therefore asked to search any hard copy material, information saved on desktops or shared folders or information still being held in electronic mailboxes. This list is not exhaustive so staff should assure themselves that they are not holding any information which may be relevant.”* We were provided with access to the email inbox set up to hold the documentation provided. The inbox contains 16 emails, of which eight contained documentation / links to documents within Content Manager.
- DoF container - a separate exercise was conducted by DoF, under the direction of GIAFIS, to identify relevant documents about the case held by NICS HR and DSO; access to the documentation identified as relevant was also provided to us in electronic form in a separate container in Content Manager.

3.14. We were not responsible for identifying the relevant documentation, nor determining the completeness of the document population provided to us in either the DAERA or DoF containers. We note in particular that while we had access to all documents within the DAERA container, given the limited time available, our review was guided by the audit fieldwork exercise conducted by GIAFIS.

Relevant policies

3.15. The relevant policies, procedures and processes determined by, and provided to us on behalf of DAERA (“relevant policies”) are as follows:

- Department of Agriculture & Rural Development Whistleblowing Policies and Procedures (20 February 2014);
- Managing Public Money NI Final (June 2008);
- DAERA Enforcement Policy (20 February 2014);
- NICS Code of Ethics (no date); and
- Chapter 6 of the NICS HR Policy (no date).

⁷ Content Manager is the document management system used by the NICS.

The DARD Whistleblowing Policy

- 3.16. The DARD Whistleblowing Policy dated 20 February 2014⁸ (“the DARD whistleblowing policy”) indicated that concerns could be raised orally or in writing and provided DARD employees with a road map to follow when they had “*serious issues to report*”, starting with notifying their line manager (or their immediate line manager). In instances where the employee has already raised concerns with these individuals, or indeed feels unable to do so, the DARD whistleblowing policy states that they should raise the matter with:
- The Director of Finance;
 - The Director of Human Resources and Corporate Services; or
 - The Head of Internal Audit.
- 3.17. If the above steps have been followed or considered and an employee still has concerns, the DARD whistleblowing policy directs the individual to contact either the Permanent Secretary or the Deputy Permanent Secretary. Alternatively, employees are advised to contact the Civil Service Commissioners for Northern Ireland.
- 3.18. The DARD whistleblowing policy also provides guidance for its managers on dealing with whistleblowing concerns. It states that the purpose of the guidance is to, “*reassure staff that they can raise genuine allegations or concerns about potential wrongdoing in confidence, through a clear internal reporting process, without putting their position at risk.*” Managers are instructed to notify their senior manager immediately of all concerns raised. In addition to this, managers are required to follow a series of steps, which include (but are not limited to):
- Immediately securing any potential evidence;
 - Carrying out enquiries/investigations promptly, sensitively and as discreetly as possible;
 - Obtaining reports from witnesses (if any); and
 - Ensuring that feedback is provided to the whistleblower.

NICS Code of Ethics

- 3.19. The NICS Code of Ethics (undated) details the:
- Civil Service values - Integrity, honesty, objectivity and impartiality;
 - The Standards of behaviour expected; and
 - The Rights and Responsibilities of Civil Service employees.
- 3.20. The NICS Code of Ethics provides further detail on each of the Civil Service values, as follows:
- Integrity - “*is putting the obligations of public service above your own personal interests*”;
 - Honesty - “*is being truthful and open*”;
 - Objectivity - “*is basing your advice and decisions on rigorous analysis of the evidence*”; and

⁸ The whistleblowing policy in place at the time the Claimant raised her concerns.

- Impartiality - *“is acting solely according to the merits of the case and serving equally well Ministers of different political persuasions.”*

3.21. In particular, we note the Standards of Behaviour expected in relation to ‘Objectivity’, are as follows:

“You must:

- *provide information and advice, including advice to Ministers, on the basis of the evidence, and accurately present the options and facts;*
- *take decisions on the merits of the case; and*
- *take due account of expert and professional advice.*

You must not:

- *ignore inconvenient facts or relevant considerations when providing advice or making decisions; or*
- *frustrate the implementation of policies once decisions are taken by declining to take, or abstaining from, action which flows from those decisions.”*

The DARD enforcement policy

3.22. The DARD Enforcement Policy’s (published 20 February 2014) (“the DARD enforcement policy”) main objective is the *“prevention or reduction of harm, caused by non-compliance with statutory requirements”*.

3.23. The DARD enforcement policy is clear that enforcement action should only be taken in the minority of cases, *“DARD believes that in most cases, working with herdkeepers, landowners, fishermen and businesses, in a positive and practical manner will achieve compliance with the legislation and successful delivery of policies. However where there are breaches of the legislation that may cause harm or deny benefits, then the presumption will be to take enforcement action appropriate to the level of harm or risk. The significance and impact of breaches will vary considerably. When deciding the appropriate response, priority will be given within each policy area, to those breaches where the greatest harm is likely to be caused. Assessment of priority and conduct of actions will be guided by our key principles of enforcement below”*.

3.24. The policy provides detail on the six principles of enforcement, being:

- ‘Proportionate’ - consists of considering the severity of the harm;
 - ‘Consistent’ - consists of ensuring uniformity in the approach to enforcement;
 - ‘Transparent’ - to ensure that those who are regulated understand what is expected of them and they will know what to expect of the Department;
 - ‘Targeted’ - directed primarily towards those whose activities actually or potentially give rise to the most serious harm and those who benefit from the criminal activity;
 - ‘Accountable’ - to the public and under the scrutiny of various bodies with the powers of audit;
- and

- ‘Compliant with Human Rights’.

3.25. The policy indicates that there are three means by which compliance can be achieved:

- Compliance Assistance - *“It is important that those obligated under a regulation are fully aware of its existence and relevance to their activity, as well as how to comply. We will work closely with stakeholder bodies to identify barriers to compliance and to provide clear, unambiguous guidance as necessary”*;
- Compliance Assessment - *“For many policies, compliance will be assessed through inspection, testing and audit of physical, electronic and documentary records. We will devote more resources to those activities and locations presenting the greater risks of harm through noncompliance”*; and
- Compliance Enforcement - to be used, *“where legislation or cross-compliance rules have been breached, and subject to the circumstances and severity of the breach”*. The policy then lists the range of actions available to the Department, including (but not limited to), warning letters, enforcement notices, licence suspensions and fixed penalty notices.

Managing Public Money Northern Ireland

3.26. Managing Public Money Northern Ireland (“MPMNI”), published in June 2008, *“sets out the main principles for dealing with resources used by public sector organisations in Northern Ireland (NI)”*. At its heart, MPMNI provides guidance to ensure that public resources are deployed responsibly and in the public interest at all times. To achieve this, MPMNI highlights the importance of the eight standards expected of all in public service, being, honesty; fairness; impartiality; integrity; openness; transparency; accountability; objectivity; accuracy; and reliability.

3.27. MPMNI specifically details the personal responsibilities of Accounting Officers in government departments; this is the Permanent Secretary within DAERA. As someone who may be called to account in the Assembly for the stewardship of resources under their control, Accounting Officers are expected to adhere to three main standards:

- governance - involves having a clear governance structure which allows the department to *“operate with propriety and regularity in all transactions”*;
- decision-making - involves supporting Ministers with clear, well reasoned, timely and impartial advice. MPMNI specifically indicates that Accounting Officers are required to *“meet [DoF]’s requirements about limits on use of public resources”*; and
- financial management - involves carrying, *“out procurement and project appraisal objectively and fairly, seeking good value for the public sector as a whole”*.

3.28. There is an overarching emphasis on ensuring value for money within the guidance specifically addressed to Accounting Officers. This consists of, *“ensuring that the organisation’s procurement, projects and processes are systematically evaluated and assessed to provide confidence about suitability, effectiveness, prudence, quality, good value and avoidance of error and other waste, judged for the public sector as a whole, not just for the Accounting Officer’s organisation”*.

- 3.29. Section 6.01 (Standards of Conduct) of the NICS HR Policy is about the general principles and rules that govern the behaviour and conduct of civil servants.
- 3.30. It includes a wide-ranging list of general principles which applies to all members of the NICS. Of particular relevance to this case is the *“need to be, and be seen to be, honest and impartial in the exercise of your duties. You must not allow your judgement or integrity to be compromised or appear to be compromised”*.
- 3.31. Section 6 also specifically states that each civil servant has the *“right to make a disclosure of information in the public interest, also known as “whistleblowing”*. Information is provided in Annex 3 which guides NICS staff on how to disclose information on wrongdoing when this is in the public interest, and outlines the support mechanisms for staff who decide to raise concerns.
- 3.32. Annex 3 specifically states that while *“many complaints will be raised through the management line, there is also a nominated officer for NICS (the Investigating Officer), who can be approached in confidence in the first instance. This role is carried out by the NICSHR Senior Strategic HR Business Partner (Grade 5). Internal resolution procedures will normally involve the Director of NICSHR Employee Relations.”*
- 3.33. As a final point, it is stated that *“where a Civil Servant has reported a matter in accordance with Departmental/Agency procedures and believes that the reply does not represent a reasonable response to the grounds of their concern, they may report the matter in writing to the Civil Service Commissioners for Northern Ireland.”*

4. Handling of the concerns raised

- 4.1. In this section, and in the sections that follow, we first set out the key facts about actions and decisions taken that we have identified from the documentation reviewed; we have sought to present these facts for each of the key actions to be determined.
- 4.2. At the end of each section, we present our key findings on these facts, including, where possible, our assessment of the extent of compliance with the relevant policies.

The initial concerns⁹

Deleted cattle moves

Email disclosures

- 4.3. The Claimant's first concern was raised on 28 February 2017. This was in relation to the deletion of cattle moves. The concern was raised with the Claimant's Line Manager, VSAHG¹⁰ Head of Division, Deputy Chief Veterinary Officer and IRM Project Manager and Senior Principal Veterinary Officer, DAERA ("IRM SPVO").
- 4.4. In the email the Claimant detailed the suspicion that livestock markets were deleting cattle moves within 24 hours of them being bought, which "*amounts to fraud on a large scale and has a serious impact on our valued bovine and bovine product traceability*". To support the suspicion, the Claimant attached Cognos reports¹¹ which, "*identify the cattle which first move out of the market had been deleted off the original market issued permit.*"
- 4.5. It would appear that the concerns were taken seriously, at least initially, by senior Departmental Officials.
- 4.6. On 19 April 2017, the Deputy Chief Veterinary Officer forwarded the email to DAERA Employee (3), copying in SPVO (2), the IRM SPVO and the Claimant's Line Manager, stating, "*As discussed there are a number of traceability strands that merit drawing together under one project programme to support our market access efforts - particularly key in current context.*" The Deputy Chief Veterinary Officer indicated in her witness statement that she forwarded the concerns to the Programme Manager for consideration. Further, on 22 June 2018 the Deputy Chief Veterinary Officer emailed Deputy Principal (DAERA) in response to the comments on the ET1 claim indicating that the concerns were forwarded by her to the IRM SPVO as the Identification, Registration and Movements ("IRM") Programme Manager. It is unclear whether the email referred to by the Deputy Chief Veterinary Officer is that which is dated 19 April 2017, as detailed above.

⁹ Please note that this section contains our analysis of the information relevant to the following key actions to be determined: the recording of the concerns raised by the complainant; the analysis or assessment of the concerns; the arrangements for reporting and escalating the concerns; the nature of any advice received from other parts of DAERA or from other departments to inform how the concerns might be handled; and the actions taken when the concerns were raised.

