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**DAO (DoF) 08/16**

**18 October 2016**

**Dear Accounting Officer**

## **USE AND APPROVAL OF CONFIDENTIALITY CLAUSES/AGREEMENTS IN DISPUTE SETTLEMENTS**

### **Purpose**

1. The purpose of this DAO letter is to provide updated additional guidance to departments on a commitment given to the Public Accounts Committee (PAC) in relation to the use and approval of confidentiality agreements/clauses in dispute settlements, etc.

### **Background**

2. I previously wrote on 7 January 2016 (FD (DFP) 02/16) reminding departments of the Public Accounts Committee's recommendation in their 2011 report into "Measuring the Performance of NI Water and Procurement and Governance in NI Water" on the use of confidentiality clauses and DFP's (now DoF's) response to the recommendation.

In that report the Committee stated that:-

*"NI Water made use of confidentiality clauses to keep embarrassing transactions secret."*

The Committee recommended *“that, as a point of principle confidentiality agreements should not be used anywhere in the public sector. However, if in exceptional circumstances their use proves to be unavoidable, the Committee considered that these cases should be approved by the relevant departmental Accounting Officer and by DFP.”*

In the Memorandum of Reply to the PAC DFP advised:

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

### **General Principles**

3. Since the issue of FD (DFP) 02/16 we have been keeping under review the cases which have been referred to DoF for approval. This has provided us with more information and background on circumstances when confidentiality clauses/agreements in dispute settlements may be considered necessary and appropriate to use and this has helped develop the general principles set out below which departments should consider when utilising such clauses/agreements in settlement cases.
4. These are:-
  - i. confidentiality agreements should not be used as a means to keep embarrassing transactions secret and should not be used to inappropriately prevent transparency and openness;

- ii. in all cases where confidentiality clauses/agreements are being used it should be considered whether their use is required and can be justified. The rationale for their use should be documented/stated;
- iii. where their use is being considered departments should obtain legal advice on the appropriateness and need for the use of confidentiality clauses/agreement;
- iv. where such clauses/agreements are being used departmental Accounting Officers should approve their use;
- v. where their use could be considered to be novel or potentially contentious DoF Supply approval should be sought;
- vi. confidentiality clauses should not be used as a means to deter or prevent employees raising concerns (i.e. whistleblowing) with a regulatory or other statutory body about wrong doing or poor practice; and
- vii. in all cases confidentiality clauses/agreement should be worded in such a way as to ensure that the relevant organisation is able to fulfil any legal responsibilities and reporting requirements e.g. in order that it can fulfil its duties for accounting and audit purposes and to fulfil any duties owed to the NI Assembly and its Committees.

### **Action**

- 6. This DAO letter should be brought to the attention of relevant staff in your department, agencies and Arm's Length Bodies.

### **Withdrawal**

- 7. FD (DFP) 02/16 is now withdrawn.

## **Enquiries**

8. General enquiries regard this DAO letter should be directed to Julie Sewell  
Tel: 028 91858276 or network 68276; email [Julie.sewell@finance-ni.gov.uk](mailto:Julie.sewell@finance-ni.gov.uk).
9. In the case of Supply queries, these should be directed to the relevant Supply  
Team through the Departmental Liaison Officer.

**Yours sincerely**

A handwritten signature in blue ink that reads "Alison Caldwell". The signature is written in a cursive style and is placed on a light purple rectangular background.

**ALISON CALDWELL**

**cc: Finance Directors  
Mike Brennan, PSD  
Emer Morelli, PSD  
Supply Officers  
Julie Sewell, PSD  
Rosemary Todd DSO  
Fiona Elliott, PSD**