¹⁰ Veterinary Service & Animal Health Group

¹¹ Cognos is an IBM business intelligence tool. We assume that it was used by DAERA to extract relevant data/reports from Animal and Public Health Information System ("APHIS").

- 4.7. On 19 April 2017, SPVO (2) responded to the Deputy Chief Veterinary Officer's email stating, *"This is worrying. My understanding is this allows one less move to be recorded ... worrying for several reasons: fraud, animal health risks, authenticity/traceability of cattle/beef and DAERA's failure to police"*.
- 4.8. IRM SPVO requested that a manager within the IRM Branch, *"look into this with his staff, so we could discuss what possible actions were open to us"¹²*. We note two emails from IRM SPVO to the IRM Manager (DAERA) in relation to this matter. On 1 March 2017, the IRM SPVO emailed the IRM Manager (DAERA) stating, *"[IRM Manager (DAERA)] - can you arrange for a summary of this for IRM branch and thoughts on possible options."* On 20 April 2017 the IRM SPVO stated, *"[IRM Manager (DAERA)] - can you [sic] team consider the issue raised by [the Claimant]."*
- 4.9. On 28 March 2017, the Claimant's Line Manager emailed the IRM Manager (DAERA) and the DAERA Employee (6), copying in the Welfare & Enforcement Branch Employee (DAERA), the Claimant, the IRM SPVO, DAERA Employee (4) and DAERA Employee (1) stating, *"Folks - [the VSAHG Head of Division (DAERA)] asked me to lead on this to come up with a strategy to counter the situation. [DAERA Employee (6)] - I would be grateful if you could arrange a meeting in Magherafelt for those listed above. If [IRM Manager (DAERA)] is too busy we will meet without him and consult at a later date."*
- 4.10. The IRM Manager (DAERA) responded on the same day stating, *"There is a strong possibility that dealers legislation may be introduced shortly (subject to consultation etc). This problem could be reduced if not solved if we were to get acceptance from NIMEA¹³ (who own the business rules around residencies) and LMC¹⁴ (own FQAS¹⁵) that the dealer's premises were not to be considered as a residency and of less significance, retained in FQAS."* It was arranged, therefore, that a meeting would take place¹⁶ after the IRM Manager (DAERA) completed Northern Ireland Food Animal Information Services ("NIFAIS") database workshops, in 10 days time.
- 4.11. On 12 June 2017, the Claimant's Line Manager emailed all of the individuals copied into the Claimant's email dated 28 February 2017, in addition to the IRM Manager (DAERA), DAERA Employee (9) and DAERA Employee (3) informing them that he met with the IRM Manager (DAERA) along with the Claimant to discuss the issue of deleted moves. The Claimant's Line Manager stated, *"We think there may be an issue with regards to the ability of markets to change the identity of recipients. We believe that there may be an agreement that markets can do this for up to 24 hours after the sale of the animals. [The Claimant] has evidence, however, that markets are able to do this up to 50 hours after the first notification. We believe that this can be done automatically and without recourse to an ASU helpdesk. I would be grateful if we could check what current functionality"*

¹² The IRM SPVO's witness statement

¹³ Northern Ireland Meat Exporters' Association

¹⁴ Livestock & Meat Commission

¹⁵ Farm Quality Assurance Scheme

¹⁶ We have not seen any evidence of when this meeting may have taken place, or if, in fact, this meeting, when arranged, was the same meeting referred to by the Claimant's Line Manager in his email of 12 June 2017 between himself, the Claimant and the IRM Manager (DAERA)

enables (perhaps additional time is allowed at weekends - non-working days?) and we recommend that we only allow 24 hour for markets to do this rather than 1 working day."

- 4.12. On 14 May 2019, in or around the time when Departmental Officials were preparing witness statements, the IRM SPVO emailed the IRM Manager (DAERA) and DAERA Employee (1) with a copy of the Claimant's Line Manager email dated 12 June 2017 stating, *"any emails or notes on this matter appreciated. Can you send them to me urgently ... [the Claimant's Line Manager] confirmed that it was not a formal minuted meeting that took place more a discussion on the subject and the outcome is recorded in the attached emails. He did not attend any other meetings where the issue was further discussed, the issue was passed to IRM programme."* We are unable to determine when this meeting took place, from the information available to us.
- 4.13. In his witness statement, the IRM SPVO indicates that subsequent to the meeting (we assume between IRM Manager (DAERA), the Claimant and her Line Manager) the following actions were considered by him and the IRM team:
- *"Do nothing;*
 - *Enforcement;*
 - *Await the new legislation which will place additional obligations on dealers ...*
 - *Amend the current legislation to reduce the timescale of reporting movements for market operators, i.e. require notification on the same day rather than the next working day. (Any such amendment would probably have taken no less than 9 months or thereabouts);*
 - *amend the database to facilitate a shorter timescale for entering a market move of a bovine animal out of a market."*
- 4.14. The IRM SPVO stated in his witness statement that enforcement was not considered appropriate, *"given that, as a matter of law, market operatives had up to the next working day to enter/upload this information and could claim that any original entry on the database was a mistake."*
- 4.15. Awaiting the new legislation and amending the current legislation options were discounted on the grounds of the time delay that would have been created, as *"the legislative process in Northern Ireland can take up to 9 months and it was considered that a small change like this would more appropriately be included in the forthcoming legislation on the Electronic Identification of Cattle which will implement EU Regulation 2017/949."*
- 4.16. It was therefore decided to make the necessary arrangements to amend the database, *"to provide for a shorter timescale for entering a market move of a bovine animal out of a market."* The decision was to update the database to make it configurable, allowing DAERA to change the timescale to be applied and to reflect any future changes in legislation. In his witness statement, however, the IRM SPVO explains there was a delay in rolling out the updated version of the NIFAIS database (developed by Sybex), which subsequently delayed this specific amendment.
- 4.17. We note from review of available emails that the IRM SPVO does follow up on this with the IRM branch in January 2018. On 8 January 2018 the IRM SPVO emailed DAERA Employee (1) stating,

“[The Claimant's Line Manager] mentioned market operatives changing the movement history on APHIS¹⁷ for animals moving out of markets for up to 7 days after the event. Can you ask IRM staff if this is actually feasible on APHIS and consider if we should consider making changes”. The response received by the IRM SPVO from his team makes reference to “awaiting confirmation from Sybex” which appears to be consistent with the IRM SPVO’s witness statement. It is unclear, however, why approximately 11 months had elapsed from when the initial concern was raised to progress the NIFAIS update.

- 4.18. On 25 June 2018 DAERA Employee (1) emailed the IRM SPVO with the ‘DAERA Functional Specification for Project Movements and Trade’ document attached (dated 8 March 2018¹⁸). This details the specifications to be included in NIFAIS specifically relating to the movement of animals, “NIFAIS Office will allow the users to view an animal’s movement history between holdings (eg. Farms / markets / slaughterhouses). This helps authorities and veterinary services to track the full movement history in the event of disease breakout.” In his email, DAERA Employee (1) stated, “In the attached spec it is page 192 ... which will enable us to require the market to notify us on the day of the sale of the moved out details if we set the configurable parameter “X” to 0 days. By default “X” will be 1 day which is the current situation and allows the markets to make changes to the move out details up to the end of the next working day.”
- 4.19. From his witness statements, and evidence given at the Industrial Tribunal, it appears that the Claimant's Line Manager believed that the “strategy to counter the situation”, on which he was leading, was the agreed amendment to the NIFAIS database, being implemented by the IRM branch. As such, “[t]hereafter the issue was outwith my control and I trusted my IRM colleagues would take appropriate action.”
- 4.20. It appears, therefore, that no further action was taken by the Claimant's Line Manager about the concerns raised about deleted cattle moves by the Claimant. We note that later in his witness statement, the Claimant's Line Manager referred to his role as Chair of the Traceability Assurance Group (“TAG”) and the actions taken by this group in relation to the concerns regarding cattle moves, “We had already investigated most of the movement issues raised by [the Claimant]. This group investigated hindrances to effective enforcement and reporting to senior policy and IRM colleagues ... [the Claimant’s] further evidence added little to the issues which had previously been identified and thoroughly researched by my group.”
- 4.21. We note that following the Tribunal decision, on 29 September 2021 Chief Veterinary Officer emailed the DoF NICS Employment Tribunals Team stating, “I am minded to ask Internal Audit to have a look at the issues raised around animal traceability in order to either confirm things are OK or tell me what needs done. Is there any reason I shouldn’t do this?”
- 4.22. The subsequent ‘Internal Audit Review of Cattle Traceability System within Veterinary Service Animal Health Group’ addressed to the Chief Veterinary Officer on 11 May 2022 (“the internal audit report”) conducted testing of amendments/deletions of cattle movements on APHIS within 48 hours of the

¹⁷ Animal and Public Health Information System

¹⁸ We note this post the date of the Claimant’s resignation on 27 February 2018.

original move, broken down into individual markets. This found that two¹⁹ livestock markets in particular had a significantly higher number of amendments/deletions (7% and 5% of amendments, compared to the next eight largest livestock markets, which had a rate of between 1% and 2%).

- 4.23. The internal audit report does not specifically comment on the investigations undertaken by management in relation to cattle amendments/deletion, but it does provide a management recommendation that, *“management should ensure that further investigation is carried out to determine the reason why these 2 markets have significantly more amendments/deletions.”*

Tuberculosis Strategic Partnership Group

- 4.24. Around the same time as the first concern, in early 2017, the Tuberculosis Strategic Partnership Group (“TBSPG”) delivery working group was established to *“ensure that as much preparatory work as possible is done towards the implementation of the report recommendations”* (according to the ‘TBSPG Delivery Pre Implementation Group Papers for March 21 Meeting’). The report referred to is the Bovine Tuberculosis Eradication Strategy for Northern Ireland, December 2016. This indicates that whilst the TBSPG was established around the same time as the first concern, it was not done so in response to the concerns raised, but rather to prepare for the implementation of the Bovine Tuberculosis Eradication Strategy for Northern Ireland report.
- 4.25. The minutes of the 11 April 2017²⁰ meeting indicated that the Claimant raised the concern of deleted market moves. The minutes state, *“[The Claimant] raised various IRM issues she is aware of. Since June last year some markets have allegedly been deleting moves and reissuing permits. It is believed this is to help dealers reduce the number of moves recorded on APHIS”*. The minutes state that, *“to change industry behaviours we also need a change in staff mind set. We will need enforcement strategy - better inspection approach and statements and the commencement [of] feedback to the new Markets DVO post ... dealers legislation is necessary to address te (sic.) C&D issue of vehicles which are marking regular journeys to and from markets for commercial purposes. This is thought to be drafted and ready for consultation ... [DAERA Employee (10)] has worked with [the Claimant] on this. Action [DAERA Employee (5)] to check with [DAERA Employee (10)] why not progressing. Action [the Claimant] to discuss her markets plan with [the Claimant’s Line Manager], agree the proposals and present this to [VSAHG Head of Division (DAERA)].”*
- 4.26. We note from review of the minutes of the next TBSPG meeting on 2 June 2017 that the issue of deleted moves was not discussed. The Claimant was present at the meeting and presented on a procedure to audit markets which she had developed.
- 4.27. The Claimant issued her apologies to the next TBSPG meeting held on 8 November 2017. We note that deleted cattle moves were not minuted as being discussed at this meeting. This was the last TBSPG meeting prior to the Claimant’s resignation from the Department.

¹⁹ The internal audit report does not identify the two markets with the significantly higher number of amendments/deletions, nor are details of the testing conducted appended to the report.

²⁰ We note that by this date, the Claimant had made one protected disclosure (relating to deletion of cattle moves).

Traceability Assurance Group and the Traceability Forum

- 4.28. Given the nature of the Claimant's concerns regarding deleted cattle moves, we might have expected them to have been discussed at the TAG meetings and the subsequent Traceability Forum.
- 4.29. It would appear that the first TAG meeting took place on 20 April 2016. We have been unable to locate a Terms of Reference relating to TAG, however, from review of the TAG meeting minutes available²¹, we note that the following 'traceability issues' were consistently discussed:
- *“Animal identities are registered to dams shortly after they are moved on APHIS into a herd;*
 - *Cattle with very young DOBs being presented for slaughter;*
 - *Renderers are 'killing off' cattle identities for a fee. e.g. £20 head;*
 - *Herdkeepers are giving dealers blank and partially completed MC2 documents to facilitate illegal moves to slaughter;*
 - *3rd party cheques (dealers using 3rd party cheques);*
 - *'D Transit' - animals registered dead on MC1 & sent to rendering. Animal never arrives and moves to suspense;*
 - *PVPs recording animals at TB tests which were not present;*
 - *Male calves in restricted herds being illegally exported;*
 - *Cattle recorded as missing/stolen;*
 - *Herdkeepers are able to source suspect/fraudulent tags from tag suppliers;*
 - *Herdkeepers have 7 days to notify moves on and off.”*
- 4.30. It appears that the TAG was subsequently disbanded in June 2017. On 5 June 2017, the Welfare & Enforcement Branch Employee (DAERA) cancelled this repeating calendar invite stating, *“Folks, please note that these TAG meetings have been cancelled as per [the Claimant's Line Manager]. [DAERA Employee (3)] and [Deputy Chief Veterinary Officer] are taking forward the IRM issues we identified.”*
- 4.31. We have been unable to locate an email from the Claimant's Line Manager which discusses the cancellation of the TAG meetings. We note however that in June 2017, the Traceability Forum was established. The Terms of Reference for the Traceability Forum, dated June 2017 states that, *“The DAERA Traceability Forum is being established initially to meet the requirements of developing improved traceability of animals on farms. The European Union (EU) requirement is that all cattle keepers must notify the Department of the births, deaths (including stillbirths) and movement of cattle, animals must be double tagged and a herd register must be kept to record this information.”*

²¹ 20 April 2016, 24 August 2016, 16 November 2016 and 18 February 2017 (we note that 18 February 2017 was a Saturday; it may therefore be the case that the minutes contain a typo in relation to the date).

- 4.32. The Traceability Forum met on 2 August 2017 and 1 November 2017 after which point, *“the membership of the group highlighted that there was duplication between this forum and others with the result that the meetings dwindled away with no dial in attendees in December”*²².
- 4.33. From review of the minutes of August and November 2017, we note that the deleted moves and traceability concerns raised by the Claimant were not discussed, despite the Claimant's Line Manager being present in August, and the IRM SPVO and the IRM Manager (DAERA) being present in November. Similarly, the issues do not appear to have been discussed at any of the TAG meetings; however we note they were first raised by the Claimant on 28 February 2017, which is after the last available TAG meeting minutes dated 18 February 2017.
- 4.34. We note from review of the TAG and Traceability Forum meeting minutes that the Claimant was not part of either group, nor in attendance at any of their meetings. The Claimant stated as part of the Tribunal that she only became aware of the TAG meetings after someone asked her why she was not present.

Ballymena Livestock Market

- 4.35. The Claimant's first concern about the Ballymena Livestock Market was made in June 2017. The substance of her concerns were serious breaches resulting in the unnecessary suffering of sheep, breaches relating to cleansing and disinfection and non-compliances with the market licence. The Claimant indicated that these non-compliances jeopardised disease control and the welfare of sheep accepted into Ballymena Livestock Market.
- 4.36. The concerns relating to this matter focus on alleged breaches during 2017, however, it is evident that the Claimant had serious concerns about Ballymena Livestock Market earlier than this.
- 4.37. On 7 November 2016 we note that the Claimant forwarded a summary of an inspection of Ballymena Livestock Market to DAERA Employee (8), the Welfare & Enforcement Branch Employee (DAERA) and the Claimant's Line Manager, which uncovered a cow with photosensitisation that was sold in Ballymena Livestock Market on 27 October 2016, transported in a lorry with 15 other cattle and left overnight before being killed on 31 October 2016. The Claimant in her email stated, *“there are several possible offences here. [DAERA Employee (8)] has agreed to investigate with a view to interview parties under caution.”*
- 4.38. The Claimant's Line Manager responded on the same day, stating, *“We need to have a strategy for improving market welfare but I'm not convinced that prosecution of every case is my first option.”*
- 4.39. On 8 November 2016, the Claimant responded by stating, *“... I believe that we should investigate this case as it is in the public's interest to highlight the welfare issues at markets, something which can only be stopped if we send out a strong message.”*

²² Email from the Animal Identification and Welfare Branch, VSAHG, DAERA to the IRM SPVO on 25 June 2018.

- 4.40. The Claimant's Line Manager responded reiterating his opinion that prosecution was not the appropriate action in this case, *"In other words I think that any prosecution, unless the circumstances are appalling, is well down the line. A scattergun approach to enforcement now is likely to be counterproductive. It would antagonise the industry and lead to a deluge of negative correspondence directed at the minister, CVO etc"*.
- 4.41. The Claimant continued to raise concerns regarding Ballymena Livestock Market throughout the following year. On 19 September 2017, the Claimant visited Ballymena Livestock Market, identifying a number of issues, such as approximately 100 sheep being kept overnight without any food or drinking water and six sheep with chronic footrot. The Claimant reported these incidents to her Line Manager, who advised her to draft a warning letter for his review, followed by two follow-up inspections. On 27 September 2017, the Claimant sent the draft letter to her Line Manager, which detailed seven instances of non-compliance noted during the visit on 19 September 2017, as summarised below:
- There were insufficient footbaths available at the back of the market and any footbaths present were *"severely soiled and had algae growing in it. This indicates that the footbath [sic] hasn't been cleansed nor refilled with disinfectant in the recent period"*;
 - There were high levels of ammonia present in the area furthest away from the sheep sale ring, indicating that the pens had not been cleansed for considerable time. In addition, 86 sheep were kept within these pens for considerable time;
 - One pen, containing 17 lambs was badly overcrowded, with no access to water or suitable food;
 - The 86 sheep kept overnight in this area had no access to suitable food or water;
 - Six sheep were lame on at least one leg, caused by advanced footrot in one or both hooves;
 - A double deck lorry and two private trailers were seen unloading large numbers of Blackface sheep into pens within the same area where the 86 overnight sheep were still being kept. There had been no cleansing or disinfection done in advance; and
 - In the sheep pens adjoining the sheep sale ring, there were also approximately 50 sheep kept overnight and *"none of these sheep had access to water and only one pen containing a larger number of sheep had access to a small amount of hay in a feed bag."*
- 4.42. The Claimant's Line Manager responded within ten minutes of the Claimant's email, stating, *"This is not the letter that I approved."* The Claimant responded (on the same day) stating, *"I cannot sign a letter which does not have all the facts and findings listed in it. If you wish for the other letter to be sent, I will not be able to sign it."* The Claimant's Line Manager responded with an updated letter stating, *"the attachment hopefully shows that all of the points in your original letter are sufficiently covered in my re-draft ... I prefer my redraft because it is succinct, clear, to the point and covers all of the non-compliances ... I hope that you will consider signing this off."*
- 4.43. On 28 September 2017, the Claimant responded stating, *"with the utmost respect, I am still unable to sign this letter."* The Claimant listed four reasons why she felt unable to sign the re-drafted letter, referencing her *"professional oath which enforces the need for animal welfare to be one of my main concern (sic.) at all times."* At the end of this email, the Claimant stated, *"however if it is deemed*

more appropriate for business reasons to prevent certain findings/conclusions from being issued to the involved parties, then I am happy for you to sign these communications to the industry, without these containing any references to my role in collecting the findings.”

- 4.44. On 29 September 2017, the Claimant's Line Manager emailed the Claimant, the Welfare & Enforcement Branch Employee (DAERA) and SPVO (3) with the final updated letter to be issued to Ballymena Livestock Market, which was signed under his name. We note that this letter was more succinct in its form, but appears to address each of the substantive issues identified. The main difference in the final updated letter was the removal of an invitation for the market operator to attend for a cautioned interview. In his written response, the Claimant's Line Manager stated that *“it was his professional opinion that the issues identified in Ballymena market could be rectified without recourse to the claimant's preferred enforcement option (an invitation to a cautioned interview) as my enforcement team only used this when considering prosecution.”*
- 4.45. We note that this approach to compliance was different to that proposed when concerns, albeit about a different issue, were brought to the attention of the Claimant in relation to another livestock market.
- 4.46. On 7 March 2017, the Claimant received an email from Pollution Response (DAERA) informing her of a slurry leak at the other livestock market. Having raised the matter with her Line Manager, he responded within an hour, asking her to, *“Please prepare a short brief for CVO [Chief Veterinary Officer] and permanent secretary. They should be briefed before we take action.”*
- 4.47. There appears to have been some debate between the Claimant, her Line Manager and the VSAHG Head of Division (DAERA) about the most appropriate course of action. On 9 March 2017, the Claimant's Line Manager responded to her stating, *“Please don't think that there is any lack of support from managers. We are all agreed that we need to sort this situation out ASAP. The Perm Sec, however, will expect us to look at all of the available enforcement options before deciding on the preferred course of action ...”*
- 4.48. In his written response to our draft report, the Claimant's Line Manager emphasised the point that *“this was ... a different problem”* and *“the fact that this would impact on the activity of the market operator, his staff and his customers made it imperative to brief the Permanent Secretary.”*

The extent to which those investigations and any actions taken were compliant with DAERA's Whistleblowing policy and with the NICS Code of Ethics

Assessment of the concerns as protected disclosures at the time

- 4.49. During the Industrial Tribunal process, both parties accepted that the Claimant had made protected disclosures. It appears however that the concerns raised by the Claimant were not treated as protected disclosures at the time, at least initially, neither by those to whom the Claimant raised the concerns, nor by the Claimant herself, and as such, the DARD whistleblowing policy was not specifically invoked nor specifically followed.

- 4.50. Despite raising her concerns with her Line Manager (as suggested in the DARD whistleblowing policy), we note that the Claimant does not request for her concerns to be added to the whistleblowing register. We note that on 25 October 2017, the Claimant received an email from DAERA Veterinary Services Co-Ordination indicating that the VSAHG was required to provide information on whistleblowing allegations for the period 1 September to 31 October 2017, which would then be reported to the Audit and Risk Assurance Committee. Staff were asked to ensure that the register was up to date for the period. We note that the Claimant sent a ‘nil return’.
- 4.51. We also note that on 2 October 2017, the Claimant emailed her Line Manager and SPVO (3) indicating that an individual should be treated as a whistleblower following concerns raised by them in relation to other livestock markets. The Claimant stated, *“Given that [the individual] has made this claim to me and [the Inspector GP2 (DAERA)] during an inspection following an anonymous complaint, it is my opinion that [the individual’s] complaint should be treated as a whistleblowing case requiring further investigation ... this will then prevent any possible claim of victimisation by [them] ... Because of all of the above I believe in the best interests of both DAERA and the industry that we abandon the idea of issuing further advisory letters and conduct an inspection as outlined above”*. It appears that this is the first reference to ‘whistleblowing’ made by the Claimant in the documentation available to us.
- 4.52. It would appear therefore that initially, the Claimant did not consider her concerns to be protected disclosures, nor seek for them to be treated as such, but rather part of her enforcement role.

Escalation of the protected disclosures by the Claimant

- 4.53. The Claimant discussed her concerns about Ballymena Livestock Market with the Chief Veterinary Officer, who was her Line Manager’s Line Manager, on 1 November 2017. In response we understand that the Chief Veterinary Officer set out his preferred approach that involved engaging with livestock markets, rather than enforcement. We note that the Judgment accepted the Claimant’s evidence that when the Claimant tried to show the Chief Veterinary Officer photographs and documents illustrating the seriousness of the concerns he refused to look at them; we are however unable to conclude on this based on the evidence available.
- 4.54. The engagement of the Claimant with the Chief Veterinary Officer on 1 November 2017 however demonstrates an escalation in approach to raising her concerns within DAERA. We also note that by this date, the Claimant had raised six of the 13 protected disclosures (as agreed at the Tribunal), demonstrating a deliberate repetition of her concerns. It could therefore be argued that at the point of escalation by the Claimant on 1 November 2017, her concerns ought to have been considered as protected disclosures.
- 4.55. This would, or should, have prompted review of the guidance in the DARD whistleblowing policy, including the appropriate actions to be taken to investigate the concerns (securing potential evidence, carrying out enquiries/investigations promptly and obtaining reports from witnesses) in addition to the need to provide feedback and support to the Claimant.

- 4.56. It appears that around this time, the Claimant's Line Manager responded less often to the Claimant's email concerns. For instance, on 15 December 2017, the Claimant emailed her line manager, the Welfare & Enforcement Branch Employee (DAERA) and SPVO (Retired) with a report of deleted market moves for the week commencing 4 December 2017, which identifies 135 deleted bovine moves through livestock markets. The Claimant is clear that as a result of the deleted market moves, the traceability of the animals *"has been compromised"* and *"has potentially compromised biosecurity in relation to the spread of TB"*. On 18 December 2017, SPVO (Retired) forwarded this email on to the VSAHG Head of Division (DAERA) stating, *"I would like to add this to the agenda for our team meeting, please."* We note from a letter from DSO to MTB Solicitors on 25 June 2019 that the meeting referred to by SPVO (Retired) was the *"DCVO (Grade 5) meeting with the SPVOs in that division to provide support rather than a minuted meeting."* We are therefore unable to conclude whether the issue was indeed discussed at this meeting. We have been unable to identify a response from the Claimant's line manager in relation to this email.
- 4.57. We also note that on 20 February 2018, the Claimant emailed the Senior Management Team with a report indicating that between 4,800 and 5,000 animals annually had their move out of a Livestock Market deleted, causing concerns in relation to TB control and the traceability of these animals. On 21 February 2018, the IRM SPVO responded with a number of questions/points for the group, one of which was DAERA Employee (4), who subsequently responded to the group. We note that the Claimant's Line Manager did not respond to this email. On 2 March 2018, the Claimant forwarded the email to the DAERA Employee (5); the DAERA Employee (5) responded on the same day, stating, *"Thanks [the Claimant]."* The Judgment states that the Claimant in her evidence indicates that this lack of substantial response to her email was the *"last straw"*.

Acceptance of whistleblowing in the employment claim

- 4.58. A summary of the relevant aspects of the DARD whistleblowing policy can be found in paragraph 3.18 et seq. above.
- 4.59. The original claim form to the Industrial Tribunal ("ET1") was dated 3 May 2018. We note that the Claimant did not refer to protected disclosures at this stage. On 28 September 2018, a NIPSA HQ Official emailed DSO with a number of *"issues in dispute"* for consideration, which references the Claimant, *"lodging a public interest disclosure."*
- 4.60. On 17 October 2018, Executive Officer (NICS HR) emailed the Deputy Principal (DAERA) providing Counsel's comments on the Claimant's request to include whistleblowing in her claim.
- 4.61. We note that Counsel's opinion was shared with the Claimant's Line Manager and the Chief Veterinary Officer and they confirmed they were happy to proceed with amendment to ET1. On 18 October 2018, the Deputy Principal (DAERA) emailed the Executive Officer (NICS HR) stating that the Chief Veterinary Officer, *"has advised that he is content to follow the legal advice"*. On the same day, the Claimant's Line Manager emailed the Deputy Principal (DAERA) stating, *"I am content to be guided by our counsel on this one. With regard to the argument itself I made it clear to the"*

complainant, I made it clear that she had played her part in highlighting the issue, that it was outwith [sic] her responsibility to put solutions in place and that she could not be criticised in due course."

- 4.62. DSO subsequently emailed the Industrial Tribunals and Fair Employment Tribunals ("ITFET") confirming DAERA's acceptance of the amendment to the ET1 stating,

"Following the CMD [Case Management Discussion] before Employment Judge Murray on 4 October 2018 the Respondent notes the Claimant's content that it is implicit in the ET1 that the Claimant suffered detriment by reason of having made Protected Disclosures. This had not been expressly set out in the ET1 and no reference had been made to either "Protected Disclosures" or "Detriment". The Respondent acknowledges the facts which have been fulsomely set out in the ET1 are capable of constituting such a claim, notwithstanding the fact that it had been expressly pleaded and that a whistleblowing claim would amount to relabelling of facts that have already been pleaded. In the circumstances, the Respondent considers that there is no necessity for a pre-hearing review to determine whether the ET1 discloses a protected disclosure claim or whether the claimant should be given leave to amend the ET1. The Respondent does however seek leave to amend the ET3 in order to deal with the whistleblowing claim".

Our key findings

The initial actions when the concerns were raised

- 4.63. This section summarises the key findings about the following two key actions to be determined:
- The recording of the concerns raised by the complainant; and
 - The analysis or assessment made of the concerns.
- 4.64. We note that each of the 13 protected disclosures (as agreed at the Tribunal) was made by the Claimant by email. The Claimant supported her concerns with evidence, such as Livestock Market inspection reports, data regarding deleted moves and extracts from the relevant legislation.
- 4.65. For each of the 13 protected disclosures (as agreed at the Tribunal), except for one sent only to DAERA Employee (5), the Claimant raised the concerns directly with her line manager, along with other Departmental Officials.
- 4.66. We also note that the Claimant raised her concerns about deleted cattle moves at the TBSPG delivery working group.
- 4.67. Other than in the minutes of the TBSPG meeting held in April 2017, however, there does not appear to have been a formal record of the concerns; we note that none of the concerns were recorded in the relevant Departmental Whistleblowing Registers, including by the Claimant.

- 4.68. It would appear, however, that the concerns about deleted cattle moves were taken seriously, at least initially, by senior Departmental Officials, including by those to whom the Claimant raised her concerns.
- 4.69. We note that the Claimant's Line Manager did appear to take the *“lead ... [on] com[ing] up with a strategy to counter the [issue about deleted cattle moves]”* and that the agreed ‘strategy’ was to *“amend the [NIFAIS] database to facilitate a shorter timescale for entering a market move of a bovine animal out of a market.”*
- 4.70. There was a delay, however, in rolling out the updated version of the NIFAIS database, which also delayed the specific amendment agreed, the specification for which seems to have been sent to the IRM SPVO in 25 June 2018 almost 16 months after the first disclosure and after the Claimant had resigned in February 2018. We do not know the reason for the delay in rolling out the NIFAIS database.

Subsequent actions and investigation of the concerns being raised

- 4.71. This section summarises the key findings from the following three key actions to be determined:
- The arrangements for reporting and escalating the concerns; and
 - The nature of advice received from other parts of DAERA or from other departments to inform how the concerns might be handled; and
 - The actions taken when the concerns were raised to:
 - investigate the concerns;
 - provide information to the individual on the actions taken; and
 - support the individual who raised the concerns.

Ballymena Livestock Market

- 4.72. It appears that the Claimant's Line Manager specifically acknowledged the concerns raised in relation to Ballymena Livestock Market, but continued to advocate for lesser enforcement actions under the DARD enforcement policy. Further, from the documentation available to us, it appears that despite the Claimant repeating her concerns about Ballymena Livestock Market, the Claimant's Line Manager increasingly failed to respond to her and the issues raised, most notably in the period from December 2017 to February 2018.
- 4.73. This lack of escalation of the concerns is in contrast to those made in relation to another livestock market, where, although a different issue, it is clear from the correspondence that the concerns were escalated to the Chief Veterinary Officer and Permanent Secretary grades. Whilst we acknowledge that the concerns were not regarded as protected disclosures at the time, given their seriousness, in our opinion, we might have expected that the Permanent Secretary in particular, would have been alerted to them during the regular stock-take meetings with senior Departmental Officials.

Deleted cattle moves

- 4.74. Within the relevant witness statements, key Departmental Officials indicated that they believed other individuals or parts of DAERA were dealing with the concerns regarding deleted cattle moves.
- 4.75. The Claimant's Line Manager is clear that the concerns were taken seriously by both the VSAHG Head of Division (DAERA) and himself and, as a result, he met with the IRM Manager (DAERA) together with the Claimant to discuss the matter when first raised by her. In particular, we note in paragraph 4.9 above that the Claimant's Line Manager told his colleagues that the VSAHG Head of Division (DAERA) had asked him to “lead” on the matter “to come up with a strategy to counter the situation.” Once that strategy, which focused on amendment to the NIFAIS database, had been determined, however, the Claimant's Line Manager stated that “the issue was outwith my control and I trusted my IRM colleagues would take appropriate action.” It appears, therefore, that no further action was taken by the Claimant's Line Manager in relation to the concerns raised about deleted cattle moves by the Claimant, including any potential enforcement action.
- 4.76. Given the traceability issues discussed at TAG meetings and the terms of reference of Traceability Forum, which were attended by the Claimant's Line Manager, we might have expected these concerns to have been discussed at these meetings; this, however, does not appear to have been the case.. In addition, there was no further mention of deleted market moves at meetings of the TBSPG after the Claimant first raised the concern at the meeting on 11 April 2017²³.
- 4.77. In his evidence to the Tribunal, the IRM SPVO stated that the option of enforcement was the responsibility of the Claimant's Line Manager. This was accepted in the Judgment as being consistent with the Claimant's evidence and her belief at the time. It appears therefore that at the time, neither the IRM branch nor the Claimant's Line Manager believed that the issue of deleted cattle moves was within their control.
- 4.78. We would expect that these roles and responsibilities would be clearly documented within a relevant DAERA policy, or at least incorporated within the DARD enforcement policy. The DARD enforcement policy however does not provide this guidance, nor explicit guidance on the level of investigation expected of Departmental Officials, in response to reported non-compliance. Whilst the various compliance options are detailed within the policy (as summarised at paragraph 3.24 et seq. above), split according to assistance, assessment and enforcement, the DARD enforcement policy does not provide guidance on when specific enforcement action should be undertaken.
- 4.79. There appears to have been a conclusion within the Department that the concerns were ‘business as usual’, despite the seriousness of the concerns raised by the Claimant. We note that the IRM SPVO in his witness statement, referred to the concerns as a “business as usual matter”. This appears to have impacted the speed at which action was undertaken to address the concerns and indeed may have been a factor in the lack of communication and feedback to the Claimant.

²³ We note that by this date, the Claimant had made one protected disclosure (relating to deletion of cattle moves).

- 4.80. Despite the concerns being considered as ‘business as usual’ by some Departmental Officials, they could still be considered as protected disclosures. The ‘Respondent’s Supplementary Submission’ dated 25 March 2021 states, *“The fact that the matters raised were treated as “business as usual” does not mean that they cannot be Qualifying disclosures; the 1996 Order contains no such restriction.”*
- 4.81. It is also evident from the summary of protected disclosures in **Appendix 1** that a range of stakeholders were aware of the concerns. It appears however that it was largely the Claimant’s Line Manager’s enforcement team and the IRM team which sought to take action on the concerns raised. There is no evidence to suggest that advice was actively sought from other areas within DAERA, or other departments, to help handle the concerns.

The assessment of the concerns as protected disclosures

- 4.82. This section summarises the key findings from the following two key actions to be determined:
- The extent to which those investigations and any actions taken were compliant with DAERA’s whistleblowing policy and with the NICS Code of Ethics; and
 - The extent to which the investigations and any actions taken reflected DAERA’s Animal Welfare/Enforcement policies.
- 4.83. As noted above, the Claimant raised the concerns (with the exception of protected disclosure K) to her line manager. In addition to this, the Claimant ensured through her emails and attendance at relevant forums, that other relevant Departmental Officials were also informed of the concerns.
- 4.84. It appears however that the concerns raised by the Claimant were not treated as protected disclosures, at least initially, neither by those to whom the Claimant raised the concerns, nor by the Claimant herself. As such, the DARD whistleblowing policy was not specifically invoked and as a result, specifically followed.
- 4.85. The Claimant did however continue to raise her concerns about Ballymena Livestock Market, including to the Chief Veterinary Officer on 1 November 2017. It could therefore be argued that at the point of escalation by the Claimant to such a senior DAERA employee, her concerns ought to have been regarded as being protected disclosures.
- 4.86. The Claimant therefore reported, and escalated her concerns, although not purposefully, in a manner consistent with initial guidance set out in the DARD whistleblowing policy. At no point, however, did the Claimant escalate her concerns further to those specifically noted in the DARD whistleblowing policy, including the Director of Finance; the Director of Human Resources and Corporate Services; or the Head of Internal Audit.
- 4.87. Whilst not explicitly referred to as protected disclosures, by raising her concerns, the Claimant would have had an expectation that they would be adequately considered and addressed, where appropriate, by the Department.

- 4.88. Despite the Claimant repeating her concerns, the Claimant's Line Manager, and the Chief Veterinary Officer in relation to Ballymena Livestock Market, do not appear to have agreed with the level of enforcement action proposed by the Claimant to address the issues raised; we note that investigation of deleted cattle moves was retrospectively requested by the Chief Veterinary Officer after the Judgment.
- 4.89. This appears to have been for two reasons.
- 4.90. Firstly, there appears to have been a lack of understanding of who, or which branch was responsible for dealing with the concerns, primarily those in relation to deleted cattle moves. As was the case with other non-compliance identified in livestock markets, we would have expected such serious concerns to have been escalated to the level of Permanent Secretary, during the regular stock-take meetings with senior Departmental Officials, for further guidance.
- 4.91. The second reason appears to have been a consistent preference by the Claimant's Line Manager and the Chief Veterinary Officer for compliance actions other than formal enforcement in relation to the issues raised in the protected disclosures. Whilst we note in paragraph 4.78 above that the DARD enforcement policy provides for a range of compliance actions, it is clear that a distinction must be made on the grounds of severity. Based on the documentation available to us, it is difficult to determine which compliance option was the right course of action at the relevant time.

5. The Industrial Tribunal Complaint

The process for advising DAERA that a claim had been made

- 5.1. The original ET1 form, lodged on the Claimant's behalf, was received by the DoF NICS Employment Tribunals Team on 12 June 2018. In summary, the Claimant cited "*major fraudulent practices*" involving line management; attempts to get these issues taken "*seriously*" by senior management; the realisation that if these fraud issues came to light management would "*point the finger*" at her; and that "*this was in direct contrast to my ethics and morals and my professional oath and I felt that I had no other option but to leave my job of 19 years and start again*".
- 5.2. On the same day, the Executive Officer (NICS HR) emailed the ET1 form to the legal team copying HR Connect. In his email the Executive Officer (NICS HR) stated that he had "*conduct of this claim within NICS HR*".

The process of advising relevant senior officers of the claim within DAERA

- 5.3. Following receipt of the ET1 form, the Executive Officer (NICS HR) shared the Claimant's statement setting out the details of the claim with the Chief Veterinary Officer and the Claimant's Line Manager "*to allow them to gather their thoughts in relation to this response*". He noted that the Claimant's Line Manager's response to the allegations would be "*invaluable*".
- 5.4. DAERA Employee (2) was subsequently nominated by the Chief Veterinary Officer as the conduit between DAERA and NICS HR in dealing with the claim. The Executive Officer (NICS HR) anticipated that she would "*have to speak to other staff members named [in the] complaint*", but asked that rather than send the complaint to all named parties, she "*liaise with the individuals involved*."
- 5.5. We note that the HR Adviser (HR Connect) told the Chief Veterinary Officer that the Tribunal had "*tight deadlines*" and therefore a response was required from the DAERA Employee (2) no later than 29 June 2018, and further that NICS HR was "*preparing a background brief to assist DSO with the preparation of the formal ET3 response*"

The decision-making relating to the provision of the response to the claim

Original ET3 response

- 5.6. DAERA Employee (2) asked the Deputy Principal (DAERA) to gather and collate inputs from VSAHG to facilitate Counsel drafting the ET3 response form.
- 5.7. On 22 June 2018, the Deputy Principal (DAERA) sent separate emails to the VSAHG Head of Division (DAERA), the Deputy Chief Veterinary Officer, the IRM SPVO, DAERA Employee (5), the Claimant's Line Manager, the SPVO (Retired) and the Senior Veterinary Officer ("SVO") ("the named

individuals”) including comments directed at each individual where they had been referenced in the Claimant’s statement, such as:

- “[VSAHG Head of Division (DAERA)] *is this correct? Do you have any relevant correspondence?*” and *“Can you confirm these comments?”*; and
- “[Deputy Chief Veterinary Officer] *did the IRM Section take [the Claimant’s] concerns on board and take action? Is there any evidence that action was taken - minutes of meetings*” and “[Deputy Chief Veterinary Officer] *any comment?*”

- 5.8. The VSAHG Head of Division (DAERA) provided his response to the Deputy Principal (DAERA) on the same day, as did the Deputy Chief Veterinary Officer. In her response to the Deputy Principal (DAERA) she stated, *“I do recall an email from [the Claimant] around this subject which, as would be normal practice re IRM issues, I would have sent to [the IRM SPVO] as IRM Programme Manager to consider approach with policy colleagues.”*
- 5.9. DAERA Employee (5), the IRM SPVO, the SPVO (Retired) and the Claimant’s Line Manager all replied to the Deputy Principal (DAERA) with their comments on 26 June 2018.
- 5.10. Of note, DAERA Employee (5) stated that he *“had a check to see if [he] still [had] the email but as it is past the 3 month rule, [he] unfortunately [did] not. The description outlined in the attached and highlighted in reference to [him was] an accurate reflection of the email conversation ... [the Claimant] and [her Line Manager] would have both been aware that responsibility for this did not lie with [him] and thus, when [the Claimant’s Line Manager] confirmed this ... [he] took no further action with regards to the request.”*
- 5.11. The SPVO (Retired) stated that he *“ ... could not find any of the related emails. This is probably because it was not [his] direct area of responsibility and [had] only been keeping emails relevant to [his] current projects in preparation for retirement and following GDPR training.”*
- 5.12. The SVO stated that *“ ... the evidence being presented was not compelling as a disease risk for TD. [He was] surprised by this allegation. [He had] known [the Claimant] for many years and would have thought she could have discussed the matter with [him] if she wanted to.”*
- 5.13. The following day, 29 June 2018, the Deputy Principal (DAERA) drafted the Tribunal response based on an amalgamation of the responses provided to him by the named individuals. He then arranged a meeting with the Chief Veterinary Officer and the Claimant’s Line Manager to discuss this draft document. We have not identified any notes of this meeting, nor follow-up emails that might reference what was discussed at this meeting.
- 5.14. Counsel was provided with a background brief from DSO on 17 July 2018, which included the Tribunal response drafted by the Deputy Principal (DAERA).
- 5.15. A first draft of the ET3 response was emailed by Counsel to DSO on 26 July 2018 for DAERA’s approval. The DoF NICS Employment Tribunals Team replied on the same day confirming they were content with the ET3 response.

- 5.16. In an email dated 31 July 2018 from the Deputy Principal (DAERA) to the Executive Officer (NICS HR) it was stated that *“the Claimant's Line Manager has reviewed the Directions and Response document ... and is content (agreed with the Chief Veterinary Officer)”*.
- 5.17. The initial ET3 response was subsequently lodged on behalf of DAERA on 3 August 2018.
- 5.18. We note a retrospective email from the DoF NICS Employment Tribunals Team to DAERA Employee (7) dated 14 February 2019 commenting on the process of submission of the ET3 form. We note that DAERA sought support from Counsel in relation to the draft ET3 response form and NICS HR cleared the draft as *“good to go”*.

Amended ET3 response

- 5.19. An email from the Executive Officer (NICS HR) to the Deputy Principal (DAERA) 17 October 2018 refers to the Claimant's desire to update her ET1 form to include 'whistleblowing' in her claim: *"The Claimant contends that she was subjected to less favourable treatment on the ground that she had made Protected Disclosures"*.
- 5.20. Emails at the time indicate that the Chief Veterinary Officer and the Claimant's Line Manager were content to be led by the advice from Counsel and approved the amendment of the ET1 by way of an email sent on 18 October 2018 from the Deputy Principal (DAERA) to the Executive Officer (NICS HR). On the same point, the Deputy Principal (DAERA) received an email from the Claimant's Line Manager confirming that *“With regard to the argument itself I made it clear to the complainant ... that she had played her part in highlighting the issue, that it was outwith [sic] her responsibility to put solutions in place and that she could not be criticised in due course.”*
- 5.21. The amended ET1 claim form was agreed between parties on 7 November 2018; on 27 November 2018 the ET3 response form was amended to deny that the claimant was subject to detrimental treatment as a result of making protected disclosures.
- 5.22. Similar to the original ET3 response form, we have not seen any evidence of who, within DAERA, formally approved the amended ET3 response, although we note that the views of both the Claimant's Line Manager and the Chief Veterinary Officer had been sought by the Deputy Principal (DAERA) prior to it being lodged.
- 5.23. There is evidence to suggest that, although NICS HR was aware of the case, it had no decision making role, such as it would, for example, in absence dismissal cases, but acted in a coordinator role between DAERA and the legal team. i.e. DSO and counsel.
- 5.24. This view would be consistent with our expectation of the role of NICS HR and indeed DSO, regardless of their level of involvement in the case. Neither organisation would have been a decision maker in relation to the defence strategy. Their role would have been focused on setting out the legal and HR approaches available, an analysis of the pro's and con's of a particular defence strategy and potentially an evaluation of the case merits. But they would have had to take instruction and direction from

whoever was deemed to be the decision maker(s) within DAERA. It appears that most of the interactions between NICS HR and DAERA were with the Chief Veterinary Officer and the Claimant's Line Manager; there is no evidence of the Former Permanent Secretary's (DAERA) involvement in the documentation we have reviewed.

The origins and nature of the advice provided to DAERA

- 5.25. From the documentation we have reviewed, we have not seen any evidence of advice from the legal team on the merits of claim. However, we have reviewed internal communications between the Chief Veterinary Officer, the Executive Officer (NICS HR) and the Deputy Principal (DAERA) in relation to the decision made by DAERA not to enter into conciliation or arbitration.
- 5.26. On 5 September 2018 an email and letter was received from the Labour Relations Agency Conciliation Service asking "*if the Respondent [was] interested in conciliation or arbitration*".
- 5.27. The Executive Officer (NICS HR) was contacted by DSO on 14 November 2018 to confirm if the department was interested in entering into conciliation or arbitration. The Executive Officer (NICS HR) asked the Deputy Principal (DAERA), copying the DoF NICS Employment Tribunals Team, to confirm "*if the Department wishes to avail of this facility?*"
- 5.28. In response to an email from the Deputy Principal (DAERA) asking what this would entail, the Executive Officer (NICS HR) stated, "*Generally speaking in cases we do not go down that route, however the option is available. Personally speaking, with the claimant leaving the service, mediation may not be beneficial to the department. For your info, as this case evolves, when counsel views all the witness statements from claimant and respondents, he will provide an opinion on the merits of the case.*"
- 5.29. On 15 November 2018 the Chief Veterinary Officer confirmed to the Deputy Principal (DAERA) that he thought "*we should show willing*". Having received, however, The Executive Officer's (NICS HR) email (above) of explanation, it appears that the Chief Veterinary Officer no longer "*wish[ed] to avail of the conciliation/arbitration facility.*"
- 5.30. On 19 November 2018, the Executive Officer (NICS HR) confirmed to DSO, copying the DoF NICS Employment Tribunals Team, that there was "*no appetite at present with the department to engage with LRA*".
- 5.31. On 12 March 2019, DAERA Employee (7) emailed the Chief Veterinary Officer explaining that "*Once the witness statements are gathered legal counsel will consider and make a recommendation to either (a) move to hearing (b) offer to enter into negotiation for settlement (if he believes there are any significant weaknesses in the case/potential for negative impact on the Department etc) ... The opposing side have secured legal representation from NIPSA, he [the Executive Officer (NICS HR)] believes therefore that [it] is highly unlikely that they will drop the case at this stage.*"
- 5.32. The Chief Veterinary Officer responded to DAERA Employee (7) to say, "*To be clear I have no difficulty with entering into negotiation should that be advised by legal council [sic]. In my only*

experience of this the cost to the Department financially, never mind the mental scars, was easily much more than the final financial award".

- 5.33. We have not had sight of any documentation setting out the recommendation of counsel in this case, nor assessment of its merits. Further to this, there is evidence of the NIFAIS Programme Manager requesting a copy of Counsel's initial advice on the case but this was not provided as there was no copy available.
- 5.34. We note, however, that in its written response to our draft report, DSO stated that "*oral advice on the merits was given [by Counsel in a meeting with the Chief Veterinary Officer on 7 October 2019] ... although this advice is not recorded in the notes of the meeting*".

Our key findings

- 5.35. Following receipt of the ET1 form by the DoF NICS Employment Tribunals Team, the relevant information required to draft the ET3 response was collated by the Deputy Principal (DAERA) based on input from the individuals named in the Claimant ET1 form (and subsequent meetings with the Chief Veterinary Officer and the Claimant's Line Manager).
- 5.36. The Executive Officer (NICS HR) had conduct of the claim within NICS HR. The original ET3 response was then drafted by Counsel on the basis of information provided by DSO and DAERA in the '*background brief*'. The DoF NICS Employment Tribunals Team confirmed that he was content with the ET3 form as, it seems were the Chief Veterinary Officer and the Claimant's Line Manager. The final draft of the ET3 response was said by NICS HR to be "*good to go*" and lodged with the Industrial Tribunal on 3 August 2018.
- 5.37. We have not had sight of evidence of discussions with DSO or Counsel in relation to defending the claim. The focus from the outset appeared to be on gathering the relevant information and drafting and submitting the ET3 response form. It is clear from the evidence provided that there was a sense of urgency within DAERA to gather the relevant information and submit a response. Given the strict Industrial Tribunal timeframes to enter a defence to a claim, it would be considered reasonable for an employer to lodge its defence and then subsequently consider the merits of defending the claim. Even if the merits of a claim are weak, lodging a defence to the claim can put the respondent in a stronger position in any subsequent negotiations.
- 5.38. Following the lodging of the ET3 response, we have not had sight of any advice note to DAERA on the merits of claim from the legal team (i.e. DSO or Counsel) which we would typically expect in a case such as this, setting out the weaknesses in the case, prospects of success and also the potential cost implications of proceeding with a hearing and being unsuccessful.
- 5.39. We note that Counsel's fee note dated 2 July 2020 does not include reference to time spent advising or drafting a merits of claim note. A written note on the merits of claim would have been in the interest of all parties involved both from a legal and commercial perspective. For instance, early decisions can be made on the basis of anticipated costs and with the benefit of a merits assessment, if the costs

outweigh any potential award for instance, it would not be uncommon that a commercial agreement is reached to settle the matter prior to incurring disproportionate costs. Equally, a party may choose to defend a claim on a point of principle or to set a precedent for other employees to show that they will not simply settle any cases pursued. However, these are all matters which are typically discussed with legal advisers or Counsel upon receipt of a merits assessment of the case and an estimate of attendant costs.

- 5.40. We have not had sight of advice from Counsel in relation to a recommendation to either (1) move to hearing (2) offer to enter into negotiation for settlement (if he believes there are any significant weaknesses in the case/potential for negative impact on the Department etc). This recommendation/advice appears to have been anticipated as it is referenced in both the Executive Officer's (NICS HR) email dated 14 November 2018 and DAERA Employee (7)'s email dated 12 March 2019. The Chief Veterinary Officer (in a response email to DAERA Employee (7)) (see details of the email in paragraph 5.32 above) suggests that he would have no difficulty with entering into negotiation should that be advised by legal Counsel. Irrespective of this, there does not appear to be any documentary evidence of Counsel advice in relation to this.
- 5.41. The evidence suggests that DAERA did not enter into conciliation/arbitration with the LRA. Typically, the role of the LRA Conciliation Officer is to help find a solution that both sides find acceptable instead of proceeding to hearing. The benefits of entering into this process (even where a resolution is not achieved), is that it provides an insight into the expectations of the other side in terms of a remedy to the situation. The LRA Conciliation Officer can provide insights into a Claimant's case and their rationale for pursuing a case which would not be apparent without their involvement.
- 5.42. It appears from the documentation reviewed that DSO was seeking DAERA's instructions in relation to whether they wanted to enter into conciliation with LRA in or around November 2018. The Chief Veterinary Officer was initially of the view that the department should enter into conciliation/mediation. However, following an email from the Executive Officer (NICS HR) to the Deputy Principal (DAERA) which highlighted that mediation may not be beneficial to the department, and that counsel would provide an opinion on the merits of the case, the department's position appeared to change and the Executive Officer (NICS HR) confirmed to DSO that there was no appetite at the department to engage in conciliation.
- 5.43. From the documentation reviewed in relation to potentially entering into conciliation, there does not appear to be evidence that DSO provided any insight or advice to DAERA in relation to the potential benefits of entering into conciliation. However, ultimately, this would have been a business decision and it would not be the case that agreeing to participate in mediation or conciliation is an indicator of a defence weakness. Instead, it is more likely that a Respondent would be perceived as demonstrating willingness to listen to the Claimant and potentially resolve the legal issues without the cost of a hearing.
- 5.44. There is evidence that the Chief Veterinary Officer and the Claimant's Line Manager sought advice from Counsel in relation to the amendment of the ET1 and subsequently proceeded on the basis of

agreeing to the amendment to the ET1 without the need for a preliminary hearing. There is no evidence that the Permanent Secretary was involved in this decision. However, from the evidence provided, the addition of the whistleblowing claim to the Claimant's ET1 form did not appear to trigger any additional management or internal investigation processes. Further to this, the inclusion of whistleblowing claims meant that the financial cap on unfair dismissal (approximately £90,000) was removed as there is no limit on the compensation that can be awarded for unfair dismissal linked to whistleblowing. Although this fact appears to have been recognised, given the significant impact on the potential award for this case, we would have expected the legal team i.e. DSO and Counsel to provide advice in relation to the potential impact this would have had in relation to proceeding to hearing both from a legal and commercial perspective.

- 5.45. Although it is not explicitly clear which DAERA staff took the decision that the case should be defended, the Chief Veterinary Officer and the Claimant's Line Manager appear to have been involved in the discussions, particularly in relation to collating the relevant information which was then sent to Counsel as the background brief. However, given the ET1 focused on these two individuals it would be anticipated their input would be required for the purposes of drafting the ET3 response, but it would be unusual that they be the sole decision makers particularly within a public body in evaluating whether a defence was appropriate.
- 5.46. Our expectation is that those involved in the claim would have some input but this would only be taken into account in the context of considering the strength of their evidence and whether they would be comfortable giving evidence. Ordinarily they would not be the key decision makers as an assessment would be made of the strength of the case and the perceived strength (or otherwise) of witnesses.
- 5.47. The final decision in relation to the amendment to the ET1 appears to have been made by the Claimant's Line Manager and the Chief Veterinary Officer on the basis of emails from them both confirming they would be led by counsel in relation to this decision. Similarly, it appears that the Chief Veterinary Officer made the final decision in relation to the conciliation on the basis of the email communications between him and the Deputy Principal (DAERA) in relation to the decision to enter into conciliation/mediation.
- 5.48. More broadly, there appears to be a gap in notes of key meetings/consultations, or written follow-up notes by way of an alternative record of the meetings/consultations, which we would expect as a means of keeping an audit trail of key discussions and decisions.
- 5.49. We also note that there is no evidence of a communication to witnesses in relation to the preservation of emails, notes or any documents (whether held virtually or in hard copy) that could be considered relevant to the claim. Typically, a data preservation notice or communication would be sent to those involved in a matter with the request that they preserve (1) all email, electronic working papers and other electronic documents; (2) all hard-copy working papers and documents (including any notebooks). It has been noted that when requests for documents or emails were made that in some instances these documents could not be produced as they are automatically deleted after three

months. If witnesses were not provided with this guidance, they could not have known the importance of retention of documents related to the claim.

6. The Industrial Tribunal

The advice and guidance provided to DAERA about witness statements

- 6.1. Based on the documentation reviewed, we have seen some evidence of advice and guidance provided to DAERA in relation to the witness statements. There is evidence that the DoF NICS Employment Tribunals Team reached out to the relevant individuals on 5 September 2019 requesting they draft a witness statement; this email included a template witness statement form and generic guidance. The DoF NICS Employment Tribunals Team informed the witnesses that the *“intention would be for Counsel to then QA your draft statements and suggest amendments as necessary.”*
- 6.2. There is evidence that Counsel reviewed each of the witness statements, requesting clarification and providing some initial views on certain points and subsequently requesting re-drafts from witnesses.

The advice and guidance provided to DAERA about oral testimony

- 6.3. Based on the documentation we have reviewed, we have not seen evidence of any written advice and guidance provided to the officials who gave evidence via oral testimony at the Tribunal. However, there is evidence that Counsel attended a two hour consultation with the witnesses on 4 February 2020 seven days prior to the hearing on 11 February 2020.

Any assessment of the level of preparedness for providing oral testimony

- 6.4. Based on the documentation we have reviewed, we have not seen any contemporaneous documentation in relation to the assessment of the preparedness of the officials providing oral testimony.
- 6.5. There is evidence of comments made by the SVO, following delivery of his oral testimony, that he did not expect the line of questioning, which may indicate a lack of preparation. By email to the DoF NICS Employment Tribunals Team and the Executive Officer (NICS HR) on 21 February 2020, the SVO states, *“I refer to a question/issue I was asked at the recent Tribunal. The question was outside the specific scope of my statement and demanded a general working knowledge of the Movement controls applied by the Divisional Veterinary Office. In fairness I did not expect the whole line of questioning to be about the Deleted Last Moves. Although this was outside my statement area, I did proceed to refute the allegation, on the basis that I needed to defend the Department as best I could.”*
- 6.6. We cannot comment on the specific questions the SVO was asked to answer. However, if he was asked a question which went beyond his own knowledge or where he was simply speculating, he would have been better advised to have stated this and confirmed that he could not answer the question. Witnesses can attempt to answer every question put to them but this is not a sensible approach if they do not have the requisite knowledge to address the points of the query. Although witnesses cannot be coached for a hearing, it would be typical that they be provided with general guidance, for instance on court etiquette, how to address tribunal and advising witnesses not to be drawn into speculating when

giving evidence. This would be quite a normal approach to equipping witnesses to best deliver evidence and respond to questions, without coaching them on what they should or should not say.

- 6.7. Rather than indicate a lack of preparation, however, it may equally indicate that the Respondent witnesses did not provide sufficient detail and context in their witness statements to address the issues raised by the Claimant. Consequently, aspects of the Claimant's witness evidence may have been put to them for their view as part of their cross-examination. This would not be unusual as witness statements cannot always cover every single issue raised by a Claimant. However, it may have been useful for witnesses to have been able to anticipate being questioned on matters outside of their own evidence and allow them to consider how they might respond in advance of the Tribunal hearing.
- 6.8. Ultimately, the legal issues were set out in the Claimant's original and amended ET1. The issues would have been set out in more detail in the Claimant's witness statement. All of these documents were available to the Respondent's witnesses and their responses and any additional background information should have been contained within their witness statements. If the witnesses did not do this, the question remains as to whether they had credible explanations for what had happened or whether they addressed the circumstances surrounding the key legal issues.
- 6.9. We note a memo dated 12 April 2022 from the Former Permanent Secretary, (DAERA) (until April 2022) to Governance and EU Funding which includes reference to 'unpreparedness' of the DAERA witnesses: *"due to performance of our witnesses in the original Tribunal hearing and what I understand to be our general unpreparedness in terms of the level of depth of questioning that they faced it is clear that real deficiencies in our processes have left us facing a liability of significant proportions at a time when our resource budget is so severely constrained"*.

Our key findings

- 6.10. Based on the documentation we have reviewed, there is limited evidence of DSO undertaking an assessment of the level of preparedness of the officials providing oral testimony prior to the hearing. However, there is evidence that a consultation was held between Counsel and the witnesses on 4 February 2020 (seven days prior to the hearing).
- 6.11. In addition to this, there is limited evidence of guidance provided to DAERA and to the officials who gave evidence. However, there is evidence which indicates that Counsel provided advice on the witness statements and attended consultations with the witnesses.
- 6.12. It is not Counsel's role to draft witness statements, typically that is done by the witness, with some guidance from their legal advisor. Counsel might then provide some additional comments.
- 6.13. The Tribunal ultimately assesses the evidence on the basis of documentary and witness testimony. Generally there may be pre-hearing consultations with Counsel when key issues are discussed and legal advice on case merits provided. Counsel may also explain what witnesses can expect on the day of the tribunal hearing in terms of formalities. However, Counsel would not provide any witness

coaching, beyond confirming matters such as how the Tribunal judge should be addressed, what to do if a witness is referred to a document etc.

- 6.14. It is not the role of Counsel to advise a witness on how to respond to particular questions or advise them to change their evidence on a particular point. It should be noted that witness preparation is typically a matter for the witnesses themselves i.e. familiarising themselves with the Hearing bundles, key dates, reviewing contemporaneous notes etc. Consequently, it may be difficult for a retrospective objective assessment of witness preparation to be made.

7. The Judgment

The means by which the Judgment was communicated to and within DAERA

- 7.1. There is evidence of the Judgment being distributed internally with reference to a decision being made in the coming weeks about appealing the decision.
- 7.2. On 22 September 2021, the DoF NICS Employment Tribunals Team emailed the Chief Veterinary Officer, attaching the Judgment, stating, "*Counsel is giving his urgent consideration with a view to formulating his opinion on the legal merits of appealing the Judgment. We plan to arrange a consultation with you to better talk through the Department's options.*"
- 7.3. The DoF NICS Employment Tribunals Team also shared the Judgment with the Claimant's Line Manager, the IRM SPVO, the SVO and the Deputy Chief Veterinary Officer on 29 September 2021. In his email he invited the witnesses to contact him for a debrief and additional support; he also stated the following:
- "... While this is a hugely disappointing outcome for us all, from our perspective it would seem clear that Judge Murray was favourably disposed towards [the Claimant], making it extremely difficult for the Department to secure the decision we wanted/needed from the tribunal ... What happens next? Our legal team is considering applying to the Court of Appeal to review the original decision, and that call will be made within the next couple of weeks ... Although this decision is a bitter pill [sic] to swallow, rest assured you were both individually and collectively a credit to your profession throughout the hearing."*
- 7.4. In response to this email, the Claimant's Line Manager replied on the same day, stating, "*I wasn't prepared for the outcome and it seems very unjust ... I still have some questions around the potential for [the Claimant] to take a case against me personally.*"
- 7.5. In a similar vein, on 4 October 2021, IRM SPVO emailed the DoF NICS Employment Tribunals Team to say "*I do feel this ruling is an injustice and I hope DAERA appeal*".
- 7.6. In response to the Judgment, we note the suggestion that the Chief Veterinary Officer wanted to investigate the issues raised about animal traceability. As noted at paragraph 4.21 in an email to the DoF NICS Employment Tribunals Team dated 29 September 2021, the Chief Veterinary Officer states, "*I am minded to ask Internal Audit to have a look at the issues raised around animal traceability in order to either confirm things are OK or tell me what needs done. Is there any reason I shouldn't do this?*". There is evidence that the Chief Veterinary Officer receives legal advice in relation to this question.

The advice and guidance provided to and within DAERA relating to the initial decision to appeal

- 7.7. The communications in relation to the appeal (other than the early references to considering the appeal (detailed above) and a reference to a consultation on 28 September 2021 detailed below), begin with Counsel sharing the draft notice of appeal, setting out the grounds for doing so, with DSO on 27 October 2021.
- 7.8. There is no evidence of Counsel providing detailed advice on the merits of appeal at this stage.
- 7.9. The notice of appeal was subsequently lodged by DSO on 2 November 2021.
- 7.10. There is evidence that on 1 February 2022 Senior Counsel reviewed and provided his comments on the notice of appeal.
- 7.11. A consultation was held with Senior Counsel on 23 March 2022. By way of follow-up the following day, SPVO (2) emailed the Executive Officer (NICS HR) (copying in the DoF NICS Employment Tribunals Team, the Chief Veterinary Officer, the Former Permanent Secretary (DAERA) and the NICS HR Tribunals Team) requesting written advice.
- 7.12. The formal merits of appeal were later provided by Senior Counsel to DSO on 29 March 2022. The same day the Executive Officer (NICS HR) shares the advice note with SPVO (2) and the Chief Veterinary Officer, copying in the DoF NICS Employment Tribunals Team; in turn SPVO (2) shares the advice note with the Former Permanent Secretary (DAERA) on 30 March 2022, copying in the Chief Veterinary Officer.
- 7.13. We note that in an email from the Permanent Secretary (DoF) on 14 April 2022 to DSO states that his understanding was that the purpose of the appeal was to assist DAERA with negotiations given they had no real leverage.

The decision-making relating to the appeal

- 7.14. Based on the documentation we have reviewed, there appears to be uncertainty about who made the decision to appeal. We note in particular, an email sent by the Former Permanent Secretary to SPVO (2) on 24 March 2022 in which he expresses his “*surprise*” on hearing “*we had appealed this case given the strong comments of the Tribunal Chair*”.
- 7.15. On 28 September 2021 a consultation was held including Counsel, DSO, NICS HR and the Claimant’s Line Manager. There is evidence in an email from SPVO(2) to the Chief Veterinary Officer to suggest that during this consultation the appeal was discussed however no decision was made.
- 7.16. An email from NICS HR Business Partner for DAERA (“NICS HRBP”) on 4 November 2021 to the Executive Officer (NICS HR), refers to the NICS HRBP and the DoF NICS Employment Tribunals Team being involved in consultations with DSO, Counsel and Senior DAERA staff in relation to the appeal.

- 7.17. An email from the Chief Veterinary Officer in response to SPVO (2)'s email on the same day states, *"Attached seems to indicate decision wasn't made at that meeting but sometime later, possibly by the legal team."*
- 7.18. Presumably the reference to the legal team is DSO and Counsel. It should be noted that in practice the legal team would act only in response to their client's instructions.
- 7.19. It appears that many individuals were subsequently contacted about their recollections or knowledge of the decision to lodge an appeal against the Judgement.
- 7.20. On 15 March 2022 in an email from Director of Employee Relations (NICS HR) to NICS HRBP, states that *"From discussions with [the DoF NICS Employment Tribunals Team] I believe the appeal was based solely on legal arguments - no further input from DAERA employees to support the appeal."*
- 7.21. The Director of Employee Relations, (NICS HR) attached the email chain he was referring to from the Chief Veterinary Officer to the DoF NICS Employment Tribunals Team which noted: *"perm sec has asked if we can get [suggested name of counsel] as senior counsel."*
- 7.22. The Chief Veterinary Officer's email arguably implies that the Former Permanent Secretary (DAERA) was aware of the decision to appeal given that he recommended Counsel. Presumably in response to this suggestion being put to him, the Former Permanent Secretary (DAERA) responded to Director of Employee Relations, (NICS HR) explaining that no apology was needed stating, *"I think [the Chief Veterinary Officer's] request to have [suggested named of counsel] as Counsel relates to a conversation I had with him re employee disputes cases in which I reference [suggested name of counsel] as someone who I would wish to have representing me given his success in such cases. I am conscious that this particular case has drawn an amount of media interest in the last week or so and will probably continue to do so up to and after the appeal case but having spoken with [the Chief Veterinary Officer] today I would have had no difficulty in supporting and approving a request to appeal the case"*.
- 7.23. This email chain would indicate that the Former Permanent Secretary (DAERA) was not aware of the decision to appeal, and therefore did not approve it, but retrospectively agreed with the decision to do so.
- 7.24. DSO provided us with handwritten notes of the meeting held on 28 September 2021, taken by the DSO Grade 7. The notes conclude with what appear to be two actions: *"Brief Senior Counsel. Lodge Appeal"*.
- 7.25. DSO also provided us with comments made by Counsel retrospectively of his recollection of the meeting. His recollection was that the decision to proceed with an appeal was made at this meeting following advice from Counsel, and that *"Departmental officials provided their agreement to this approach at the meeting"*. We note, however, that this agreement is not recorded in the handwritten meeting minutes and that the Chief Veterinary Officer stated in his written response to our draft report that the decision was not made at the meeting of 28 September 2021.

The process that led to the decision being taken by the Departmental Accounting Officer that the Judgment should not be appealed

7.26. Based on the documentation reviewed, there is evidence to suggest that the decision taken by the Former Permanent Secretary (DAERA) to withdraw the appeal was made following receipt of advice from Senior Counsel:

- 29 March 2022 - SPVO (2) emails the Executive Officer (NICS HR), the Chief Veterinary Officer and the DoF NICS Employment Tribunals Team attaching the advice note, stating, *"I will ask the Perm Sec to advise whether we should agree to the proposal in paragraph 24"*. We note that paragraph 24 of the advice note proposes the following: *"In light of this there is potentially a window of opportunity in which to seek to enter into negotiations with the Respondent in an attempt to resolve the underlying quantum issues in the Tribunal case and thereby render the appeal ... at the end of April superfluous"*;
- 5 April 2022 - Email from the Former Permanent Secretary (DAERA) to SPVO (2), the Chief Veterinary Officer and the Deputy Secretary (DAERA Central Services and Contingency Planning) in response to SPVO(2) email which stated that the Press Office had asked if they had updated the Minister on their decision to negotiate a settlement, *"[SPVO (2)] if we have no[t] updated the Minister then we should given the high profile nature of this case. In terms of spending authority I am assuming it would require my sign-off given the potential sums involved and I have copied in [the Deputy Secretary (DAERA Central Services and Contingency Planning)] for his view on that"*;
- 5 April 2022 - Email from the DoF, Tribunals Team to SPVO (2) and the Deputy Secretary (DAERA Central Services and Contingency Planning), *"I understand that [the SPVO (2)] has been in contact to make you aware of a consultation in this case tomorrow afternoon. The consultation will involve all legal representatives and accountants who prepared the relevant reports in this case and it is anticipated that a settlement figure will be recommended"*;
- 12 April 2022 - In an email from the Former Permanent Secretary (DAERA) to DSO , copying Deputy Secretary (DAERA Central Services and Contingency Planning) the process required by the Former Permanent Secretary (DAERA) to be able to progress to settlement is highlighted: *"I am expecting to receive a document from [Senior Counsel] setting out his advice, along the lines he indicated during our discussions last week... Until I have advice I am afraid I will not be in a position to progress the settlement as I need a basis on which to do so"*; and
- 12 April 2022 - Memo from the Former Permanent Secretary to Governance and EU Funding, *"... it seems to me ... that a settlement is, on balance, the better course of action in the circumstances in which we find ourselves. I am therefore, albeit reluctantly, confirming Accounting Officer approval to pursue a settlement of up to £1.25m ... I have also asked that*

the report also consider the mechanisms and approvals obtained in relation to the decision making re the appeal”.

DAERA management decisions with respect to relevant individuals following the decision to accept the findings

Potential disciplinary action

- 7.27. Based on the documentation reviewed, it appears that in March 2022, it was decided that any review of the conduct of relevant individuals would be considered after the appeal. In accordance with the Terms of Reference, our review is based on documentation up until 15 April 2022 and therefore we have not considered nor provided comment on anything after this date.

Temporary promotion of the Claimant’s Line Manager

- 7.28. The Claimant’s Line Manager was notified of his temporary promotion to Deputy Chief Veterinary Officer (Grade 5) by the Business Management Branch, through the Deputy Chief Veterinary Officer, on 28 March 2022; the Chief Veterinary Officer was copied into this correspondence.
- 7.29. We note that the Chief Veterinary Officer wrote to the Former Permanent Secretary (DAERA) on 12 April 2022 in relation to the temporary promotion of the Claimant’s Line Manager, stating *“Prior to [the Claimant’s Line Manager] taking up the post, I spoke to him to ensure that he was aware of the likelihood of adverse publicity due to the [Claimant’s] Industrial Tribunal case and possibly by his temporary promotion. [The Claimant’s Line Manager] stated that he has dealt with adverse publicity so far by avoiding the media ... I invited him to review his acceptance of the temporary position ... but did not withdraw from the competition. As [the Claimant’s Line Manager] was successful in an open and fair competition and is not subject to any sanctions arising from the Industrial Tribunal, I must accept his decision.”*
- 7.30. The process for the temporary promotion was reviewed by the Deputy Secretary (DAERA Central Services and Contingency Planning) and was determined to have followed formal guidance.

Our key findings

- 7.31. We have identified evidence of (i) the means by which the Judgment was communicated to DAERA and within DAERA; (ii) the decision-making relating to the appeal (albeit with gaps in information as detailed below); and (iii) DAERA management decisions with respect to relevant individuals following the decision to accept the findings.
- 7.32. Based on the documentation we have reviewed, there is limited documentation available to evidence the chain of events relating to the initial decision that the Judgment should be appealed.
- 7.33. We were subsequently provided with handwritten notes of the consultation with Counsel on 28 September 2021 which record a discussion about appealing the decision (and the subsequent lodging

of the appeal on 2 November 2021). The notes conclude with what appear to be two actions: "*Brief Senior Counsel. Lodge Appeal*".

- 7.34. There is no record of a follow up note from Counsel confirming the outcome of the consultation. In email chains from attendees of the consultation, retrospectively discussing the meeting, there is uncertainty around the outcome of this meeting, albeit there is acceptance that the appeal was discussed.
- 7.35. There is a suggestion that the decision to appeal was taken by the legal team and based solely on legal arguments with no input from DAERA employees. However, in our view, it is extremely unlikely that DSO and Counsel would have made decisions about an appeal without taking instructions from DAERA. Therefore, presumably this decision was made prior to Counsel sharing the first draft of the notice of appeal with DSO on 27 October 2021 as Counsel would have expected to have been instructed of DAERA's intention to appeal to know to prepare it.
- 7.36. DSO provided us with comments made by Counsel retrospectively of his recollection of the meeting. His recollection was that the decision to proceed with an appeal was made at this meeting following advice from Counsel, and that "*Departmental officials provided their agreement to this approach at the meeting*". We note, however, that this agreement is not recorded in the handwritten meeting minutes and that the Chief Veterinary Officer stated in his written response that the decision was not made at the meeting of 28 September 2021.
- 7.37. There are a series of emails about the Former Permanent Secretary's (DAERA) sign off of the decision to appeal. In an email dated 14 March 2022 the Former Permanent Secretary (DAERA) sets out, "*I have no recollection or record of being consulted on the decision to appeal the case and having just spoken to the [Chief Veterinary Officer], his recollection was that I was not involved and that he took the decision based on the advice of Counsel. That said in the circumstance I would have agreed with the decision to appeal anyway.*" Senior Counsel's advice on the merits of appeal was provided on 29 March 2022.
- 7.38. In our opinion, practice would indicate that it would be considered very unusual for those involved in the claim to be involved in any decisions relating to an appeal. We note that the Chief Veterinary Officer was in attendance at the consultation with Counsel on 28 September 2021 when the decision to appeal may have been taken or, at the very least, when the question of whether there ought to be an appeal was discussed. It follows that his involvement or attendance at a consultation with Counsel when a decision to appeal was being discussed could amount to a conflict of interest. Although there is no documentary evidence to suggest that attempts were made to manage this conflict of interest, Counsel retrospectively noted that "*the [Chief Veterinary Officer] stated that he felt that he was too close to the case and that he would take a step back.*"
- 7.39. The Claimant's Line Manager was notified of his temporary promotion on 29 March 2022. The process for the temporary promotion was subsequently reviewed by the Deputy Secretary (DAERA Central Services and Contingency Planning) and found to have followed formal guidance.

7.40. It would be considered best practice to document the rationale and approval processes followed in reaching any key decision, including recording who made, and ultimately was responsible for making the decision, and when that decision was made. In regard to the initial decision to appeal, there is a paucity of documentation currently available to support this decision and therefore to determine whether it was a transparent process. Based on the documentation reviewed, there is a lack of transparency in the decision making process to appeal, including a documented rationale and approval, such as would be required by Managing Public Money Northern Ireland (“MPMNI”).

Appendix 1 - Summary of protected disclosures

A	Date made 28/02/2017 by email This disclosure was made to the Claimant's Line Manager , VSAHG Head of Division (DAERA), Deputy Chief Veterinary Officer and IRM SPVO
B	Date made 24/05/2017 by email Disclosed to the Claimant's Line Manager , VSAHG Head of Division (DAERA), the Deputy Chief Veterinary Officer and SVO
C	Date made 22/09/2017 by email Disclosed to the SVO and the Claimant's Line Manager
D	Date made 21/09/2017, 22/09/2017, 25/09/2017, 27/09/2017 and 28/06/2017 by emails Disclosed to the Claimant's Line Manager
E	Date made 04/12/2017 by email followed by further emails on the 13/12/2017, 15/12/2017 and 18/12/2017 Disclosure to the Claimant's Line Manager, SPVO (3) , the Welfare & Enforcement Branch Employee (DAERA) and Admin staff
F	Date made 30/11/2017 and 01/12/2107 by email Disclosure to the Claimant's Line Manager
G	Date 11/12/2017 by email Disclosure to Francis Meehan from IRM section, the Claimant's Line Manager and the Welfare & Enforcement Branch Employee (DAERA)
H	Date made 15/12/12017 Disclosure made to SPVO (Retired), the Claimant's Line Manager, the Welfare & Enforcement Branch Employee (DAERA) and DAERA Employee (4)
I	Date made 18/12/2017 by email to SPVO (Retired) Disclosure made to the VSAHG Head of Division (DAERA), SPVO Field, SVO, the Claimant's Line Manager and IRM SPVO
J	Date made 23/01/2018 Disclosure made to the Claimant's Line Manager and the Welfare & Enforcement Branch Employee (DAERA)
K	Date made 19/02/2018 Disclosure made to the DAERA Employee (5).
L	Date made 20/02/2018 by email Disclosure made to the Claimant's Line Manager, SPVO (Retired) and IRM SPVO
M	Date made 21/02/2018 by email Disclosure made to DAERA Employee (4), IRM SPVO, the Claimant's Line Manager, SPVO (Retired), DAERA Employee (1) and IRM Branch

Appendix 2 - Timeline

Date	Event
1999	The Claimant joined the Department of Agriculture as a Veterinary Officer
April 2016	The Claimant appointed as a Supervisory Veterinary Officer
28 February 2017	The Claimant raised her first concerns in relation to the deletion of cattle moves
20 February 2018	The Claimant raised her last concern, the lack of adequate response to which was viewed by her as being the “ <i>last straw</i> ”
27 February 2018	The Claimant resigns from the Northern Ireland Civil Service
3 May 2018	Original claim form (ET1) lodged with Industrial Tribunal
3 August 2018	Initial ET3 response lodged on behalf of DAERA
September 2018	The Claimant lodges a public interest disclosure
7 November 2018	Amended ET1 claim form agreed between parties
27 November 2018	ET3 response form amended to deny that the claimant was subject to detrimental treatment as a result of making protected disclosures
11 - 14 February 2020	Industrial Tribunal hears evidence on liability
4 June 2021	Submissions hearing takes place
22 September 2021	Judgment handed down
28 September 2021	Consultation with Counsel, DSO, NICS HR and DAERA to discuss outcome
2 November 2021	Appeal lodged
23 March 2022	DAERA officials meet with Senior Counsel, Counsel and DSO
28 March 2022	Notification of temporary promotion of the Claimant’s Line Manager to DCVO (Grade 5) from 11 April 2022 to 2 October 2022
29 March 2022	DAERA receives advice from Senior Counsel on the merits of appeal
12 April 2022	Appeal withdrawn and settlement agreed

This document has been prepared only for DAERA and solely for the purpose and on the terms agreed with DAERA. We accept no liability (including for negligence) to anyone else in connection with this document.

If you receive a request under freedom of information legislation to disclose any information we provided to you, you will consult with us promptly before any disclosure.

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